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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

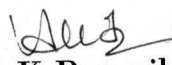
OA No.24 of 2010


Cuttack this the ~~11~~ day of January, 2012

Sri Pramod Chandra Patnaik Applicant
Vs
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be sent to PB New Delhi for circulation? ✓


(A.K. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.24 of 2010

Cuttack this the ~~11th~~ day of January, 2012

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Pramod Chandra Patnaik, IAS, aged about 59 years, Son of Late Gobind Chandra Patnaik at present working as State Project Director, Orissa Primary Education Programme Authority, "Sikshya Saudha", Unit-5, Bhubaneswar-751001.

.....Applicant

By legal practitioner -Mr.K.C.Kanungo, Counsel

-Versus-

1. Secretary, Ministry of Personnel, Public Grievance and Pension, Deptt. Of Personnel & Training, North Block, New Delhi-110 001.
2. State of Orissa represented through Chief Secretary to Govt. of Orissa, Orissa Secretariat, Bhubaneswar-751 001, Dist. Khurda.
3. Union Public Service Commission represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi-110 069.
4. Shri Raj Kishore Jena, IAS (Retired) Plot No. 513, Jharpada, Bank Colony, Po.Budheswari, PS-Laxmisagar, Bhubaneswar, Dist.Khurda, Orissa.
5. Shri Manoranjan Mishra, IAS, Secretary, Board of Revenue, Orissa, Cuttack.
6. Shri Krishna Chandra Mohapatra, IAS, Private Secretary to Chief Minister, Orissa Secretariat, Bhubaneswar-751 001, Dist. Khurda.
7. Shri Jagadish Prasad Agarwala, IAS, Director, Panchayat Raj, P.R. Department, Orissa Secretariat, Bhubaneswar-751 001, Dist. Khurda.
8. Shri Pramod Kumar Pattnaik, IAS, Commissioner Cum Secretary to Government PG & PA Department, Orissa Secretariat, Bhubaneswar-751001, Dist. Khurda.

9. Shri Jyoti Prakash Das, IAS, Commissioner Cum Director (OBC) ST & SC Development Department, Orissa, Secretariat, Bhubaneswar, Dist. Khurda.
10. Shri Balakrishna Sahoo, IAS, Labour Commissioner, Orissa, Bhubaneswar, Dist. Khurda.
11. Sri Surendra Kumar Mishra, IAS, Personal Secretary to Governor of Orissa, Raj Bhawan, Bhubaneswar-751 001.

....Respondents

By legal practitioner -Mr.U.B.Mohapatra, SSC

Mr.S.K.Padhy, Adv.

Mr.R.C.Swain, ASC

Mr.G.C.Nayak, GA (State)

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ORDER

MR.C.R.MOHAPATRA, MEMBER(A)

Applicant is a promotee IAS Officer of the State of Orissa.

He has filed this OA seeking the following reliefs:

“Your Lordship may be graciously pleased to admit this application and upon hearing the parties quash the proceedings of the Review Selection Committee at Annexure-A/8 and the Notification No. 14015/17/2006-AIS(1) Dt.21.09.2006 at Annexure-A/9 for the ends of justice;

Be further pleased to direct the Respondents (1 to 3) to have fresh/review meetings of the Selection Committee to recommend fresh select list for promotion to IAS in respect of the selection year, 2002 taking into consideration the direction/observation of the Hon'ble Tribunal and High Court at Annexure-A/4 and Annexure-A/6 respectively, importantly and particularly, the gradings in respective ACRs of 5 years of the officers and punishments of some officers.

Be further pleased to hold that the Applicant stands in higher pedestal for his meritorious ACRs (outstanding Grading although) than Respondent Nos.4,5,7 and 10 and Late Satyananda Sethi and specifically in view of the punishment awarded to O.P.No.7 and Late Satyananda Sethi during the preceding 5 years;

Be further pleased to hold that the Applicant is entitled to be empanelled in the select list of 2002 and to be

promoted to IAS in respect of the year 2002 w.e.f. Dt.06.02.2004 with all consequential benefits such as promotion and arrears for revision of scale of pay for the ends of justice;

Be further pleased to quash the proceeding of the Review Selection Committee held on Dt.20.01.2010 and the consequential order at Annexure-A/15 for the ends of justice;

Be further pleased to issue any other/further order(s) or direction(s) on the Respondents in the interest of justice;

Be further pleased to allow the cost;

For such kind act, the Applicant shall as in duty bound ever pray."

2. Despite service of notice and adequate opportunity no separate counter has been filed by Respondent Nos. 4 to 11.
3. However, Respondent No.1 [Secretary, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, New Delhi], Respondent No.2 [State of Odisha represented through Chief Secretary to Government of Odisha, Odisha Secretariat, Bhubaneswar] and Respondent No.3 [UPSC represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi] have filed their counter separately opposing the prayer of the Applicant to which the Applicant has also filed rejoinder more or less reiterating his stand taken in the OA.
4. Heard the arguments advanced by the parties with reference to their respective pleadings and perused the materials placed on record.
5. Learned Counsel for the Applicant submitted that the Selection Committee proceedings dated 13.08.2003 followed by Notification of Officers of the State Civil Service promoting them to IAS

was set aside by this Tribunal vide order dated 3.11.2004 and 04.11.2004 in OA Nos. 1255/2003 & 2/2004 which was upheld by the Hon'ble High Court of Orissa in WP (C) No 13153/04 dated 10.01.2006 and confirmed by the Hon'ble Apex Court in SLP No. 7398/2006 dated 04.08.2006. Pursuant to the said orders Review Selection Committee was convened. The main plank of the submission of the Applicant is that the Review Selection Committee the same wrong as was committed on the earlier occasion which had been quashed by this Tribunal. Learned Counsel for the Applicant took us through the observation of this Tribunal at paragraph 11 & 13 and the observations of the Hon'ble High Court in its order dated 10.1.2006 at paragraph 30, 33, & 35 vis-à-vis the order at Annexur-A/8 to buttress his claim that the recommendation made by the Review Selection Committee was contrary to the observations made in the above orders and hence, the impugned orders are liable to be set aside. Learned Counsel for the Applicant further contended that no reason was assigned by the RSC as to how the applicant with a brilliant service record was again ignored and Respondent No.7 inflicted with penalty and having no outstanding grading in previous five years ACRs and Respondent No.10 who was superseded by the applicant just few months before the selection to IAS in promotion to the post of Orissa Administrative Service (Super Time Scale) and Shri Satyananda Sethi another selectee inflicted with statutory penalty of **censure** during

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preceding five years and punishment of stoppage of increment with cumulative effect were selected whereas the applicant who had no disciplinary proceeding or punishment on him and having outstanding remarks was ignored. Hence recommendations of the RSC could not have been acted upon by the Respondents.

6. The case of the Respondent No.3 (UPSC represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi) that in compliance of the orders of the Hon'ble High Court of Orissa, Review Selection Committee was held and considered all eligible State Civil Service Officers for inclusion in the vacancies of the year 2002. The Committee evaluated/made overall assessment of the recording made in the preceding five years ACRs/CCRs of the eligible State Civil Service Officers before recommending names against the vacancies and in particular the Selection Committee on overall assessment of the service record/ACRs graded the applicant as 'Very Good'. Further stand of the Respondents is that the name of the applicant was duly considered by the Review Selection Committee in the manner provided in the Promotion Regulation along with other eligible State Civil Service Officers. With the overall assessment of grading, the Committee [both original as well as the review SC] was unable to include his name in the select list due to the statutory limit on the size of the select list and

availability of enough officers with a similar or even higher/better grading.

As regards the allegation of the Applicant that despite pendency of disciplinary proceedings while others were included in the select list his name did not find place, it is contended by the Respondents as under:

“12.1. It is submitted that disciplinary proceedings instituted against the following officers were reported to be pending at the time of original SCM dated 13.08.2003:

Name of officers	Sl.No. in the eligibility list.
(i) Sh. Satyananda Sethi (SC)	05
(ii) Sh. Krushna Ch. Mohanty	09
(iii) Sh. Narayana Pr. Das	12
(iv) Sh. Raj Kishore Behera	18

12.2. The Selection Committee that had met on 13.08.2003 for preparation of the Select List of 2002 had included the name of Shri Satyananda Sethi at Sl.No.8 in the Select List. Sh. Sethi had passed away on 27.8.2003 before the recommendations of the said Selection Committee were approved by the Commission. Sh. Pradeep Kumar Panda, SCS Officer of Orissa had represented that he may be considered for promotion in place of Sh. Sethi. The Commission requested the Govt. of India, DOP&T to furnish their comments on the representation of Sh. Panda. The DOP&T vide letter dated 11.11.2003 had stated that they had noted the report by Sh. Panda on the demise of Sh. Sethi. As regards the representation for promotion to the IAS, they were of the view that inclusion of Sh. Panda's name in the select list would be beyond the permissible size of the Select List for 2002. In view of this the Commission had approved the recommendations of the Selection Committee as contained in the Minutes of their meeting dated 13.08.2003 without any modification.

12.3. Further, S/Sh. Pradeep Kumar Panda and Kulamni Rout at S.No.06 & 14 of the eligibility list have retired from Govt. service on superannuation w.e.f. 30.06.2006 and 30.04.2006 respectively. In view of the fact that S/Sh. Satyananda Sethi Pradeep Kumar Panda and

Kulamani Rout were eligible for consideration as on 01.01.2002 and were in service on the notional date i.e. 31.12.2002 they were considered for promotion by the Review SCM.

12.4. Prior to the review SCM, the State Govt. intimated that they have dropped the departmental proceedings against Sh.Satyananda Sethi vide State Govt. order dated 24.09.2004 as Sh.Sethi expired on 27.08.2003. Further the State Govt. have initiated disciplinary proceedings against Sh.Chandrasekhar Parida at Sl.No.21 of eligibility list vide State Govt. Memo dated 16.01.2004 and 02.07.2005.

12.5. As such, the disciplinary proceedings instituted against the following officers were pending as on the date of the review SCM:-

Name of officer	Sl.No.in the eligibility list.
(i)Sh.Krushna Ch.Mohanty	09
(ii)Sh.Narayana Prasad Das	12
(iii)Sh.Raj Kishore Behera	18
(iv)Sh.Chandrasekhar Parida	21

12.6. The Review Committee also considered the punishment/penalties imposed against the following officers in the zone of consideration:-

Name of Officers	Sl.No.in the Eligibility list	Date of Punishment order
(i)Sh.Raj Kishore Jena	01	31.10.95(Censure)
(ii)Sh.Jagdish Pr.Agrawal	04	26.8.96(Censure)
(iii)Sh.Satyananda Sethi(SC)	05	16.01.98(Censure)
(iv)Sh.Pradeep Ku Panda	06	09.02.96(Stoppage of one increment without cumulative effect).
(v)Bibhu Pr.Mishra	07	14.3.97(Stoppage of one increment with cumulative effect).

7. It has been contended by the Respondents' counsel that as per the orders of the Tribunal and the Hon'ble High Court of Orissa, the punishment orders were duly taken into consideration by the RSC while assessing the service records of the Officers. As reported by the

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Government of Odisha, there was no change in the service records of the officers in the zone of consideration placed before the original selection committee on 13.08.2003. Since there was no material change in the service records of the officers other than the officers at Sl.Nos.4, 5, 6 and 7 of the eligibility list, the Review Selection Committee decided to retain the assessment of the previous committee in their respect. The Review Committee noted that a formal warning was issued to the officer at Sl.No.1 which was not a penalty as per the State Government Rules. The Committee also noted that the change in the status of disciplinary proceedings in respect of officers at Sl.Nos.5 and 21 of the eligibility list since the original selection committee met on 13.08.2003 would only have an effect on the provisional inclusion of officers in the list as per proviso to Regulation 5(5). On an overall relative assessment of the service records, the Committee assessed the eligible officers in accordance with the provisions of the promotion regulations and as per the guidelines of the Commission framed for the purpose. The case of the applicant was considered by the Selection Committee for the year 2002 at Sl.No.16 in the eligibility list. On an overall assessment of his service records the Committee graded him as Very Good. As such the applicant could not be included in the Select List of 2002 due to **the statutory limit on the size of the select list and the availability of enough officers with the same or even higher/better grading.**

As regards the contention of the applicant that tainted officers were found more suitable than the applicant and were selected to IAS it was contended that any complaint against any of the eligible officers has no bearing on the assessment being made by the select committee for promotion to All India Service.

As regards the contentions raised by the Applicant against Respondent No.10 it is the case of the Respondent No.3 that the Selection Committee does not base its assessment only on the overall ACR grading of an officer but deliberates at length on his attributes as reflected under the various columns of his ACR and assigns its own grading to each officer. Thus the final grading assigned to an officer by the Selection Committee may not necessarily be the same as the overall ACR grading of the officer. As such an officer's inclusion/non-inclusion in a select list would depend on the grading assigned by the selection committee which may be different from the ACR grading assigned to him by the reporting/reviewing officer. In this connection, Respondents counsel has placed reliance on the decision of the Hon'ble Apex Court in the case of **UPSC V K. Rajaiah and others**, 2005 AIR SCW 3275.

It has been contended by the Respondents' Counsel that promotion of SCS Officers to the IAS is not only a promotion but is also induction into the All India Services. As per the provisions of the Promotion Regulations, the Selection is based on merit. Where Selection

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is made on merit alone, a senior officer has no legal right to promotion but only a right to consideration and if any officer junior to him is selected for promotion on merit, the senior officer is not legally superseded. In other words, the selections to the All India Services are primarily made on the basis of merit and seniority plays a secondary role. An element of supersession is also inherent in the selection process. In this connection, the decision of the Hon'ble Apex Court in the case of **R.S.Dass V UOI and others**, AIR 1987 SC 593 has been relied on.

They have contended that as per the orders of this Tribunal upheld by the Hon'ble High Court of Odisha subsequently by Hon'ble Apex Court the punishment imposed and overall records of the officers WERE considered and recommendations were made by the Selection Committee/Review Selection Committee.

In support of the stand that the Tribunal being not the appellate authority cannot sit over the assessment/recommendation made by the Selection Committee and that judicial review on the recommendation of the Selection Committee is limited, Respondents' Counsel has placed reliance on the decisions of the Hon'ble Apex Court in the cases of **UPSC V L.P.Tiwari & Ors** in Appeal (Civil) No.5155 of 2006; **Nutan Arvind V UOI and others**, (1996) 2 SCC 488, **State of Madhya Pradesh V Shrikant Chapekar**, JT 1992 (5) SC 633, **Dalpat Abasaheb Solunke V B.S.Mahajan**, AIR 1990 SC 434, **Smt. Anil Katiyar V UOI and**

others, 1997 (1) SLR 153 and in the case of **Sh.M.V.Thimmaiah and Ors V UOI and others**, Civil Appeal No. 5883-5891 of 2007 and has prayed for dismissal of this OA.

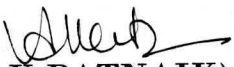
8. We note that the main grievance of the applicant is that the consideration given by the Review Selection Committee to his case vis-à-vis the case of the others was no consideration being contrary to the observations of this Tribunal, Hon'ble High Court of Orissa which was confirmed by the Hon'ble Apex Court. In other words it is the case of the applicant that the Review Selection Committee also committed the same mistake as was committed by the Original Selection Committee viz; consideration was given without evaluating the entire service records of the officers. In this connection we have perused the minutes dated 08-09-2006 of the Review Selection Committee placed at Annexure-A/8. Relevant portion the minutes of the Review Selection Committee is extracted herein below:


"11. The Review Committee examined the records of the officers whose names are included in the Annexure, who fulfilled the conditions of eligibility upto the year 2000-01 as the crucial date for reckoning the eligibility is 01.01.2002. Since there was no material change in the service records of the officers other than officers at Sl.No. 4,5, 6 & 7 of the eligibility lists, the Review Selection Committee decided to retain the assessment of the previous Committee in their respect. The Review Committee also noted that a formal warning was issued to the officer at S.No.1 vide State Government's order dated 31.10.1995 which is not a penalty as per the State Government Rules. The Committee also noted that the change in the status of disciplinary proceedings in respect of officers at Sl.No.05 and 21 of the

eligibility list since the original Selection Committee met on 13.08.2003 would only have an effect on the provisional inclusion of officers in the list as per proviso to Regulation 5(5). As such, the Committee retained the assessment of previous Committee in respect of them. On an overall relative assessment of their service records, the Committee assessed them as indicated against their names in Annexure. **While assessing their suitability, the Committee took into consideration the penalties imposed on the officers against them as intimated vide State Government's letters dated 18.08.2006 and 05.09.2006.** However, the Committee did not take into consideration any adverse remarks in the Annual Confidential Reports of the officers which were not communicated to them while assessing their suitability.

9. In view of the above we do not find any justification to hold that the Review Selection Committee had erred in making its recommendations and that too by ignoring the penalties/punishments while making its own assessment. The Commission has its own guidelines and procedure about scrutinizing the records. Scrutinization of records on the basis of the said internal guidelines and procedure by the Commission has been upheld by the Hon'ble Apex Court in the case of Anil Katiyar V Union of India and others, 1997 (1) SLR 153. This apart, classification given by the State Government authorities in the ACRs of an officer is not binding on the Selection Committee which can evolve its own methods for classification and this can be at variance with gradations given in the ACRs. The power to classify as Outstanding, Very Good, Good and Unfit being vested with the Selection Committee is no more *res integra* in view of the decision of the Hon'ble Apex Court in the case of UPSC V K.Rajaiah, 2005 AIR SCW 3275. In view of the above, none of
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the grounds canvassed by the Applicant's counsel in support of the reliefs claimed in this OA warrants interference by us. Hence this OA is held to be without any merit and is accordingly dismissed. No costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)