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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 14 OF 2012
CUTTACK, THIS THE 27th DAY OF July, 2012

Gadadhar Parida..... Applicant

Vs

Union of India & Others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Yes*

AKP
(A.K.PATNAIK)
MEMBER (JUDL.)

CRM
(C.R.MOHAPATRA)
MEMBER (ADMN.)

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CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 14 OF 2012
CUTTACK, THIS THE 27th DAY OF July, 2012

CORAM :

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

&

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

.....

Gadadhar Parida, aged about 58 years, Son of Late Paramananda Parida of H.I.G. 184, KANAN VIHAR, Phase-I, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

.....Applicant

Advocate(s) for the Applicant- M/s. A. Mishra, Jaydev Sengupta,
D.Ku.Panda, G.Sinha.

VERSUS

1. UNION OF INDIA represented through Secretary to Government, Department of Personnel & Training, Ministry of Personnel, Public Grievance. & Pensions, North Block, New Delhi.
2. UNION PUBLIC SERVICE COMMISSION, represented through the Secretary, Dholpur House, Shahjahan Road, New Delhi-110069.
3. STATE OF ORISSA represented through its Chief Secretary to Government, General Administration Department, Bhubaneswar.

..... Respondents

Advocate(s) for the Respondents - Mr. U.B.Mohapatra (For R-1 &2).
Mr. G.C.Nayak (For State of Orissa)

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ORDER

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

Applicant is the member of the Orissa State Civil Service, i.e Orissa Administrative Service. His grievance is that though his juniors have been inducted/promoted to the Indian Administrative Service in Orissa cadre, he has been denied the same. By challenging the decision of the Respondents in not inducting/promoting him into Indian Administrative Service, he has filed the present O.A. seeking the following relief:

“.....to quash the order of the respondent no.1 dated 23.11.2011 (Annexure-A/9);

And further be pleased to direct the respondent no.1 to promote the applicant to the Indian Administrative Service retrospectively from the date his immediate junior Sri Krishna Gopal Mohapatra was promoted to the said Service i.e. from 24.02.2011 (Annexure-A/2);

And further be pleased to direct the respondents to pay all the service and financial benefits retrospectively;

And further be pleased to allow this application with costs.”

2. Respondent No.3 has filed counter opposing the relief sought by the applicant. Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel for the Union of India had submitted that no counter is required to be filed by Respondent Nos. 1 and 2 as the crux of the

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matter relates to the State Government, who has already filed counter. Respondent No.3's contention is that though the applicant's name was recommended by the State Govt. to the UPSC for promotion to IAS for the select list of 2007 and the Selection Committee held by the UPSC on 01.11.2010 considered his case for including him in the Select List of 2007 provisionally subject to the clearance from the disciplinary proceedings which had been initiated against him vide GA Department O.M. No. 10272/Gen dt. 09.05.2006 for the irregularities committed while functioning as MD, Odisha State Handloom Weavers Cooperative Societies. The applicant retired from the State Government service on 31.01.2011 on attaining the age of superannuation. Subsequently, he was exonerated of all the charges by the Govt. of Orissa on 15.02.2011. State Govt. recommended to the UPSC for making his name unconditional in the Select List of 2007 as he was exonerated of the charges in the disciplinary proceedings and the UPSC thereupon declared him as unconditional in the Select List. However, the applicant was not appointed to IAS by the Respondent No.1 on the plea that he had already retired from the State Civil Service on attaining the age of superannuation on 31.01.2011. The applicant filed O.A. No. 403/11 before this Tribunal against the decision of Respondent No.1. In this O.A. the moot issue under consideration was whether due to the retirement

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the applicant would be deprived of becoming an IAS when the retirement age of All India Service is 60 years. This Tribunal had already decided this issue in the case of Lingaraj Khadenga vs Union of India in O.A. 443/08, in similar circumstance, in favour of said Sri Khadenga. Respondents were directed by this Tribunal vide order dated 10.08.2011 in O.A. 403/11 as follows:

“The Respondents are directed to consider/reconsider the case of the applicant for appointment/promotion to IAS retrospectively i.e the date on which his junior was promoted to IAS keeping in mind the orders of this Tribunal dated 27th July, 2009 in OA No. 269 of 2009 (Surendera Prasad Mishra v Union of India and others), dated 13th August, 2010 in OA No. 443 of 2008 (Lingaraj Khadenga v Union of India and others), order dated 19.07.2011 in OA No. 127 of 2011 (Bhabani Sankar Panda v Union of India and others), vis-à-vis the recommendation by the Government of Orissa under Annexure-A/5 dated 7th March, 2011 and communicate the decision in a well reasoned order to the Applicant within a period of 45 days from the date of receipt of copy of this order.”

In pursuance of the aforesaid order of this Tribunal, Respondent No.1, i.e. DOP&T, vide order under Annexure-A/9 passed the following impugned orders:

“WHEREAS, after receipt of complaint a factual report was solicited on 26.08.2011 from Government of Orissa, which was provided by them, vide letter dated 10.10.2011. The State

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Government has inter-alia informed that there were four vigilance cases registered against Shri Parida pending and in the case no. BBS(V) PS case no 47 dated 21.12.2006; preliminary charge sheet no. 4 dated 24.4.2011 against Shri Parida showing undue official favour to Shri Sapan Kumar Kundu has been submitted to the trial Court.

WHEREAS, it has been observed that in pursuance of the following proviso to Regulation 7(3) of IAS (Appointment by Promotion) Regulation, 1955, inclusion of Shri Parida in the select list is to be treated as deemed provisional:

“Provided that if an officer whose name is included in the select list is, after such inclusion, issued with a charge-sheet or a charge sheet is filed against him in a Court of Law, his name in the select list shall be deemed to be provisional.”

NOW THEREFORE, in pursuance of the above proviso to Regulation 7(3) of IAS (Appointment by Promotion) Regulation, 1955 the inclusion of the name of Shri Gadadhar Parida in the select list of 2007 is deemed provisional and thus appointment order cannot be issued.

3. The above order of Respondent No.1 has driven the applicant to knock at the doors of this Tribunal for the second time. The contention of the applicant in the present O.A. is that the Respondents are hell bent in depriving him of his legitimate dues, i.e. induction into the IAS on some ground or the other. In the first instance, Respondent No.1 rejected his claim vide Annexure-A/7 dated 10.06.2011 on the ground that he has retired from the State

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Civil Service on 31.01.2011. After the Tribunal's direction to reconsider the case on the basis of similarly situated State Civil Servants having got promotion to IAS, Respondent No.1 on the plea of a Police Case No. 47 of 21.12.2006 and report from the State Government rejected his claim under Annexure-A/9 on the ground that a preliminary charge sheet No. 4 dated 24.04.2011 in the case No. BBSR(V) PS case no. 47 dated 21.12.2006 has been submitted to the Trial Court. While rejecting his case in the first instance vide order dated 10.06.2011 this position, i.e., preliminary charge sheet dated 24.04.2011 has been submitted to the Trial Court was never held against the applicant.

4. We have heard Ld. Counsel for both the sides and have also perused the documents available on record. We have also gone through the Regulation 5(5) and 7(3) of the IAS (Appointment by Promotion) Regulation, 1955. For the sake of clarity, we reproduce the said provisions as under:

“5(5) The List shall be prepared by including the required number of names first from amongst the officers finally classified as “Outstanding” then from amongst those similarly classified as “Very Good” and thereafter from amongst those similarly classified as “Good” and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.

Provided that the name of an officer so included in the list shall be treated as provisional if the State

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Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the 2nd proviso to sub-regulation (1), the officer included provisionally in any of the Select List so prepared, shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the Select List determined by the Central Government for such year. EXPLANATION I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

....
...

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Civil Service.

Provided that if an officer whose name is included in the Select List is, after such inclusion, issued with a charge sheet or a charge sheet is filed against him in a Court of Law, his name in the Select List shall be deemed to be provisional."

5. The specific point of law, which has been raised by the Ld. Sr. Counsel for the applicant, is that there is no provision

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for treating the name of the applicant as provisional in the select list for the second time after the same has been made unconditional by the State Government and the UPSC. Hence, the appointment of the officer should have been made within 60 days after his name was made unconditional by the Commission, in terms of first proviso of Sub Regulation 4 of Regulation 7. Ld. Sr. Counsel for the applicant during the course of hearing, by filing a copy of the final report/charge sheet No. 4 dated 29.04.2011 brought to our notice that though it mentions "Preliminary", the document was submitted to the Special Judge, Vigilance, Bhubaneswar on 03.09.2011, which was seen by the Special Judge, Bhubaneswar on 06.09.2011.

6. Ld. Govt. Advocate for the State of Orissa, filed a memo on 05.06.2012 stating as follows:

"As per the order dated 10.05.2012 passed by the Hon'ble Tribunal on the above subject, it is to clarify that on completion of investigation charge sheet is being placed before the trying Court as per provision u/s 173 Cr.P.C.

Section 173 (2)-(i) says as soon as investigation is completed, the officer in-charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a Police Report, a report in form prescribed by the State Government.

Besides, Section 173 (8) says that nothing in this connection shall be deemed to preclude further investigation in respect of an offence after a report under sub-Section (2) has been forwarded

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to the Magistrate and, whereupon such investigation, the Officer-in-charge of the Police Station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed.

IN BBSR Vigilance P.S. Case No. 47 dated 21.12.2006 Charge Sheet has been placed vide C.S.No.4 dt. 29.04.2011 u/s 13(2) r/w 13(1)(d) P.C. Act/420/120-B IPC against Shri Gadadhara Parida and 5 others on completion of investigation. Further investigation was kept open as per provision u/s 173(8) Cr. P.C. only awaiting sanction against another accused namely Sri Pradipta Kumar Sahani, ex-Secretary, O.S.H.W.C.S Ltd, Bhubaneswar. On the basis of above charge sheet Hon'ble Trying Court has already taken cognizance of the offences in this case on 28.09.2011 in respect of accused persons including Sri Gadadhar Parida, ex.M.D. O.S.H.W.C.S., Ltd, Bhubaneswar. Next date has been fixed to 26.07.2012 for appearance of accused persons.

In BBSR Vigilance P.S. Case No. 26 dated 30.06.2007 Charge Sheet has been placed vide C.S.No.31 dt. 30.08.2011 u/s 13(2) r/w 13(1)(d) P.C. Act/420/120-B IPC against Sri Gadadhara Parida and 6 others on completion of investigation. Further investigation was kept open as per provision u/s 173 (8) Cr. P.C. only for awaiting sanction against one accused. On the basis of above charge sheet. Hon'ble Trying Court has already taken cognizance of the offences in this case on 14.10.2011 in respect of the accused persons. Next date has been fixed to 19.07.2012 for appearance of accused persons.

As regards to clarification on Preliminary Charge Sheet, it is mentioned



that the status i.e. Cr.P.C., has not defined 'Preliminary' or 'final' charge sheet, as described in earlier paragraph. Combination of charges submitted by investigating agency is known as charge sheet customarily, vide 173(2)(i) Cr.P.C.

Along with this memo a letter from the Inspector General of Police & Ex-officio Special Secretary of Govt. GA (Vigilance), Odisha, Cuttack, D.O.No. 4148 dated 16.05.2012, the position of P.S. Case No. 47 dated 21.12.2006, which is the basis for denying the promotion to the applicant, was also filed wherein it has been stated as under:

"In BBSR Vigilance P.S. Case No. 47 dated 21.12.2006 Charge Sheet has been placed vide C.S.No. 4 dt. 29.4.2011 u/s 13(2) r/w 13(1) (d) P.C.Act/420/120-B IPC against Shri Gadadhara Parida and 5 others on completion of investigation. Further investigation was kept open as per provision u/s 173(8) Cr.P.C. only awaiting sanction against another accused namely Shri Pradipta Kumar Sahani, ex-Secretary, O.S.H.W.C.S. Ltd, Bhubaneswar. On the basis of above charge sheet Hon'ble Trying Court has already taken cognizance of the offences in this case on 28.09.2011 in respect of accused persons including Shri Gadadhar Parida, ex. M.D., O.S.H.W.C.S. Ltd, Bhubaneswar. Next date has been fixed to 26.07.2012 for appearance of accused persons."



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Thus it was submitted that Hon'ble Trial Court has taken cognizance of the offences in the P.S. Case No. 47 dated 21.12.2006 on 28.09.2011 in respect of the applicant.

7. For proper adjudication of the case, it would be necessary, at the cost of repetition, to recount the relevant dates having a bearing on the case.

- i) Select List containing the name of the applicant was approved and notified on 05.01.2011 and 24.02.2011 respectively.
- ii) Appointment Order excluding the applicant was issued on 24.02.2011.
- iii) His junior Sri K.G.Mohapatra was promoted on 24.02.2011.
- iv) Applicant retired from State Civil Service on superannuation on 31.01.2011.
- v) Applicant was exonerated of the charges, due to which he had been put as provisional, on 15.02.2011.
- vi) UPSC made his name unconditional.

On the date, i.e. 24.02.2011, on which Sri K.G.Mohapatra was promoted, the applicant had been exonerated of the charge and he ought not to have been excluded by treating

his name as provisional. No legal provision including Regulation 7(3) of the IAS (Appointment by Promotion) Regulation, 1955 could have been invoked at that point of time. He could have been promoted from that date. But due to the quirk of fate, delay in processing his case at the official level, the exoneration came exactly 15 days after his retirement. It is precisely for this reason that this Tribunal vide its order dated 10.08.2011 in O.A. 403/11 directed the Respondents to consider the applicant for promotion as was done in the case of a few other similarly situated officers. The Respondents acquiesced in the same albeit trying to justify their inaction due to a later event i.e. cognizance by the Trial Court on 28.09.2011 and raising the issue of so-called preliminary charge sheet dated 29.04.2011 and invoked Regulation 7(3) to again treat the applicant's case as deemed provisional.

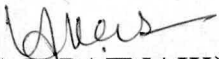
8. The sequence of events creates an indelible impression on our mind to the effect as if there is a concerted effort to deprive the applicant of his legitimate dues at the appropriate time by resorting to a Chess Board strategy. This is loathsome to say the least. Ordinarily, we would have left the matter of promotion/induction to IAS to the Respondents. But keeping in view the way/manner in which this case has traversed so far and observations made above, we, in the circumstances, are inclined to quash the order of Respondent No.1 dated 23.11.2011 at




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Annexure-A/9 and direct the Respondents to grant promotion/induction to the applicant to IAS w.e.f. the date his junior got promoted with all consequential benefits as expeditiously as possible but not later than 30 days from the date of receipt of copy of this order. Ordered accordingly.

9. O.A. is allowed. Parties to bear their own costs.


(A.K.PATNAIK)
MEMBER (JUDL.)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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