

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No.444 of 2013

Cuttack, this the 12th day of July, 2013

CORAM

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

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

.....

Sri Prafulla Chandra Mishra, aged about 59 years, Son of Late Srinivas Mishra, Commissioner, Consolidation, Cuttack, Odisha presently residing at Qr.No.J.O.19, Cantonment Road, Cuttack-753 001.

....Applicant

(Advocate(s):-M/s.K.C.Kanungo, Chitra Padhi)

-Versus-

Union of India represented through -

1. The Secretary to Govt. of India, Ministry of Personnel, Public Grievance and Pension, Department of Personnel & Training, North Block, New Delhi-110 001.

State of Odisha represented through -

2. Chief Secretary to Govt., Odisha Secretariat, Bhubaneswar, Dist. Khurda, PIN-751 001.
3. Special Secretary to Govt. of Odisha, General Administration Department, Odisha Secretariat, Bhubaneswar-751 001, Dist. Khurda, Odisha.
4. Shri Aditya Prasad Padhi, IAS, Additional Chief Secretary to Chief Minister, Odisha, Bhubaneswar-751 001, Dist. Khurda, Odisha.
5. Sri Injeti Srinivas, IAS, Development Commissioner Cum Additional Chief Secretary, Odisha and Secretary to

Alles

Government P&C Department, Government of Odisha,
Bhubanesar-751 001, Dist. Khurda, Odisha.

6. Smt. Alka Panda, IAS, Additional Director General, Bureau of Indian Standards, Development of Consumer Affairs, Government of India, New Delhi.
7. Shri Upendra Nath Behera, IAS, Additional Chief Secretary, Finance Department, Government of Odisha, Odisha Secretariat, Bhubaneswar -751 001, Dist. Khurda, Odisha.
8. Sri Taradatt, IAS, Chief Administrator, KBK, Odisha, Bhubaneswar-751 001, Dist. Khurda, Odisha.

.....Respondents

(Advocate(s)-Mr.G.C.Nayak & Mr.V.Narasingha)

for Resp. 1 and 2.

Al

ORDER

(Oral)

A.K. PATNAIK, MEMBER (J):

It is the case of the Applicant that his date of retirement being 31.1.2014 he is at the fag end of his service career. In this OA, he has challenged the order/notification dated 29.6.2013 at Annexure-A/1 & Annexure-A/2 promoting his juniors (Respondent Nos. 4 to 8) even though they do not have the eligibility condition of thirty years' service as provided in the Promotion Guidelines dated 28.3.2000 of Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel and Training, New Delhi.

Al

His assertion is that he has been denied promotion to the grade of Chief Secretary in the Indian Administrative Service in the apex scale of Rs.80,000/- with effect from 1.7.2013 illegally and arbitrarily. His further contention is that keeping his case in a sealed cover, with^{out} ^R any recommendation to that effect by the Screening^{Committee} ^R is bad in law as laid down in the case of **K.V.Jankiraman -Vrs- UOI and others, AIR 1991 SC 2010** more so when his juniors were promoted to the said grade without having the eligibility conditions. According to the Applicant, in exercise of colourable power, his case was kept in sealed cover even though there was no recommendation of the Screening Committee his case was kept in a sealed cover whereas the Respondent Nos. 4 to 8 who were/are juniors to him were given promotion to apex scale by suppressing, manipulating and misreprensting the settled principle and guidelines of the Government of India as because none of them have completed thirty years of service. It has been stated that though he has submitted representation on 01.07.2013 at Annexure-A/4 but he has not been communicated any reply thereon and he is in

Alles

apprehension that unless this Tribunal intervenes in the matter no action would be taken on his representation thereby allowing the applicant to continue in humiliation and harassment. Hence by filing the instant Original Application he has sought the following reliefs:

“....to quash Annexure-A/1 and A/2 to the extent it has given promotion to Respondent Nos.4 to 8 to the grade of Chief Secretary in the Apex Scale of Rs.80,000/- w.e.f. 1.7.2003 for ends of justice;

To direct the Respondent No.2 to consider the promotion of the Applicant to the next higher grade of Chief Secretary w.e.f. 1.7.2013 for the ends of justice;

To direct the Respondent No.2 to extend all service benefits and entitlements including arrear on fixation of pay in the scale of Rs.80,000/- w.e.f. 1.7.2013 for the ends of justice.”

2. Heard Mr.K.C.Kanungo, Learned Counsel appearing for the Applicant, Mr.G.C.Nayak, Learned Government Advocate and Mr.V.Narasingha, Learned Counsel appearing through Vakaltanama for the Respondent Nos.2&3, and Mr. B.K.Mohapatra, Learned Additional CGSC appearing for the Respondent No.1 and perused the records.

3. The Guidelines dated 28th March, 2000 reads as under:

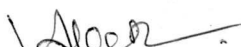
“VI. PROMOTION IN THE GRADE OF CHIEF SECRETARY

Waleh

The zone of consideration for promotion in this grade would consist of all the members of the Service who have completed 30 years of service. Appointment in this grade would be made from amongst the officers thus cleared, at any time during the relevant year and subject to the provisions of rule 9(7) of the IAS (Pay) Rules, 1954. The Screening Committee for this purpose shall consist of the Chief Secretary concerned, one officer working in his grade in the cadre and another officer of the cadre serving in Government of India in the same grade."

4. Paragraph of the decision of the Hon'ble Apex Court in the case of **K.V.Jankiraman-Vrs-Union of India and others**, AIR 1991 SC 2010 reads as under:

"6. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued."

5. It is the specific case of the Applicant that no charge sheet was issued to him either in Departmental proceedings or criminal case. Hence keeping his name in a sealed cover is against the law. 

8

6

OA No.444/2013
PCMisra-Vrs-UOI&Ors

6. We find that alleging his non promotion and promotion of his juniors was/is in violation of the Rules/guidelines/Law the applicant submitted an exhaustive representation on 1.7.2013 (Annexure-A/5) and ten days thereafter has approached this Tribunal by filing the instant OA, without giving a breathing time to the Respondent No.2 to look into his grievance. When representation has been submitted by an employee alleging injustice/miscarriage of justice was caused to him in the decision making process of the matter, the authority is well within his domain to consider and dispose of the same keeping in mind the rules and law. Therefore, time and again it has been reiterated that disposal of the representation at the hands of the authority at the first instance at the earliest opportunity, is sine qua non and, therefore, without waiting ^{for R} the result, it is not wise on the part of an employee to rush ^{to R} this Tribunal nosooner representation is filed. Be that as it may, when the applicant has made serious allegation through his representation dated 1.7.2013 at Annexure-A/4 that Respondents have illegally and arbitrarily deprived ^{him} of his legitimate right for promotion by way of adopting sealed cover

Alec

9

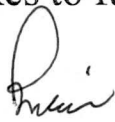
7


OA No.444/2013
PCMisra-Vrs-UOI&Ors

procedure and promoted his juniors in gross violation of Rules and Law to such high post in the State, we feel it prudent to direct the Respondent No.2 to consider and dispose of the said representation dated 1.7.2013 keeping in mind the extant Rules/Regulation/Law and communicate the result thereof to the Applicant at an early date preferably within a period of 90(ninety) days from the date of receipt of copy of this order. Ordered accordingly.

7. In the result, this OA stands disposed of, without going to the merit of this matter, at this admission stage. There shall be no order as to costs.

8. Copy of this order along with OA be sent to the Respondent Nos.1&2 by speed post at the cost of the Applicant; for which Mr.Kanungo, Learned Counsel for the Applicant undertakes to furnish the required postal requisite by 15.7.2013.


(R.C.MISRA)
Member(Admn.)


(A.K.PATNAIK)
Member (Judicial)