

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/944/2015

Date of Reserve:14.02.2019

Date of Order: 15.03.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Duryodhan Behera, IFS(Retd.), aged about 64 years, S/o. Late Bhukari Charan Behera, At-Sector-4, Plot No.107, Niladri Vihar, PO/PS-Chandrasekharpur, Dit-Khurda.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Environment, Forest & Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi-110 003.
2. Union Public Service Commission, through Secretary, Dholpur Hose, New Delhi-110 069.
3. State of Odisha represented through its Special Secretary to G.A. Department, Secretariat Building, At/PO-Bhubaneswar, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.Mohapatra
Mr.P.R.J.Dash
Mr.J.pal

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is a retired Indian Forest Service(IFS) Officer. He had earlier approached this Tribunal in O.A.No.966 of 2013 for direction to respondents to fix his seniority in IFS cadre as per the Selection Year 2003 by giving allotment in the year 1998 with other consequential reliefs. This Tribunal vide order dated 22.04.2014 disposed of the said O.A. with direction to Respondent No.4 to consider the representation and dispose of the same by a well reasoned order to be communicated to the applicant within a specific time

frame. While the matter stood thus, applicant filed a Misc. Application No.425 of 2004 seeking modification of the aforesaid order dated 22.04.2014 to the extent that direction made to Respondent No.4 to dispose of the representation should be read as Respondent No.5, i.e., Additional Secretary, Government of Orissa, General Administration (AIS) Department, Orissa Secretariat, Bhubaneswar. Accordingly, vide order dated 06.08.2014 this Tribunal so ordered and disposed of M.A.No.425/2014. Complying with the aforesaid direction of this Tribunal, Respondent No.5 passed an order dated 18.11.2015(A/12) rejecting the claim of the applicant for re-fixation of his seniority in IFS cadre of Odisha to the Selection year 2003. Aggrieved with this, the applicant has again approached this Tribunal in this Original Application under Section 19 of the A.T.Act, 1985, wherein he has prayed for the following reliefs:

“Under these circumstances it is most humbly prayed therefore that this Hon’ble Tribunal may graciously be pleased to quash the rejection order passed by respondent no.5 at annexure-A/12 and further be pleased to direct the respondents to fix the seniority of the applicant in IFS cadre as per the Selection Year 2003 by giving Allotment in the year 1998;

And further be pleased to direct that the Junior Administrative Grade be given to the applicant in the year 2007 and the Selection Grade be fixed on 2011.

2. Facts of the matter in brief are that applicant was promoted retrospectively to Deputy Conservator of Forests in OFS Group-A notionally with effect from 01.08.1998, when his juniors had been promoted to the said rank. Consequently, his inter se seniority in the gradation list of OFS Group A was fixed above Sri K.C..Dalai and below Sri Atis Kumar Behera. Grievance of the applicant is that consequent upon his retrospective promotion to the rank of Deputy Conservator of Forests (OFS-I) with effect from 01.08.1998 his

selection to IFS cadre should have been made against the year 2003, his year of allotment being 1998 as has been done in case of his senior Shri Atish Kumar Behera as well as his immediate junior Shri Ramesh Chandra Sethi and accordingly, he should have been granted the consequential service benefits, like, Junior Administrative Grade in the year 2007 and Selection Grade in the year 2011 etc.

3. The applicant while assailing the impugned order of rejection of his claim vide A/12 dated 18.11.2015 has pleaded that the ground urged by the respondents that there is no enabling provision in the Indian Forest service (Appointment by Promotion) Regulations, 1966 for review of a Select List once approved by the Commission and acted upon by Government of India is an out of come of non-application of mind inasmuch as under similar facts and circumstances, the Respondents have considered the matter in the light of the decision of this Tribunal in O.A.No.110 of 1996 – decided on 5.2.2004 (Biswanarayan Mohanty & Another vs. Union of India & Ors.). and granted relief to the applicants therein. Therefore, non-consideration of the case of the applicant amounts to unreasonableness and arbitrariness.

4. Opposing the prayer of the applicants Respondent Nos.2, 3 & 4 have filed independent counters. However, before taking note of the submissions made in the counter, it would be profitable to lay emphasis on the reasons assigned by the respondents in the impugned order dated 18.11.2015 (A/12) while rejecting the request of the applicant. For the sake of clarity, the contents of the order dated 18.11.2015 are extracted hereunder.

“No.SER1-IFS-0022-2014-27140/AIS-1, WHEREAS, the Hon’ble CAT, Cuttack Bench in their order dated 06.08.2014 in O.A.No.966 of 2013 filed by Duryodhan Behera vs. UOI and others directed the respondents No.5(Addl.Secretary to Government of Odisha, General Administration Department) to consider and dispose of the representation of the applicant dated 11.06.2013 and

communicate the result thereof to the applicant by way of a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order.

AND WHEREAS, the Forest & Environment Department vide the letter No.1104/F&E dated 16.01.2015 forwarded the representation dated 11.06.2013 of the applicant along with other requisite documents to revise the select list of 2003 and to fix the year of allotment as 1998.

AND WHEREAS, in pursuance of the order dated 18.05.2007 of the Hon'ble OAT in OA No.607/2001 and judgment dated 31.12.2008 of the Hon'ble High Court of Odisha in WP(C) No.9249, 9515, 9197 of 2007, the inter-se-seniority of the applicant was re-fixed and placed above Shri K.C.Dalai & Shri R.C.Sethi and below Shri Atis Kumar Behera.

AND WHEREAS, the applicant requested in his representation dated 11.06.2013 to consider the selection to IFS in the year 2003 and year of allotment to 1998 at par with Shri Atis Kumar Behera who was selected to IFS in 2003 and assigned year of allotment 1998.

AND WHEREAS, as per Indian Forest Service (Appointment by Promotion) Regulations, 1966, this respondent only forwarded the requisite documents in respect of the State Forest Service Officer (applicant) to the Union Public Service Commission, who is the appropriate authority to consider for the revision of the select list.

AND WHEREAS, a detailed proposal regarding re-fixation of seniority of the applicant in IFS cadre of Odisha to the selection year, 2003 was forwarded to the Union Public Service Commission, New Delhi vide G.A. Department letter No.3175/AIS.I dtd. 06.02.2015.

AND WHEREAS, the Union Public Service Commission, New Delhi vide letter No.11/186/2014-AIS dtd. 09.10.2015 has intimated the State Government that the matter was examined in the Commission and in this connection it may be noted that there is no enabling provision in the Indian Forest Service (Appointment by Promotion) Regulations, 1966 for review of a Select List once approved by the Commission and acted upon by the Government of India. There is also no specific direction of the Hon'ble CAT to the Commission for reconsideration of the name of Shri Behera (applicant) for inclusion in the Select List. Therefore, the Commission is not in a position to accede to the request of the State Government.

NOW THEREFORE, in view of the letter of the Commission cited above the representation of Shri Duryodhan Behera, IFS (Retd.)

regarding re-fixation of seniority in IFS cadre of Odisha to the Selection year 2003 is hereby rejected, as it is devoid of merit".

5. In the counter filed by Respondent No.2, Union Public Service Commission the stand taken is in conformity with the impugned order as quoted above. It also appears that said Respondent No.2 was the authority competent to take a decision on the grievance raised by the applicant in this O.A. as it is evident from the impugned order dated 18.11.2015. But in the absence of any specific direction being issued by this Tribunal to the Union Public Service Commission in O.A.No.966 of 2013 to consider the case of the applicant, the direction issued by this Tribunal in O.A.No.966 of 2013 could not be considered in its proper perspective. However, it is an undisputed fact that under similar facts and circumstances in O.A.No.110 of 1996 (cited supra) the case of the applicants therein has been considered. It is also not in dispute that under similar circumstances, requests of Shri Atish Kumar Behera who is senior to the applicant as well as Shri Ramesh Chandra Sethi, who is his immediate junior, have been considered and they have been granted the consequential service benefits, like, Junior Administrative Grade in the year 2007 and Selection Grade in the year 2011 etc. In this view of this admitted position, we are unable to accept the contentions of the Respondents that there is no enabling provision in the Indian Forest Service (Appointment by Promotion) Regulations, 1966 for review of a Select List once approved by the Commission and acted upon by the Government of India. This being the position, we quash the impugned order dated 18.11.2015 (A/12) and direct the Respondents, particularly Respondent No.2, UPSC to consider the case of the applicant for selection to IFS as per law against vacancy for year 2003 when his junior Shri Ramesh Chandra Sethi was selected vide order dated

19.11.2007(A/2), in place of the applicant's selection to IFS in the year 2004 and if he is found suitable for selection for the year 2003 then all consequential benefits as per law be allowed to the applicant in line with the applicants in O.A.No.110 of 1996, i.e., S/Shri Bishwa Narayan Mohanty and Laxmi Kanta Dash vs. UOI & Others dated 5.2.2004(A/11). This order be complied within 90 (ninety) days from the date of receipt of this order.

6. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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