

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 620 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Pradip Kumar Mishra, aged about 56 years, S/o Late Ishwar Prasad Mishra, permanent resident of Nayapara, At/PO/Dist-Sambalpur-768001, presently working as Addl. Secretary to Government of Odisha, Department of Medium, Small and Micro Enterprises, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.

.....Applicant

VERUSUS

1. Union of India, represented through Secretary, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, North Block, New Delhi – 110001.
2. State of Orissa represented through Chief Secretary to Govt. of Odisha, State Secretariat, Bhubaneswar-751001, Dist-Khurda, Odisha.
3. Union Public Service Commission represented through its Secretary, Dholpur House, Sahajahan Road, New Delhi – 110069.
4. Dilip Kumar Mohanty (3), IAS, Joint Secretary to Chief Minister, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.
5. Dhruva Charan Panchabhaya, CEO, Western Odisha Development Council, Rajeev Bhawan, Bhubaneswar, Dist-Khurda, Odisha.
6. Hadibandhu Singhsardar, IAS, Secretary, State Transport Authoity, board of Revenue Building, Cuttack, Odisha.
7. Baladrushna Behera, IAS, Joint Secretary to Government of Odisha, Water Resources Department, Rajiv Bhawan, Bhubaneswar, Dist-Khurda, Odisha.
8. Sudarshan Das, IAs, Joint Secretary to Government of Odisha, Commerce & Transport Department, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.
9. Julius Lakra, IAS, District Magistrate & Collector, Deogarh, At/PO/Dist-Deogarh, Odisha.
10. Basanta Kumar Behera, IAS, Joint Secretary to Government of Odisha, H&FW Department, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.
11. Debi Prasad panda, IAS, Administrator, NITI, Sri Jagannath Temple, AT/PO/Dist-Puri, Odisha.
12. Pradeep Kumar Rath, IAS, Director of Estates & Ex-Officio Joint Secretary to Government of Odisha, General Administration Department, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.
13. Bishnu Prasad Sahoo, IAS, Joint Secretary to Government of Odisha, Home Department, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.
14. Debraj Mishra, IAs, District Magistrate & Collector, Bolangir, At/PO/Dist-Bolangir, Odisha.
15. Sangram Keshari Ray, IAs, Registrar, Odisha University of Agriculture and Technology (OUAT), Bhubaneswar-3, Dist-Khurda, Odisha.

16. Laxminarauyan Mishra, IAs, Joint Secretary, Orissa Public Service Commission (OPSC), PO/PS-Cantonment Road, Cuttack, Odisha.
17. Susil Kumr Das-3, director of Culture, Sanskruty Bhawan, Museum Complex, Bhubaneswar, Dist-Khurda, Odisha.
18. Harekrishna Behera, IAS, Joint Secretary to Government of Odisha, Excise Department, State Secretariat, Bhuvbaneswar, Dist.-Khurda, Odisha.
19. Chudamani Seth, PD, DRDA, At/PO/Dist-Koraput, Odisha.
20. Govind Chandra Sethi, IAs, Joint Secretary to Government, Steel & Mines Department, State Secretariat, Bhubaneswar, Dist-Khurda, Odisha.

.....Respondents.

For the applicant : Mr.K.C.Kanungo, counsel

For the respondents: Mr.J.Pal, counsel
Mr.R.C.Swain, counsel

Heard & reserved on : 18.7.2019 Order on : 5.8.2019

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

In this OA, the applicant had joined under Government of Odisha in Odisha Administrative Service on 1.1.1982. Two disciplinary proceedings (in short DP) were initiated against him under the relevant rules in 2004 and 2005. Vide two orders dated 1.6.2011 (Annexure-A/1 and A/2), both the DPs initiated against the applicant were concluded with imposition of the penalty of withholding of one increment without cumulative effect for each of the DPs. On 8.8.2011 for each of the DP, the meeting of the Selection Committee for promotion from OAS to IAS was held under chairmanship of the Member, UPSC to consider the list of 54 officers, whose names were sent by the State Government (respondent no. 2) for 18 vacancies under the regulation 5 of the IAS (Appointment by Promotion) Regulations, 1955 (in short 'Regulations, 55'). The Committee considered the matter and recommended the list of officers suitable for promotion which did not include the applicant's name. The applicant was aggrieved since his name was not included in the list of officers promoted to IAS for the year 2010 and he has filed this OA challenging the promotion order of the officers selected for promotion to IAS for year 2010. The applicant seeks the following reliefs in the OA:-

"Your Lordship may be graciously pleased to admit this application, call for the records, and upon hearing the parties be pleased to quash the proceedings of the Selection Committee dated 8.8.2011 at Annexure A/5, two Notifications dated 1.6.2012 of Govt. of India at Annexure A/6 & A/7 and Notification dated 22.6.2012 of Government of Odisha at Annexure A/8 and A/8(A) for the ends of justice.

AND

Be further pleased to direct the Respondents (1 to 3) to have review meetings of the Selection Committee for assessment and

recommendation of the name of the applicant for promotion to Indian Administrative Service by incorporating the name of the applicant in the Select List-2010 for the ends of justice.

AND

Be further pleased to hold that the applicant is entitled to be empanelled in the selection list of 2010 and to be promoted to Indian Administrative Service in respect of the year 2010 w.e.f. dt 22.6.2012 with all consequential benefits and entitlements with arrears for the ends of justice.

AND

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

AND

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

2. The case of the applicant is that the DPs pending against the applicant were disposed of with minor penalty on 1.6.2011 and this penalty has been challenged by the applicant in the State Administrative Tribunal. Hence, non-consideration of his name for promotion to IAS was illegal and arbitrary.

3. The respondent no. 2 filed Counter stating that the OA was grossly barred by limitation as his name was forwarded for consideration for the year 2010 and the applicant has not challenged the decision within the stipulated time. It was stated that due to the DPs pending against him, his promotions in OAS were stalled and as on the cut off date of 1.1.2010 for consideration of Selection Committee, the DPs were pending and as his seniority was not restored, his name was not within the zone of consideration for which it was not sent to UPSC for consideration for promotion. It was further stated that after conclusion of the DPs, the sealed cover for the applicant was opened and he was allowed promotion in OAS notionally and his seniority was restored during the year 2012, i.e. after the cut off date of 1.1.2010. It was averred that after restoration of his seniority, he was senior coming within the zone of consideration for promotion to IAS.

4. The respondent no. 3 (UPSC) filed their Counter stating that the Selection Committee had considered the list sent by the State Government as required under the Regulations, 55 and recommended the name of the suitable officers from among the list.

5. Heard learned counsels for the applicant as well as for the respondent no. 1, 2 and 3 who reiterated their contentions in respective pleadings. Admittedly, the applicant's name was not included in the list of eligible officers based on the status as on the cut off date relevant for the Selection Committee (i.e. 1.1.2010), the DPs against him were pending and his seniority in higher grades in OAS was not finalized as on 8.8.2011. From the pleadings on record,

we do not find any reason for not sending his name after restoration of his seniority after finalization of FPs against the applicant, particularly when the respondent no. 2 has admitted that the applicant was senior in the base post, but could not be recommended due to pending DPs. It is also seen from the Minutes of the Selection Committee (copy at Annexure A/5 of the OA) that other officers with pending DP were considered and some of them were provisionally selected.

6. From the submissions of the learned counsels for the parties, it is clear that the applicant was an eligible candidate for promotion to IAS for the year 2010 after restoration of his seniority after finalization of DPs against him and by not including the applicant's name among the list of officers eligible for consideration by the Selection Committee, the applicant was deprived of his right of being considered for promotion.

7. Respondent no. 2 has raised the issue of delay in their Counter. It is stated that the delay was due to the fact that the applicant's name was not included in the list of eligible candidate with the cut off date of 1.1.2010. We are unable to agree with such a stand, since the cause of action for the applicant will arise for the date his juniors were promoted in 2012 on the basis of the recommendations of the Selection Committee which did not consider the applicant's case. Hence, this OA is not barred by limitation.

8. In the circumstances, we direct the respondent no. 2 to send the applicant's name to the respondent No. 3 as an officer eligible for consideration for promotion to IAS for the year 2010. Thereafter the respondent No.3 is to convene a Review meeting of the Selection Committee meeting held on 8.8.2011 for promotion to IAS for the year 2010 to consider the case of applicant as per law. Taking into account the fact that the applicant has retired from service during pendency of the OA, we direct that if the applicant will be found fit for promotion by the Selection Committee after holding the Review meeting as above, then he will be promoted notionally to IAS from the date when his immediate junior was promoted and all consequential retirement benefits as a result of notional promotion including arrear of the differential pension will be allowed to him as per the provisions of law within a period of six months from the date of receipt of a copy of this order.

9. The OA is accordingly allowed to the extent as above. No cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath