
(2003) 09 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 8496 of 2003

Budhimanta Dash

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

Administrative Service (Recruitment) Rules, 1954 — Rule 8(2)
Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 323A

Citation : (2003) 96 CLT 621 : (2003) 2 OLR 504

Hon'ble Judges : Sujit Barman Roy, J; L. Mohapatra, J

Bench : Division Bench

Advocate : A.K. Mishra, M.M. Basu, R.R. Mohanty, J. Sengupta, D.K. Panda, P.R.J. Dash and G. Sinha, for the Appellant; P.K. Mohanty, Additional Government Advocate for O.Ps. 1 and 2 and M. Agarwal, Standing Counsel (Central) for O.P. 3, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application assails the order dated 31.7.2003 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack dismissing the Original Application No. 435 of 2003 as not maintainable.

2. The case of the petitioner is that he is presently working as Joint Auditor General, Co-operative Societies, Government of Orissa. His grievance is that under Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954, the Central Government on recommendation of the State Government and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission recruit persons by promotion from the State Civil Service. Under Sub-rule (2) of Rule 8, the Central Government may, in special circumstances and on the recommendation of the State Government and in consultation with the Commission and in accordance with such regulations recruit Officers to the Indian Administrative Service having outstanding ability and merit serving in

connection with affairs of the State, but is not a member of the State Civil Service. Such person should be holding a gazetted post in a substantive capacity. The further case of the petitioner is that his name was first recommended during the year 1993-94 for being interviewed by the UPSC but he could not be given appointment. According to the petitioner, since in the year 1993-94 he was recommended by the State Government under Rule 8(2) for the purpose of recruitment to I.A.S., he was also eligible to be recommended in the current year, but such recommendation having not been made by the State Government, he had approached the Central Administrative Tribunal. The Central Administrative Tribunal dismissed the petition as not maintainable solely on the ground that non-recommendation of the name of the petitioner by the State Government being the crux of the matter, the Central Administrative Tribunal had no jurisdiction to entertain the case.

3. Since the question raised before this Court is pure question of law, on consent of the learned Additional Government Advocate, we heard the matter at length at the admission stage.

4. Admittedly, the petitioner is not a member of Orissa Administrative Service and, therefore, does not hold a post in the State Civil Service. There is no dispute that the petitioner is holding a gazetted post in substantive capacity and, therefore, not being a member of the State Civil Service of the State, he is entitled to be considered for recommendation provided he has outstanding ability and merit. Shri Mishra, the learned counsel appearing for the petitioner submitted that in the year 1993-94 the petitioner having been recommended for appointment to I.A.S., his ability and merit cannot be questioned and the same having been considered once and the name of the petitioner having been recommended, there was no reason for the State Government not to recommend the petitioner for the recruitment to the I.A.S. in the current year. Here in this writ application we are not called upon to decide the case on merit and we are only to decide as to whether the original application before the Central Administrative Tribunal was maintainable or not.

5. Article 323-A of the Constitution of India stipulates that Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. In exercise of power conferred under the said Article, the Administrative Tribunals Act, 1985 was enacted to provide for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of such persons as enumerated in Article 323-A of the Constitution of India. Service matters has been defined in Section 3(q) of the Act. The same runs as follows :

"Service matters in relation to a person, means all matters relating to the

conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any Corporation or society owned or controlled by the Government as respects."

6. Section 14 of the Act prescribes that the Administrative Tribunals shall exercise jurisdiction, power and authority in relation to recruitment, matters concerning recruitment to any All India Service etc. The term recruitment used in Article 323-A as well as in Section 14 of the Act came up for consideration before the Madhya Pradesh High Court in the case of Dr. Usha Narwariya v. State of M.P. and Ors. reported in 1993 LI C 2300. The Full Bench of the Madhya Pradesh High Court considering Article 323-A, preamble of Administrative Tribunals Act as well as Sections 14, 15 and 19 of the Act observed that the term recruitment refers all steps starting from notifying vacancies, inviting applications etc. culminating in appointment. Any dispute relating to such steps taken for recruitment shall come within the jurisdiction of the Tribunal. Though some other decisions were also cited by the learned counsel for the petitioner, we have not referred to them as in those decisions the term recruitment has also been interpreted more or less in the similar way as the full Bench of Madhya Pradesh High Court. Coming to the facts of the present case undisputedly the petitioner is a gazetted officer holding the post in a substantive capacity but not belonging to the State Civil Service. Rule 8 (2) of the Indian Administrative Service (Recruitment) Rules, 1954 provides as follows :

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre-

(1) xx xx xx (2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State but who holds a gazetted post in a substantive capacity."

7. There being no dispute that the petitioner holds a gazetted post in a substantive capacity but does not belong to State Civil Service, is entitled to for consideration for recommendation for recruitment to the I.A.S. by direct recruitment from among the Officers holding a gazetted post in a substantive capacity with outstanding ability and merit. The question of recommendation by the State Government in the case of persons not belonging to State Civil Service but holding a gazetted post in a substantive capacity with outstanding ability and merit is to be considered by the State Government under Rule 8(2). Therefore, recruitment to Indian Administrative Service includes the process of recommendation made under Sub-rule (2) of Rule 8. Since the process of recommendation as provided under Rule 8(2) of the aforesaid Rule is the

beginning of the process of recruitment to Indian Administrative Service, we are of the view that the same come within the term recruitment as used in Article 323-A of the Constitution as well as Section 14 of the Act and, therefore, the Central Administrative Tribunal had jurisdiction to entertain the application.

8. We, therefore, set aside the impugned order and direct the Central Administrative Tribunal, Cuttack Bench to entertain the application and decide the same on merit.

Sujit Barman Roy, C.J.

9. I agree.