

(2024) 03 OHC CK 0225
In the Orissa High Court
Case No : Writ Petition (C) No. 17759 Of 2012

Union Of India

APPELLANT

Vs

Gadadhar Parida And Others

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309, 312
All India Services Act, 1951 — Section 3, 3(1)

Citation : (2024) 03 OHC CK 0225

Hon'ble Judges : Dr. B.R. Sarangi, J;G. Satapathy, J

Bench : Division Bench

Advocate : Debashish Tripathy, D.K. Panda, G. Sinha, A. Mishra

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. The Union of India represented through its Secretary, Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) has filed this writ petition challenging the order dated 27.07.2012 passed in O.A. No. 14 of 2021 under Annexure-1, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has acceded to the prayer of opposite party no.1 to appoint him to Indian Administrative Service (IAS) consequent upon inclusion of his name in the Select List of 2007 prepared for appointment/promotion of the State Civil Service Officers of Orissa to Indian Administrative Service.

2. The factual matrix of the case, in a nutshell, is that a meeting of the IAS selection committee was held on 01.11.2010. The name of opposite party no.1 was included in the list, but provisionally, as departmental proceeding was pending against him at that time. On attaining the age of superannuation at the age of 58 years being a State Civil Service Officer, the opposite party no.1 was retired from service on 31.01.2011. The opposite party no.1 was exonerated from the charges in the departmental proceeding on 15.02.2011 after he was

superannuated from service on 31.01.2011. Thereafter, the appointment notification was issued on 24.02.2011 by the Department of Personnel and Training (DoPT) in respect to the unconditionally included officers. But, opposite party no.1 was not appointed, as because Union Public Service Commission (UPSC) did not inform DoPT regarding his exoneration nor declared to enter his name as unconditional. On 24.04.2011, preliminary charge sheet was filed against opposite party no.1 in Bhubaneswar Vigilance P.S. Case No.47 of 2006. Thereafter, on 02.06.2011, UPSC declared inclusion of the name of the opposite party no.1 unconditional. Therefore, opposite party no.1 filed O.A. No. 403 of 2011 before the Central Administrative Tribunal seeking direction to promote him to IAS w.e.f. 24.02.2011 and the said Original Application was disposed of on 10.08.2011 directing the DoPT to consider the case of opposite party no.1 within a period of 45 days.

2.1. On 26.08.2011, another complaint was received from the State Government regarding pendency of other two vigilance cases against opposite party no.1. On 10.10.2011, the State Government informed that another preliminary charge sheet was filed against opposite party no.1 on 24.04.2011. Thereafter, on 23.11.2011, DoPT issued an order considering opposite party no.1 as deemed provisional, but denied his appointment as IAS in view of the pending vigilance cases against him. Consequentially, opposite party no.1 filed O.A. No. 14 of 2012 before the Central Administrative Tribunal and in turn the tribunal quashed the order dated 23.11.2011 denying promotion to opposite party no.1 and directed the petitioner to consider/reconsider the case of opposite party no.1 for appointment/promotion to IAS retrospectively, i.e., the date on which his juniors was promoted keeping in mind the order dated 27.07.2009 passed in O.A. No. 269 of 2009 (Surendra Prasad Mishra v. Union of India); order dated 13.08.2010 passed in O.A. No. 443 of 2008 (Lingaraj Khadenga v. Union of India); order dated 19.07.2011 passed in O.A. No. 127 of 2011 (Bhabani Sankar Panda v. Union of India), vis-à-vis the recommendation of the Govt. of Orissa on 07.03.2011 and communicate the decision by a well reasoned order to the opposite party no.1 within a period of 45 days from the date of receipt of the copy of the order.

2.2. Aggrieved by the aforesaid order, Union of India preferred this writ petition, which was dismissed by a Division Bench of this Court vide order dated 07.11.2012. Consequentially, the petitioner preferred SLP No. 20858 of 2013 before the apex Court and vide order dated 30.07.2014 the apex Court set aside the order passed by the Division Bench of this Court and remanded the matter to be heard by this Court observing that some debatable issues arise from the order of the Central Administrative Tribunal. Hence, this writ petition is taken up after remand.

3. Mr. Debashish Tripathy, learned Central Government Counsel appearing for the Union of India vehemently contended that opposite party no.1 being a tainted officer against whom vigilance cases were pending cannot be promoted to be

appointed as IAS as per the Regulation 7(3) of IAS (Appointment by Promotion) Regulation, 1955. It is contended that by the time the case of opposite party no.1 was under consideration a vigilance case was pending where charge sheet was submitted and thereafter due to pendency of such case though his name was enlisted provisionally in the list of appointment/promotion to the post of IAS, but due to pendency of the vigilance case, promotion was not given to him and, as such, in the meantime, on attaining the age of superannuation, he had already retired from the State Government service. Subsequently, after his retirement, three other vigilance cases were found to be pending against him. As a matter of fact, when the case of opposite party no.1 was under consideration, the vigilance cases were pending against him where charge sheets were submitted and, therefore, no promotion was given to him. As such, the claim made by opposite party no.1, that he should be granted the benefit of promotion from the date his juniors were promoted, cannot be sustained in the eye of law. Therefore, the direction given by the tribunal to extend the benefit to opposite party no.1 from the date his juniors were given promotion also cannot be sustained, as by the time the case of opposite party no.1 was considered for promotion, a vigilance case was pending where charge sheet had already been submitted. Merely because his name was provisionally included in the list, no right can be accrued in favour of the opposite party no.1 for giving promotion.

To substantiate his contention, learned counsel appearing for the petitioner has relied upon the judgment of the apex Court in the case of Gurpreet Singh Bhullar and others v. Union of India and others, AIR 2006 SC 1484 : (2006) 3 SCC 758.

4. Per contra, Mr. D.K. Panda, learned counsel appearing for opposite party no.1 vehemently contended that the vigilance case which was pending before the vigilance authority, opposite party no.1 having been exonerated from the same, he should have been given promotion and, as such, the tribunal has not committed any error apparent on the face of the record so as to cause interference of this Court at this stage. To substantiate his contention he has relied upon the order dated 27.07.2009 passed in O.A. No. 269 of 2009 (Surendra Prasad Mishra v. Union of India); order dated 13.08.2010 passed in O.A. No. 443 of 2008 (Lingaraj Khadenga v. Union of India); order dated 19.07.2011 passed in O.A. No. 127 of 2011 (Bhabani Sankar Panda v. Union of India). It is contended that the tribunal relying upon the aforementioned orders, which have already been implemented by the authority and benefits have already been extended in favour of the applicants thereof, passed the order impugned and, thereby, no illegality or irregularity has been committed by the tribunal so as to warrant interference of this Court. Consequentially, dismissal of the writ petition is sought for.

5. This Court heard Mr. Debashish Tripathy, learned Central Government Counsel appearing for the petitioner and Mr. D.K. Panda, learned counsel appearing for opposite party no.1 through hybrid mode and perused the record. Pleadings have been exchanged between the parties and with the consent of learned counsel for

the parties this writ petition is being disposed of finally at the stage of admission.

6. The process for appointment of State Civil Service Officers to the Indian Administrative Service under IAS (Appointment by Promotion) Regulations, 1955 is initiated by the State Government with determination of year-wise vacancies. Once the vacancies are determined, the State Government is required to make available the relevant service records of eligible State Civil Service Officers who fall within the zone of consideration to the Union Public Service Commission. The Commission convenes a meeting of the Selection Committee. The role of Union of India in finalizing the selection is restricted to the functional requirement of nominating two Joint Secretary level officers as its representatives. Once the select list is approved by the UPSC, only thereafter the appointments of those State Civil Service Officers who are included unconditionally in the select list are notified by the Government of India.

7. The Parliament in accordance with Article 309 of the Constitution of India read with Article 312 of Constitution of India has enacted the All India Services Act, 1951 for the purposes of regulating the recruitment and conditions of the service of persons belonging to the Indian Administrative Service. Under the All India Services Act, 1951, particularly Section 3 of the said Act, the Central Government is empowered to make rules to regulate the recruitment and conditions of the service of persons appointed to the Indian Administrative Service. For just and proper adjudication of the case, Section 3(1) of the All India Services Act, 1951 is quoted below:-

"3(1) The Central Government may, after consultation with the Governments of the State concerned, (including the State of Jammu & Kashmir) (and by notification in the Official Gazette) make Rules for the Regulation of recruitment and conditions of service of persons appointed to an All-India Service"

8. In pursuance of Section 3(1) of the All India Services Act, 1951, the Central Government has framed the following Rules:-

"a) The Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to in short as the Recruitment Rules)

b) The Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to in short as Promotion Regulations).

c) The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as Section Regulations)."

9. A person is recruited to the Indian Administrative Service under Rule-4 of the Recruitment Rules by one of the three sources given hereunder:-

"a) Through competitive examination (i.e., direct recruitment);

b) by promotion of substantive member belonging to the State Civil Service; or

c) by selection of officers who hold in a substantive capacity gazette posts in

connection with the affairs of the State and belong to the services other than State Civil Service.”

10. The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in the Government of India administers the provisions contained in the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter called the “Promotion Regulations”) and, therefore, concerned with the application in the matter of recruitment to the Civil Service from amongst State Civil Service Officers and interpretation of any of the statutory provisions laid down in the said Regulations as the cadre controlling authority in respect of the Indian Administrative Service.

11. In view of the aforesaid provisions, the State Government concerned is competent to propose within the overall ceiling of 15% of the total promotion quota of that State, determination of vacancies for a particular year under Non-SCS quota if there are officers of outstanding merit and ability having rendered 8 years’ service in a gazette post equivalent to Deputy Collector. The State Government is also concerned with the forwarding of names of Non-SCS officers to Union Public Service Commission for consideration by the selection committee for appointment to IAS. The suitable Non-SCS officers, who are included in the select list, are eligible for appointment to the IAS as per provisions of the IAS (Appointment by Selection) Regulations, 1997. In the process of preparation of the select list by the UPSC, the petitioner, as cadre controlling authority in respect of the Indian Administrative Service, is concerned with determination of vacancies in consultation with the State Government and nomination of two officers not below the rank of Joint Secretary as members of the selection committee and thereafter in making appointments of the officers included in the select list to the IAS subject to and in accordance with the provisions contained in Regulation 9 of the Promotion Regulations. The process of preparation of the select list for vacancies already determined begins with the list of names of State Civil Service Officers being forwarded by the State Government to the Commission for consideration by the Selection Committee. The select list prepared by the committee is forwarded by the State Government to the Commission along with its observations on the recommendations of the Committee. The observations of the Central Government are also forwarded to the Commission thereon and final approval to the select list is conveyed by the Commission to the Central Government. Thereafter, on receipt of the select list, appointments are considered by the Central Government from the select list on receipt of unconditional willingness for appointment to the IAS from the officers included in the select list, accompanied with a declaration of marital status and also consent for termination of lien in the State Civil Service in the event of substantive appointment to the IAS.

12. In terms of the provisions contained in the aforesaid promotion/selection regulations, the vacancies in the promotion and selection quota of State Civil Service as well as Non-SCS categories, are first determined by the Central

Government on the basis of proposals forwarded by the State Government, whereafter the names of the eligible officers are forwarded for consideration of the selection committee. Thereafter, the selection committee examines the service record of those officers and makes suitable relative assessment. On this basis, a suitability list of officers is then prepared. The number of vacancies to be filled up in the promotion quota as have been determined keeping 1st January of that particular year as the cut-off date, are determined. For this purpose, SCS officers equal to three times of the number of the vacancies are shortlisted. After the State Government and the Central Government give their observations on the recommendation of the selection committee, the UPSC finalizes the select list, out of which, the petitioner makes appointments to the IAS. The year-wise select lists are prepared in case of State Civil Service Officers in terms of Regulation 5 of the Promotion Regulation and in case it has not been possible for some reason, to hold the meeting of the selection committee during a particular year. This provision has been incorporated in the promotion regulation for the purpose that the SCS Officers, who are considered for promotion in the IAS in the order of their seniority, are not placed at a disadvantage, if for administrative reasons or otherwise, the selection committee meeting has not taken place.

13. Regulation 7(3) of IAS (Appointment by Promotion) Regulations, 1955, reads as under;-

"Provided that if an officer whose name is included in the select list is after such inclusion, issued 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."

Taking into account the aforementioned provisions, the select list of 2007 for appointment by promotion of the State Civil Service Officers of Orissa to Orissa Cadre of IAS was to be prepared against the vacancies. A meeting of selection committee for this purpose was convened in UPSC on 01.11.2010. The committee recommended a list of suitable officers as under:-

"Sl.No.

Name (S/Sh.)

Date of birth

1.

Anirudha Rout

29.04.1953

1A@

Kallol Kumar Das

27.03.1953

2.#

Gadadhar Parida

22.01.1953

3.

Krishna Gopal Mohapatra

21.03.1954

4.

Raj Kishore Choudhury

21.05.1954

5.

Benudhar Dash

10.01.1954

6.

Narayan Samantaray

10.02.1953

@ The name at Sr.No.1A was included in the list in addition to the normal size of the select list in pursuance to 2nd proviso to Regulation 5(5) of the IAS (Appointment by Promotion) Regulations 1955 and his inclusion is provisional subject to clearance in the disciplinary proceedings pending against him.

The name at S.No.02 was included in the select list provisionally subject to his clearance in the disciplinary proceedings pending against him."

14. The above recommendation of the committee was approved by the UPSC on 05.01.2011. The name of opposite party no.1 was included at sl.no.2 in the select list prepared for appointment by promotion of the State Civil Service Officers of Orisa to Orissa Cadre of IAS. The inclusion of his name in the select list was declared as provisional in view of the provisions as contained in the proviso to Section 5 (5) of IAS (Appointment by Promotion) Regulation, 1955 because by the time the select list was approved by UPSC, as per the information furnished by the State Government, opposite party no.1 was facing a disciplinary proceeding. As such, the opposite party no.1 could not be appointed to IAS because the inclusion of his name in the select list was provisional and it was not further made unconditional by the UPSC by 24.02.2011, the date on which the appointments were effected by the department.

15. The petitioner received a letter on 02.06.2011 from the UPSC that they have declared the inclusion of name of opposite party no.1 in the select list of 2007 as unconditional and final consequent upon receipt of a proposal to this effect from the State Government that the opposite party no.1 had been exonerated from

the disciplinary proceedings pending against him because of which the inclusion of his name in the select list was kept provisional. The said issue was considered by the petitioner. But it was noticed that in the meantime, he had retired from the State Civil Service w.e.f. 31.01.2011 consequent upon attaining the age of superannuation, i.e., 58 years in the State of Orissa. Regulation 9 (1) of IAS (Appointment by Promotion) Regulation, 1955 provides that only the members of State Civil Service officers can be appointed to IAS. Consequently, opposite party no.1 was not appointed by the Department to IAS despite declaration of the inclusion of his name as unconditional and final in the select list of 2007 by the UPSC. By the time, the communication was made by the UPSC on 02.06.2011, opposite party no.1 having retired from service on 31.01.2011, he was no more continuing as State Civil Service Officer, as he had already superannuated from service. Therefore, opposite party no.1 filed O.A. No. 403 of 2011 before the Central Administrative Tribunal, Cuttack Bench, Cuttack, which was disposed of vide order dated 10.08.2011, operating part of which reads as under:-

"10. We find no substantive ground to differ from the view already taken in the above case. Hence, the letter of rejection in Annexure-A/6 is hereby quashed. The respondents are directed to consider/reconsider the case of 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 the Tribunal dated 27th July, 2009 in O.A. No. 269 of 2009 (Surendra Prasad Mishra v. Union of India and other), dated 13th August 2010 in O.A. No. 443/2008 (Lingaraj Khadenga v. Union of India and others), order dated 19.07.2011 in O.A. 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."

16. On receipt of the aforesaid judgment of the tribunal, when the petitioner wanted to implement the same, the petitioner received a complaint stating therein that the officer was still not clear from vigilance angle and was facing criminal proceeding, which was ascertained from the State Government's letter dated 26.08.2011 and, as such, the State Government intimated that four vigilance court cases were registered against opposite party no.1, namely, SBP (V) P.S. Case No.9 dated 15.02.2003, BBSR (V) P.S. Case No.47 dated 21.12.2006, BBSR (V) P.S. Case No. 26 dated 30.06.2007 and BBSR (V) P.S. Case No. 22 dated 09.06.2008. It was categorically informed by the State Government that in Bhubaneswar (Vigilance) P.S. Case No. 47 dated 21.12.2006, a preliminary charge sheet no.4 dated 24.04.2011 had been submitted to the trial court. Therefore, the petitioner as per the provisions contained under Regulation 7 (3) of IAS (Appointment by Promotion) Regulation, 1955 examined the case of the opposite party no.1. As per proviso to Regulation 7 (3), 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. There is no dispute that

after inclusion of the name of opposite party no.1 in the select list, he was issued with a charge sheet and the charge sheet has already been filed against him in the court of law. Therefore, his name in the list of 2007 is deemed provisional and, as such, his name was withheld. The opposite party no.1, aggrieved the communication made by the petitioner on 23.11.2011, again approached the tribunal by filing O.A. No. 14 of 2012. So far as opposite party no.1 is concerned, whether he is entitled to get such promotion, relevant event in the case is quoted below:-

Sl.

No.

Event

Date

remarks

1

Meeting of selection committee

01.11.2010

The officer included in the list but provisionally

2

The officer retired from the SCS

31.01.2011

3

The officer got exonerated in the case pending against him, due to which he was included provisionally in the SLs.

15.02.2011

4

The appointment notification issued by this Department in respect of unconditionally included officers

24.02.2011

The officer was not appointed as by that date there was no information with us regarding his exoneration and UPSC had not declared the inclusion of his name as

unconditional

5

Bhubaneswar (Vigilance) P.S. Case No.47 dated 21.12.2006

24.04.2011

A preliminary charge sheet No.4 has been filed

6

UPSC declared the inclusion of his name as unconditional

02.06.2011

This department does not

appoint him as he had retired and ceased to be a member of SCS on

31.01.2011

7

The Hon'bel CAT directs to appoint him to IAS despite his retirement

10.08.2011

8

Another complaint received and a fresh report sought for by this Department

from the State Government

26.08.2011

9

The State Government informs that a fresh preliminary charge sheet had been issued to him on 24.04.2011

10.10.2011

10

This Department issues an order considering him deemed provisional and further denies his appointment to IAS

23.11.2011

11

Another O.A. filed. Disposed off.

27.07.2012

This Department's order dated 23.11.2011

quashed and

directions for appointment to IAS within 30 days.

17. The tribunal while considering O.A. No. 14 of 2012 made following observations in paragraph-7 of the judgment to the following effect:-

"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 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. No. 403/2011 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."

Consequently, the tribunal directed the petitioner to grant promotion/induction to opposite party no.1 to IAS w.e.f. the date his junior got promoted with all consequential benefits within a period of thirty days from the date of communication of the order.

18. The above order passed by the tribunal was challenged before this Court in the present writ petition and at the stage of admission, this Court, vide order dated 07.11.2012, passed following order:-

"Heard learned counsel for the parties.

This writ application has been filed by the petitioner challenging the order dated 27.07.2012 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 14 of 2012.

We have gone through the impugned judgment of the Tribunal. We do not find any infirmity in the impugned order of the Tribunal to be interfered with.

Since the writ application is merit less and we are not inclined to admit the same, the same is devoid of merit.

The writ application is accordingly dismissed."

19. The petitioner challenged the order of dismissal dated 07.11.2012 before the apex Court by filing SLP (C) No. 20858 of 2013 and vide order dated 30.07.2014, the apex Court passed the following orders:-

"Heard learned counsel for the parties.

Leave granted.

Having perused the order passed by the Central Administrative Tribunal, we are of the view that the High Court, while refusing to admit the writ petition ought to have passed a reasoned order, inasmuch as, in our considered view, certain debatable issues did arise from the order of learned Administrative Tribunal. In that view of the matter, we set aside the order of the High Court and request the High Court to decide the writ petition on the basis of a reasoned order after hearing all the contesting parties.

The appeal is allowed accordingly. It is made clear that we have no expressed any opinion on the merits of the case."

Consequently, the matter was remanded to this Court by the apex Court for fresh adjudication and, thereafter, this Court, vide order dated 11.04.2022, passed the following orders:

"This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Parhi, learned Assistant Solicitor General of India along with Mr. D. Tripathy, learned Central Government Counsel.

3. The petitioner has filed this writ petition seeking to quash the order dated 27.07.2012 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 14 of 2012.

4. Perused the records. It appears that opposite party no.1 is the member of the Orissa State Civil Service, i.e., Orissa Administrative Service and his grievance is that though his juniors have been inducted/promoted to the Indian Administrative Service in Odisha cadre, he has been denied the same. Therefore, he approached the Central Administrative Tribunal, Cuttack Bench, Cuttack by

filing O.A. No. 14 of 2012 to quash the order dated 23.11.2011 passed by the petitioner and direct the petitioner to promote him to the Indian Administrative Service retrospectively from the date his immediate junior Krishna Gopal Mohapatra was promoted to the said service, i.e., from 24.02.2011.

5. Mr. P.K. Parhi, learned Assistant Solicitor General of India seeks time to obtain instructions in the matter.

6. Put up this matter after two weeks.

7. Instructions, if any, shall be obtained in the meantime."

In compliance of the order dated 11.04.2022, when the matter was listed on 09.05.2022, this Court passed the following orders:-

"This matter is taken up through hybrid mode.

2. Mr. P.K. Parhi, learned Assistant Solicitor General of India states that in compliance of the order dated 11.04.2022, he has received instructions that since there was pendency of four vigilance cases against the opposite party no.1, he has not been given promotion to the post of Indian Administrative Service (IAS) under Regulation 7 (3) of IAS (Appointment by Promotion) Regulations, 1955. He seeks time to file the same by way of an affidavit.

3. On his request, list this matter after two weeks. Affidavit, if any, shall be filed in the meantime."

Thereafter, in compliance of the order dated 29.06.2022, the petitioner filed an affidavit incorporating the letter dated 10.10.2011 communicated by the State Government in G.A. Department to the Department of Personnel & Training with a subject heading "complaint against Sri Gadadhar Parida (opposite party no.1 herein) and Sri Bhabani Shankar Panda retired SCS officers of Orissa. So far as opposite party no.1 is concerned, it was stated as follows:-

"There are four vigilance cases registered against Shri Gadadhar Parida.

a) SBP (V) PS Case No.9 dated 15.02.2003

In the said case Shri Parida in his capacity as MD, Orissa State Handloom Weavers Cooperative Society had allegedly shown undue official favour to a private person and causing pecuniary loss to the Society.

After due enquiry by Vigilance Department charge sheet was framed against other accused persons in the said case, while lapses of Shri Gadadhar Parida were referred the Principal Secretary to Government, Textile and Handloom Department for initiating departmental action.

Accordingly, departmental proceeding was initiated vide Commissioner of Departmental Enquiry Case No.53/2007. After enquiry, Government has exonerated Shri Parida vide GA Department letter No.3517/Gen dated 15.02.2011.

b) BBSR (V) PS Case No.47 dtd. 21.12.2006 In this case Shri Parida has been charge sheeted for showing undue official favour to Sri Sapan Kumar Kundu for which preliminary charge sheet No.4 dated 24.04.2011 has been submitted to the trial court.

c) BBSR (V) PS Case No.26 dated 30.06.2007 This was booked for showing undue favour by making excess payment of Rs.14.86 lakhs. GA (Vigilance) Department is going to submit charge sheet against Sri Parida to the trial court.

d) BBSR (V) PS Case No.22 dated 09.06.2008 This was filed against Sri Parida for misappropriation of Government money by manipulating the re-valuation statement and other records.

As per report of GA (Vigilance) Department an investigation the case is in progress. It may be noted at the time of selection of the officer for promotion to IAS, GA (Vigilance) Department has given a report that sanction of prosecution in case No.47/06 and Case No.26/07 is awaited."

20. In Gurpreet Singh Bhullar (supra), in paragraph-16, the apex Court held as under:-

"Filing of charge sheet is preceded by an indepth investigation. Charges are filed in Court when the prima facie case is established in course of the investigation. The intendment of the Legislature is that a person who is charged with a criminal offence in which charge is filed in court and the case being pending for trial, that too against a police officer, the inclusion of such officer in the list shall be treated as provisional. The dangerous interpretation assigned to the statute by the High Court would negate the intendment of the Legislature. In our view, the High Court has committed grave fundamental error of law and the same is unsustainable in law."

21. In view of the aforesaid facts and law, it is made clear that when a select list of 2007 was prepared admittedly the name of opposite party no.1 was mentioned at sl.no.2, which was included provisionally subject to clearance in disciplinary proceeding pending against him and he was retired from State Government service on 31.01.2011. But the departmental proceeding initiated against him was closed on 15.02.2011 and he was exonerated from the charges framed against him in respect of SBP (V) P.S. Case No. 9 dated 15.02.2003. So far as BBSR (V) P.S. Case No.26 dated 30.06.2007 is concerned, charge has already been framed and the case is pending and other two cases, namely, BBSR (V) P.S. Case No.47 dated 21.12.2006 and BSSR (V) P.S. Case No. 22 dated 09.06.2008, the same are still pending and the same have not yet been decided nor charge sheet has been filed. Therefore, by the time the case of opposite party no.1 was considered, the departmental proceeding was pending and during pendency of the departmental proceeding, he was retired from service on 31.01.2011. Even after retirement on 31.01.2011, he was exonerated from the disciplinary proceeding on 15.02.2011, it cannot ipso facto entitle him to get the benefit, as directed by the Central Administrative Tribunal by the order

impugned. On the other hand, in BBSR (V) P.S. Case No.26 dated 30.06.2007, charge sheet has already been submitted, though in respect of BBSR (V) P.S. Case No.47 dated 21.12.2006 and BBSR (V) P.S. Case No. 22 dated 09.06.2008, charge sheet has not yet been submitted, and that itself cannot entitle the benefits to opposite party no.1 when a charge has already been framed in respect of BBSR (V) P.S. Case No.26 dated 30.06.2007. Out of four vigilance cases, as mentioned above, three cases were pending against opposite party no.1 when the list was prepared. Therefore, knowing fully well that there were pendency of vigilance cases, his name was included provisionally even though he was exonerated in one of the vigilance case, i.e., SBP (V) P.S. Case No. 9 dated 15.02.2003 on 15.02.2011, after his retirement from service on 31.01.2011. But in other case, i.e., BBSR (V) P.S. Case No.26 dated 30.06.2007, charge has been framed and the same is pending consideration. Therefore, the direction given for grant of promotion/induction to the opposite party no.1 to IAS w.e.f. the date when his juniors got promotion and also for grant of all consequential benefits, cannot be sustained in the eye of law.

22. If considered from other angle, whether opposite party no.1, as claimed, is entitled to get the benefit of promotion as per Indian Administrative Service under IAS (Appointment by Promotion) Regulations, 1955 from State Cadre post to IAS.

In *Tarsem Singh v. State of Punjab*, (1994) 5 SCC 392, the apex Court held that promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour.

In *State of U.P. v. Jalal Uddin*, (2004) 8 Scale 426, the apex Court held that promotion is advancement in rank or grade or both. An employee has no right to be promoted but he has right to be considered for promotion.

In *K. Samantray v. National Insurance Co. Ltd.*, (2004) 9 SCC 286, the apex Court held that no employee has a right to be promoted, but has a right to be considered for promotion.

23. The above being the provisions of law decided by the apex Court and applying the same to the present context, it is made clear that even if the vigilance cases were pending, keeping in view the proviso to Regulation 7 (3) of IAS (Appointment by Promotion) Regulations, 1955, the case of opposite party no.1 was considered, but due to pendency of the vigilance cases and departmental proceeding against him, his name was provisionally included in the list. But, in the meantime, he was superannuated from service on attaining the age of superannuation on 31.01.2011 and subsequent thereto, on 15.02.2011, he was exonerated from one of the vigilance cases and other three vigilance cases were pending against him, out of which in one case charge sheet has already been submitted. Therefore, in that case, the direction given by the Central Administrative Tribunal by the impugned judgment dated 27.07.2012 in

O.A. No. 14 of 2012 for grant of promotional benefit to opposite party no.1 cannot be sustained in the eye of law and is liable to be quashed and is hereby quashed.

24. In the result, the writ petition is allowed. But, however, in the facts and circumstances of the case, there shall be no order as to costs.

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