

State of Orissa

Vs

Pyarimohan Samantaray and Others

Civil Appeal No. 1185 of 1975

(A.N. Ray, M.H. Beg, P.N. Shinghal JJ)

03.11.1976

JUDGMENT

SHINGHAL, J. –

1. This appeal by the State of Orissa is directed against the judgment of the Orissa High Court dated April 11, 1975, on a petition filed by respondent Pyarimohan Samantaray (hereinafter referred to as the petitioner) under Articles 226 and 227 of the Constitution.

2. The petitioner claimed that he was a permanent member of the Orissa Administrative Service Class I, since 1959 and was senior to those who were arrayed in the petition as respondents 4 to 13. His grievance was that the committee which was constituted under Regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulation, 1955, hereinafter referred to as the Regulations, prepared a list of State Civil Service Officers under Regulation 5, for promotion to the Indian Administrative Service, in 1960, but did not include his name even though there was no justification for his supersession by those who were arrayed as respondents 4 to 13. The petitioner also felt aggrieved because those respondents were promoted to the Indian Administrative Service by notifications dated May 12, 1962, November 29, 1962, April 25, 1963 and March 27, 1965, while his own claim was overlooked. A list was however prepared by the committee in 1961 in which, according to the petitioner, his name was put at the bottom of the list. It was another grievance of the petitioner that the list was not prepared according to law and the names in it were not arranged in order of seniority in State Civil Service. It was not reviewed and revised every year in spite of the requirement of Regulation 5. The petitioner was not appointed to the Indian Administrative Service until 1968, so that he ranked very low in seniority on the date of his appointment. On the basis of these main averments the petitioner filed the aforesaid petition before the High Courts, for the several reliefs stated in it, including the relief for quashing the select list and for a declaration that he may be treated to be a member of the Indian Administrative Service with effect from May 12, 1962, when, according to him, a vacancy arose in the promotion quota of that service.

3. The petitioner's claim was traversed in the replies which were filed by the State Government and others, for several reasons. The High Court allowed the petition by its impugned judgment dated April 11, 1975, to extent that it directed the authorities concerned to redetermine his seniority vis-a-vis those of the respondents from 4 to 13 who were still in service, and to give him all consequential benefits as a result of such redetermination. The High Court left the parties to bear their own costs.

4. The controversy before us has been confined to the short point whether the High Court erred in not dismissing the petition in spite of the inordinate delay and laches on the part of the petitioner.

That is why we have not thought it necessary to refer to the other facts in details for it will be enough to refer to the admitted facts which bear on the controversy before us.

5. As has been stated, the list of the State Civil Service officers who were found suitable for appointment to the Indian Administrative Service was prepared in 1960, in which the name of the petitioner was not included while the names of respondents 4 to 13, who were junior to him, were included. The petitioner has stated that he felt aggrieved because of his supersession by his juniors in that list. He contended that his name was included in the list which was prepared in 1961, but it was put at the bottom of the list, i.e., after respondents 4 to 13. That, according to the petitioner, was in contravention of Regulation 5 (3) of the Regulation for reasons mentioned in the petition. The said respondents were promoted to the Indian Administrative Service in 1962 and the petitioner has stated that he thereupon made a representation to the Chief Secretary against his supersession in that very year, but it was rejected on November 9, 1962. Instead of seeking a redress of his grievance by a writ petition after the rejection of his representation, the petitioner has stated that he sent a memorial to the Chief Minister on January 23, 1963. It was rejected on March 16, 1964. The petitioner then made a representation to the Government of India on February 6, 1965, but no order thereon was communicated to him. He made another representation to a Minister of the State Government in December, 1965. According to the petitioner, no order was passed on it also even though he continued to wait until July 12, 1969, when he claims to have addressed another letter to the State Government for the proper fixation of his seniority. It was rejected on November 1, 1969. The petitioner thereupon sent another memorial to the Chief Minister on January 6, 1970, which was rejected on August 26, 1970. Thereafter he made a representation to the Government of India on November 17, 1970 and was further representation to the Chief Secretary on January 3, 1973, and thereafter filed the aforesaid writ petition under Articles 226 and 227 in the Orissa High Court.

6. It would thus appear that there is justification for the argument of the Solicitor General that even though a case of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in *Rabindra Nath Bose v. Union of India* (1970) 2 SCR 697 : (1970) 1 SCC 84), the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay. The fact therefore remains that the petitioner allowed some 11 years to go by before making a petition for the redress of his grievances. In the meantime a number of other appointments were also made to the India Administrative Service by promotion from the State Civil Service, some of the officers received promotions to higher posts in that service and may even have retired. Those who continued to serve could justifiably think that as there was no challenge to their appointments within the period prescribed for a suit, they could look forward to further promotion and higher terminal benefits on retirement. The High Court therefore erred in rejecting the argument that the writ petition should be dismissed because of the inordinate and unexplained delay even though it was "strenuously" urged for its consideration on behalf of the Government of India.

7. In the view we have taken, we do not think it necessary to examine the controversy on the merits. The appeal is allowed, the impugned judgment dated April 11, 1975 is set aside and the writ petition is dismissed. There will however be no orders to the costs.

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