

**GOVERNMENT OF ODISHA
REVENUE AND DISASTER MANAGEMENT DEPARTMENT**


NOTIFICATION

Bhubaneswar, Dated the 44374 December, 2018

No-RDM-CON-R-56-2017 /R&DM, Sri Mohan Sahu ,OAS-A (JB), at present Tahasildar, Hemgiri was initially appointed as OAS-II officer and subsequently brought over to OAS-I(JB) cadre w.e.f.25.05.2009 due to re-structuring of the Odisha Administrative Service Cadre vide Revenue & DM Department Resolution No- 851 / R&DM Dated 25.05.2009 and Resolution No-1234/R(CS) dated 20.08.2009.

Now , in pursuance of order dated 22.02.2017 of Hon'ble Odisha Administrative Tribunal passed in O.A. No.1385/2015, Government in Revenue &DM Department have been pleased to extend the benefit of promotion to Sri Sahu in OAS-I(JB) cadre w.e.f. 11.08.2006 i.e. date on which promotion Notification in favour of his junior Sri Dillip kumar Sahoo to OAS-I(JB) cadre was issued with all consequential service and financial benefits. The inter-se- seniority of Sri Mohan Sahu is fixed below Smt.Reena Mohapatra and above Sri Dillip Kumar Sahoo in OAS-I (JB) cadre.


By Order of Governor,


(B.K. Giri)

Under Secretary to Government


Memo No 44375 /R&DM , Dated 17 DEC 2018

Copy forwarded to Accountant General (A&E), Odisha, Bhubaneswar for information & necessary action.


Under Secretary to Government.

Memo No 44376 /R&DM , Dated 17 DEC 2018

Copy forwarded to the Director ,Printing Stationary and Publication , Odisha, Cuttack ,Email: deputydirectorpp@rediffmail.com for information and it is requested for publication of this Notification in the next issue of Odisha Gazette and supply 10 (Ten) copies to this department..


Under Secretary to Government.

Memo No 44377 /R&DM , Dated **7 DEC 2018**

Copy forwarded to the Private Secretary to Chief Minister, Odisha / Private Secretary to Minister, Revenue and Disaster Management / Private secretary to Chief Secretary ,Odisha / Private secretary to Principal Secretary ,Revenue and Disaster Management Department for kind information of Hon'ble Chief Minister , Minister, Revenue and Disaster Management, Chief Secretary and Principal Secretary ,Revenue and Disaster Management Department respectively.

POCML
07/12/18

Under Secretary to Government.

Memo No 44378 /R&DM , Dated **7 DEC 2018**

Copy along with copy of order dated 22.02.2017 passed in O.A.No-1385/2015 forwarded to General Administration & P.G.Department for information and necessary action.

They are requested to take action as per order dated 22.02.2017 pertaining to their Department.

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Under Secretary to Government.

Memo No 44379 /R&DM , Dated **7 DEC 2018**

Copy forwarded to the Collector, Sundargarh for information & necessary action

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07/12/18

Under Secretary to Government.

Memo No 44380 /R&DM , Dated **7 DEC 2018**

Copy forwarded to Sri Mohan Sahu, Tahasildar, Hemgiri ,Dist-Sundargarh for information & necessary action.

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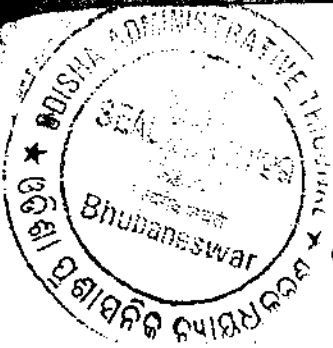
Under Secretary to Government.

Memo No 44381 /R&DM , Dated **7 DEC 2018**

Copy forwarded to GOE (A) Branch / GOE (B) Branch / Confidential Branch (5 spare copies) / I.M.U. Cell of R&DM Department, for information & necessary action.

POCML
07/12/18

Under Secretary to Government.



ODISHA ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, BHUBANESWAR

CORAM:

Hon'ble Sri S.K.Dash,
Member (Administrative)
Hon'ble Sri G.R.Purohit,
Member (Judicial)

Original Application No.1385/2015

Mohan Sahu ...Applicant

Vrs.

1. Government of Odisha represented through
Its Principal Secretary,
Revenue & Disaster Management Department,
Bhubaneswar.
 2. Special Secretary,
General Administration Department,
Bhubaneswar.
 3. Dillip Kumar Sahoo,
B.D.O., Odagaon, Dist. Nayagarh
- ...Respondents.

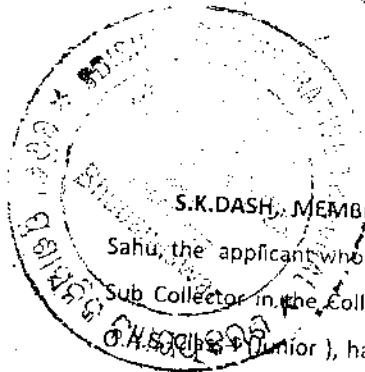
APPEARANCES:

For the applicant: M/s S.N.Pattanaik & associates
(Advocates)

For the respondents: Mr. N.C.Badajena,
Standing Counsel

Date of decision: 22-02-17

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ORDER

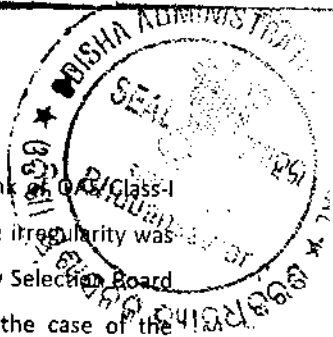
S.K.DASH, MEMBER (ADMINISTRATIVE): Sri Mohan Sahu, the applicant who is presently working as Additional Sub Collector in the Collectorate of Jajpur in the rank of O.A.S.C.I(Sr Junior), has filed this O.A. with a prayer to issue appropriate direction to the respondents to give him promotion from the rank of OAS-Class-I(Junior) to different higher ranks from the date when his juniors got such promotion with all consequential service as well as financial benefits.

2. The case of the applicant is that he entered into Government service in the cadre of OAS, Class-II on 22.7.1995. He is senior to Sri Dilip Kumar Sahoo (respondent No.3) as per Annexure-1 gradation list, It is averred that the Selection Board held on 9.6.2006 for consideration of promotion of OAS Class-II officers to OAS Class-I (Junior) did not consider the case of the applicant, rather deferred consideration of candidature of the applicant and few others on the ground of non-availability of CCRs as per the Selection Board proceeding dated 9.6.2006 at Annexure-2. While the applicant could not be considered due to want of CCRs, the Selection Board considered the case of his juniors including respondent No.3 and the recommendation was approved by the Government followed with promotion Notification dated 11.8.2006 at Annexure-3 wherein

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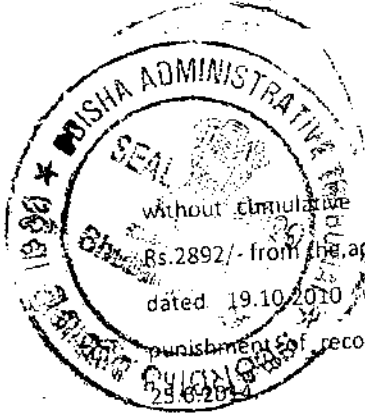
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respondent No.3 got promotion to the rank of Class-I (Junior). It is further averred that the same irregularity was committed in the proceedings of the review Selection Board held on 2.7.2007 at Annexure-4, wherein the case of the applicant was further deferred due to non-availability of CCRs, whereas many more juniors were allowed the benefit of promotion. As per the applicant, he has been deprived of his right of consideration for promotion for no fault of him, but for the laches on the part of the State respondents in procuring and producing the CCRs of the relevant period before the Selection Board held on 9.6.2006 and review Selection Board held on 2.7.2007. Therefore, the applicant not being responsible in any manner for writing CCR, custodian of CCR, so also to present it before the Selection Board, he cannot be denied with the right of consideration as well as right of promotion from the date when his juniors got such promotion.

In the Selection Board meeting held on 10.1.2008 as at Annexure-5 the case of the applicant was considered, but his recommendation was kept in a sealed cover on the ground that the departmental proceedings were pending against him. In the meantime departmental proceeding dated 7.12.2004 along with additional proceeding dated 24.3.2005 were finalized vide order dated 7.8.2010 with the minor punishment of (i) stoppage of two annual increments

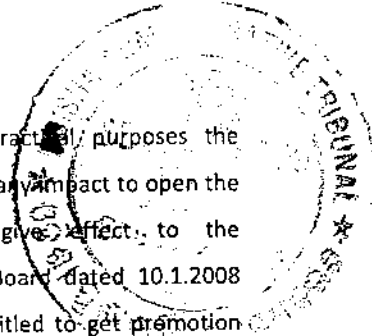


without cumulative effect and recovery of Rs.320/- and Rs.2892/- from the applicant. The departmental proceeding dated 19.10.2010 was also finalized with the minor punishment of recovery of Rs.6,650/- vide order dated

It is averred that promotion of the applicant ought to have been considered from the date his juniors were promoted i.e. on 11.8.2006 in pursuance of selection board meeting held on 9.8.2006 since the relevant departmental proceeding which was pending on the date of selection board meeting has already been concluded with minor penalty of censure and recovery. The Government in Revenue & Disaster Management Department also informed the General Administration Department vide their letter dated 17.7.2014 at Annexure-14 that the disciplinary proceedings against the applicant have been finalized and no other disciplinary proceeding is pending against him. Even in the vigilance case No.21/2006 initiated against the applicant cognizance was taken by the Special Judge (Vig.), Jeypore on 23.5.2011. Till date the copies of police papers have not yet been served on the applicant. Further the vigilance proceeding where the cognizance has been taken on 23.5.2011 was not in existence during the Selection Board held on 10.1.2008, in which the recommendation of the Selection Board in respect of the applicant was kept in a

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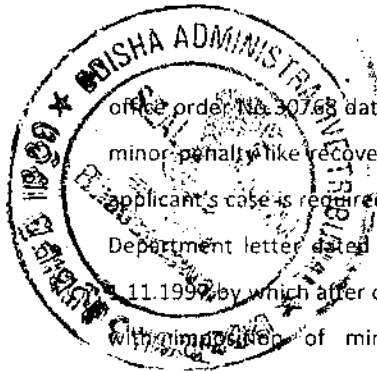
sealed cover. Therefore, for all practical purposes the subsequent proceeding cannot have any impact to open the sealed cover as well as to give effect to the recommendation of the Selection Board dated 10.1.2008 and accordingly the applicant is entitled to get promotion from the date his junior got promotion in all ranks.



4) The State respondents considered the case of the applicant after collecting the CCRs before the Selection Board held on 10.1.2008, but his case was not considered as a review DPC of the DPC dated 9.6.2006. Accordingly, the facts and figures as on 10.1.2008 were legally taken into consideration in respect of the applicant and the recommendation of the DPC has been kept in a sealed cover.

5) Heard Mr. S.N.Pattnaik, learned counsel for the applicant and Mr. N.C.Badajena, learned Standing Counsel.

6) After hearing learned counsel for both the parties, it is noted that Departmental Proceeding bearing memorandum No.3169 dated 7.12.2004 and additional proceeding bearing No.943 dated 24.3.2005 were initiated against the applicant, which were finalized vide order dated 7.8.2010 imposing minor penalty like stoppage of increments, recovery, etc.(Annexure-6). Similarly, another departmental proceeding initiated against the applicant by the Panchayati Raj Department has also been finalized vide



office order No. 30768 dated 19.10.2014 by way of imposing minor penalty like recovery and censure (Annexure-7). The applicant's case is required to be considered in terms of G.A. Department letter dated 18.2.1994 read with letter dated 11.1997 by which after closure of the proceeding followed with imposition of minor penalties like stoppage of increments, fine, recovery, censure, sealed cover is required to be opened and in case the recommendation is in favour of an employee, the benefit of retrospective promotion is to be extended in favour of such employee from the date when his immediate junior got such benefit, in the present case the similar benefit has been denied to the applicant despite closure of the proceedings, rather the respondents have decided not to open the sealed cover on the plea of subsequent proceeding in the form of a Vigilance case as at Annexure-8 to the O.A. The Revenue and Disaster Management Department has categorically intimated the General Admn. Department vide Annexure-11 to the O.A. that no departmental proceeding is pending against the applicant. Despite all these communications the applicant is yet to be benefitted with promotion by way of opening of the sealed cover. The State respondents have not filed reply despite several opportunities were given to them to file their counter. Law is well settled that the right of promotion can only be affected if on the date of the DPC any

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departmental or judicial proceeding is pending. However, a subsequent proceeding initiated after the DPC held cannot have any effect on the right of consideration as well as to get promotion in view of the decision of the Tribunal dated 21.9.2015 passed in O.A.2545/2014 and the decision of the Hon'ble Supreme Court, 2000 SCC (L&S) 897 in the case of Delhi Jal Board vs. Mahinder Singh, wherein it is held that the mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, come in the way of giving him the benefit of the assessment by the departmental promotion committee in his favour in the anterior selection. This decision of the Hon'ble Apex Court is squarely applicable to the present case at hand.

Since the grievance of the applicant has not been disputed by the State respondents and the applicant has justified his claim with supported documentary evidence which is none other than the departmental notifications and information collected under the RTI Act,2005, the issue involved in this case is squarely covered by the principle decided by the Hon'ble Supreme Court as well as this Tribunal, State respondents are directed to open the sealed cover of the selection board dated 10.1.2008 and to

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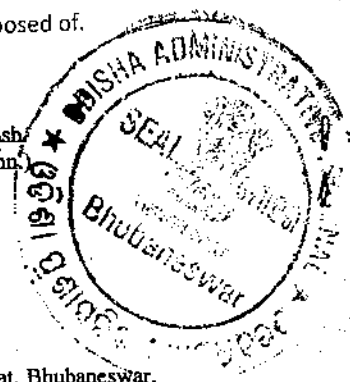
extend the benefit of promotion to different ranks in favour of the applicant from the date when his immediate junior Respondent No.3 got such benefits with all consequential service and financial benefits, within a period of three months from the date of receipt of the order. The benefits, consequential thereto, be provided to the applicant in terms of G.A. Department letter dated 1.11.1997 governing the field of "seal cover".

Original Application is accordingly disposed of.
Send copies. No costs.

Sd/- S.K.Dash
Member (Admin)

I agree.

Sd/-G.R.Purohit
Member (Judl.)



Memo No. 1448 Dt. 25-2-17

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1. Principal Secretary, Revenue & D.M. Deptt. Odisha Secretariat, Bhubaneswar, Dist.-Khurda.
2. Special Secretary, G.A.Deptt., Odisha, Bhubaneswar.
3. Dillip Kumar Sahoo, B.D.O.Odagaon, Dist-Nayagarh.
4. Mohan Sahu C/o S.N.Pattnaik, Advocate, OAT. Bhubaneswar.
5. Standing Counsel , O.A.T., Bhubaneswar, Dist-Khurda
6. Publisher, ATT. Bhubaneswar for information & necessary action.

Completed by:
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23/2/17
DEPUTY REGISTRAR
Deputy Registrar
DISHA ADMINISTRATIVE TRIBUNAL
BHUBANESWAR