

Administrative Tribunal, Principal Bench, New Delhi in O.A. 1525 of 2001 and the order dated 18.07.2003 (Annexure-7) passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 276 of 1993 filed by the present petitioner.

2. The case of the petitioner has a chequered career. The petitioner was an ex-army personnel for twelve years. After taking retirement from the defence service, the petitioner pursuant to an advertisement dated 21.02.1972 applied for the post of Assistant Commandant in Class-II Cadre of the Odisha Military Police. On being successful in the interview, he got selected and joined as Assistant Commandant on 16.11.1972. Before joining in the Odisha Military Police Service, the petitioner had rendered five years eleven months and two days of approved commissioned service out of his twelve years career in defence service. Thus, he made a representation to the Secretary, Government of Odisha, Home Department, Bhubaneswar-opp. party no. 2 to fix seniority taking into consideration his past service in the Army and to antedate his date of joining in the Odisha Military Police. He also requested the opp. party no. 2 to re-fix his scale of pay accordingly. The State Government vide its letter dated 18.01.1978 granted the benefit of military service from

30.08.1964 to 31.07.1970 to the petitioner. Accordingly, a revised gradation list was published and circulated, wherein the petitioner was placed at Sl. No. 9, whereas the name of one Shri Gopabandhu Biswal was placed at Sl. No. 10 in the cadre of Assistant Commandant. When the matter stood thus, said Gopabandhu Biswal moved this Court in OJC No. 2414 of 1982 challenging the action of the State Government in not considering his case for promotion as Deputy Superintendent of Police in the I.P.S. Cadre. After creation of the Central Administrative Tribunal pursuant to the enactment of the Administrative Tribunal Act, 1985, the writ petition was transferred to the Central Administrative Tribunal, Cuttack Bench, Cuttack (for short 'the Tribunal') and the same was registered as T.A. No. 1 of 1989. Vide order dated 24.12.1991, said T.A. was disposed of directing the State Government to consider the case of Shri Gopabandhu Biswal for promotion in the cadre of I.P.S. in respect of the vacancies available from 1977 till January, 1980. The judgment passed by learned Tribunal in T.A. No.1 of 1989 was challenged by the State of Odisha and others before the Hon'ble Apex Court in SLP(C) No. 7479 of 1992, which was dismissed on 03.08.1992.

3. The petitioner being better placed than that of Shri Biswal submitted a representation to the Government of Odisha on 17.09.1992 for consideration of his case for promotion to the rank of Deputy Superintendent of Police in the cadre of I.P.S. in the light of the decision of Shri Biswal in T.A. No. 1 of 1989. Since his representation was not considered, he filed O.A. No. 276 of 1993 before the Tribunal challenging the action of the authorities in not considering his case for promotion in the cadre of I.P.S. and prayed for a direction for consideration of his case in the light of the decision rendered in T.A. No.1 of 1989. Along with other averments, the petitioner had specifically asserted that the petitioner being senior to Shri Biswal in the cadre of Assistant Commandant in Orissa Military Police Service, is entitled to the benefit as that of Shri Biswal, which was conferred pursuant to the judgment passed in T.A. No. 1 of 1989. Two other Original Applications, i.e. O.A. Nos. 277 and 278 of 1993, were also filed by Shri G.P. Mishra and Shri Nursinghanath Panda respectively before the Tribunal claiming the self-same relief as that of the petitioner.

4. Some of the members of I.P.S. Cadre had also filed Review Applications, i.e. Review Application Nos. 16 and 18 of

1993, before the Tribunal challenging the judgment passed in T.A. No. 1 of 1989 on the ground that they were not made parties to the T.A. No. 1 of 1989 filed by Shri Biswal and in view of the direction made in the said T.A., their promotional avenue would be affected. All these applications were taken up together by the Tribunal and vide judgment dated 24.6.1994 (Annexure-4), the Tribunal allowed the Review Application Nos. 16 and 18 of 1993 holding that T.A. No.1 of 1989 was devoid of merit. O.A. No. 276 of 1993 filed by the petitioner and O.A. Nos. 277 and 278 of 1993 filed by Shri G.P. Mishra and Shri Nursinghanath Panda respectively for consideration of their cases for promotion in the light of the judgment passed in T.A. No.1 of 1989 were dismissed. The said common order dated 24.06.1994 passed by the Tribunal in O.A. Nos.276, 277 and 278 of 1993 as well as Review Application Nos. 16 and 18 of 1993 were challenged before the Hon'ble Supreme Court in Civil Appeal Nos.3456 and 3457 of 1996 filed by the State Government and Civil Appeal Nos. 3458, 3459 and 3460 of 1996 filed by the present petitioner and two others, who were applicants before the Tribunal. Said Gopabandhu Biswal also filed Civil Appeal Nos. 3451 to 3455 of 1996 assailing the order passed by the Tribunal under

Annexure-5. All these Civil Appeals were heard analogously and the Hon'ble Supreme Court vide judgment dated 21.04.1998 allowed the Civil Appeals with the following observation.

13. *It is difficult to include the applicants in the review applications in the category of "persons aggrieved". The main applicant i.e. the present appellant-Biswal had joined as party respondents all those persons who had superseded him for selection to the Indian Police Service Since they would be persons affected in case he succeeded in his application. The Tribunal had directed that Biswal be considered for promotion between 1977 and 1980 and not thereafter. During this period, the two applicants in review application No. 16 of 1993 were nowhere within the zone of consideration for promotion to I.P.S. One of the applicants joined the police service only in 1974 and was not eligible for further promotion till 1982. The other applicant, though eligible for promotion, was on account of his rank in the seniority list, not within the zone of consideration at any time prior to 5.11.1980. As a matter of fact the two applicants in review application No. 16 of 1993 were selected for promotion to I.P.S. only in 1993 when they were included in the select list of 1993. Therefore, they could not have been made parties in T.A. No. 1 of 1989. At that point of time, these applicants had only a chance of promotion in future. This does not confer and legal right on these applicants and they cannot be considered as parties aggrieved by the impugned judgment. however, leniently one may construe the term 'party aggrieved', a person not directly affected cannot be so considered. Otherwise for years to come, every person who becomes eligible for promotion will be considered a party aggrieved' when the Tribunal interprets any Service Rule such as in the present case. Only persons who are directly and immediately affected by the impugned order can be considered as 'parties aggrieved' under Section 22(3) (f) read with Order 47 Rule 1.*

14. *The same is the case with the applicants in Review Application No. 18 of 1993. These two applicants in the*

Review Application No. 18 of 1993 were direct recruits to the Indian Police Service of 1975 and 1976 batches. The quota for direct recruits is different and these applicants were not concerned with the appointments made within the quota of promotes from the State Police Service. Therefore, it is difficult to look upon them as persons aggrieved. If at all they would be affected by the promotion given to the original applicant-Biswal, that would be in respect of their chance for promotion to the next higher post. This does not confer any legal right on these applicants. They cannot, therefore, be considered as persons aggrieved. In our view the Tribunal was not entitled to, and ought not to have entertained the review applications once the special leave petition from the main judgment and order had been dismissed.

15. The Tribunal also had before it, three other applications which were filed under Section 19 of the Administrative Tribunals Act 1985. The Tribunal had dismissed these applications in view of having allowed the review petitions and set aside its earlier order in T.A. No. 1 of 1988. In view of the fact that the Tribunal's judgment in review applications cannot be sustained, the Tribunal will be required to examine these three applications filed before it on merit and dispose them of in accordance with law.

16. In deciding these applications, the Tribunal cannot ignore its earlier judgment.

"The use of precedent is an indispensable foundation upon which to decide what is the law and its application the individual case; it provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as provide a basis of orderly development of legal rules". (Halsubry Fourth Edn. Vol. 26 para 573).

If the Tribunal decides to follow its earlier judgment the respondents in these applications can file petitions for leave to appeal if they so desire; and any other person aggrieved may also, with the leave of the Court, apply for special leave to file an appeal. In the event of the Tribunal coming to a conclusion that its earlier judgment

requires reconsideration, the Tribunal can refer the question to a larger Bench. In either case the persons aggrieved can apply and intervene to put forward their point of view.

17. We, therefore, allow these appeals, set aside the order of the Tribunal in review applications and remand the Original Applications Nos. 276, 277 and 278 of 1993 for fresh consideration by the Tribunal in accordance with law. There will, however, be no order as to costs.

6. After remand, the Tribunal did not agree with the reasons recorded in the in T.A. No.1 of 1989. Thus, the Tribunal referred the matter to the larger Bench giving the reasons in detail, as per the observations made by the Hon'ble Supreme Court. As there was less possibility of constitution of a Full Bench in the Central Administrative Tribunal, Cuttack Bench, Cuttack, the matter was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi vide its order dated 27.06.2000 (Annexure-5). The matter was referred to the Full Bench to answer the reference, which is as follows:

- 1. Whether Assistant Commandant of Orissa Military Police and Deputy Superintendent of Police constituted one cadre prior to 5.11.1980 or these two categories of posts were included in two different cadres with effect from 14.7.1947?*
- 2. In case the first question is answered by holding tht the two categories of posts were included in two different cadres from 14.7.1947, whether a specific declaration of*

equivalency by the State Government is necessary for the purpose of considering Assistant Commandants for promotion to Indian Police Service till 4.11.1980?

7. The Principal Bench at New Delhi constituting a Full Bench heard the reference made. The Full Bench of the Tribunal at New Delhi, vide its order dated 16.04.2002 (Annexure-6) answered the reference after discussing the matter in detail as follows:

- (i) *Assistant Commandants of Orissa Military Police and Deputy Superintendent of Police did not from one cadre prior to 5.11.1980.*
- (ii) *A specific declaration of equivalence by the State Govt. is necessary for the purpose of considering Assistant Commandants for promotion to IPS till 4.11.1980.*

8. Accordingly, the matter was directed to be placed before the appropriate Division Bench for disposal on merit in accordance with law. Thereafter, the matter was taken up by the Division Bench of the Tribunal and in the light of the findings of Full Bench, the Original Applications were disposed of being devoid of any merit vide its order dated 18.07.2003 (Annexure-7). Assailing the orders under Annexures-6 and 7, this writ petition has been filed.

9. Mr. Rajeev Roy, learned counsel for the petitioner made a lengthy argument raising different issues. Narrating the facts in detail, as referred to above, he submitted that the Full Bench of the Tribunal is devoid of any jurisdiction to sit over the judgment of the Division Bench in batch of cases filed by the petitioner along with others in O.A. Nos. 276, 277 and 278 of 1993 as well as Review Application Nos. 16 and 18 of 1993 for the reason that the decision was subjected to scrutiny by the Hon'ble Apex Court in Civil Appeal Nos. 3451-3455 of 1996, when the Hon'ble Apex Court vide its judgment dated 21.04.1998 (quoted supra) categorically held that in dealing with the applications, as aforesaid, the Tribunal could not have ignored its earlier judgment in T.A. No. 1 of 1988 by coordinate Bench and taken a different view. Thus, while setting aside the judgment passed by the Tribunal in batch of Writ Petitions as well as Review Applications, the Hon'ble Supreme Court remitted the matter back to the Tribunal for fresh consideration in accordance with law. Accordingly, the matter was considered by the Division Bench of learned Tribunal and the Division Bench of learned Tribunal thought it proper to refer the matter to the Full Bench in view of the observation of the Hon'ble Supreme Court to the effect that if

the Division Bench of the Tribunal comes to the conclusion that earlier judgment requires reconsideration, then it can refer the question to the larger Bench. The larger Bench of the Tribunal after answering the question referred to it by the Division Bench relegated the matter to it for adjudication. Accordingly, the impugned order dated 18.07.2003 under Annexure-7 was passed. Thus, both the judgment dated 16.04.2002 of the larger Bench under Annexure-6 and the consequential order dated 18.07.2003 passed by the Division Bench under Annexure-7 have been challenged in this writ petition.

10. The main plank of argument of Mr. Rajeet Roy, learned counsel for the petitioner is that in view of the judgment rendered in the case of **Gopabandhu Biswal -v- Krishna Chandra Mohanty and others**, reported in (1998) 4 SCC 447, learned Tribunal did not have any scope to take a different view in the matter, wherein it has been held by the Tribunal that no other inference is possible except that prior to 05.11.1980, the post of Assistant Commandant and Deputy Superintendent of Police was one cadre and with effect from 05.11.1980, the post of Assistant Commandant has been excluded from the existing cadre. So far as the equivalency of the posts of Assistant Commandants with

that of Deputy Superintendents of Police is concerned, vide correction Slip No. 5 of 1969 of the Police Manual Volume-1, it is to be found that the Deputy Superintendents of Police have been equated with Assistant Commandants. As per Rule 7 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, the State Civil Services Class-I and Class-II consists of services and grades specified in the schedule. Since both the posts come within one and the same cadre, the question of giving a declaration regarding equivalency of the posts does not arise, especially keeping in view the pay scale, rank and status of both the categories of the officers being one and the same. Thus, learned Tribunal has grossly erred in law in placing reliance on the letter dated 14.07.1947, which disclosed that the posts of Assistant Commandant and Deputy Superintendent of Police belonged to two different cadres. It is his submission that the letter dated 14.07.1947 cannot overshadow the Government notification dated 05.11.1980, which was issued in exercise of power conferred under Section 13 of the Orissa Military Police Act, 1946 (for short 'the Act, 1946'). Section 2(1) of the Act, 1946 defines "Military Police Officer" means a person appointed to the Orissa Police Force constituted under Section 2 of the Police Act,

1861. The State Government except placing reliance on the letter dated 14.07.1947 could not produce any material to show that the posts of Assistant Commandant and Deputy Superintendent of Police constituted different cadres. Since there is no rebuttal material to the notification dated 05.11.1980 indicating bifurcation of the aforesaid two posts to different cadres, it can be reasonably presumed that both the posts belonged to one cadre till 04.11.1980. The said notification itself shows that the State had declared both the posts equivalent in terms of Rule 2(j)(ii) of the IPS (Appointment by promotion) Regulations, 1955. Referring to the counter affidavit filed by the State Government before the Tribunal, Mr. Roy submitted that in paragraph-5 of the counter affidavit, the State Government had specifically admitted that since the number of incumbents in the rank of Deputy Superintendent of Police were very less in comparison to the number of posts, the Government had decided to keep some of the Assistant Commandants in the cadre of Deputy Superintendent of Police for the purpose of leave reserve strength inasmuch as the pay scale of Deputy Superintendents of Police and Assistant Commandants were the same. In the past, when the posts of Assistant Commandants had fallen vacant, their

number being small, the Deputy Superintendents of Police were being posted as Assistant Commandants. On the issue of delay, Mr. Roy submitted that the same cannot stand on the way of the petitioner in getting the desired relief on merit as the Tribunal while referring the matter to the larger Bench in its judgment dated 27.06.2000 has already rejected the said plea of the State Government. Thus, it is no more available to be raised in this writ petition. Placing reliance on the judgment passed in the case of **Gopabandhu Biswal** (supra), he submitted that since the said Biswal was junior to the petitioner in the rank of Assistant Commandant and has been promoted in the rank of Deputy Superintendent of Police, the petitioner is entitled to the said relief. He also relied upon the decisions in the cases of State of **Gujarat -v- Mirzapur Moti Kureshi Kassab Jamat & others**, reported in (2005) 8 SCC 534, **Gammon India Ltd. -v- Commissioner of Customs, Mumbai**, reported in (2011) 12 SCC 499, **Roshan Lal Tandon -v- Union of India**, reported in MANU/SC/0328/1967, **The Commissioner, Karnataka Housing Board -v- C. Muddaiah**, reported in (2007) 7 SCC 689, **State of Kerala and others -v- E.K. Bhaskaran Pillai**,

reported in (2007) 6 SCC 524 and **State of Mysore -v- C.R. Sheshadri and others**, reported in (1974) 4 SCC 308.

11. Mr.M.S. Sahoo, learned Additional Government Advocate for the State-opp. parties, on the other hand, submitted that there is neither any illegality nor infirmity in the impugned judgment and order under Annexure-6 and Annexure-7. The petitioner was never in born in the cadre of Orissa Police Service and thus, his case could not have been considered for promotion treating him to be in the cadre of Deputy Superintendent of Police, as claimed. He also referred to the discussion of facts as well as provision of law by the Full Bench in its judgment under Annexure-6 in deciding the issues referred to it. It is his submission that there cannot be any dispute to the proposition of law that in view of Section 2(j)(ii) of Indian Police Service (Appointment by Promotion) Regulations, 1955, there has to be a notification declaring both the posts to be equivalent. Admittedly, there is no such declaration by the State Government at the relevant time. Further, the case of **Gopabandhu Biswal** (supra) cannot be relied upon by the petitioner as the Hon'ble Supreme Court while remitting the matter by setting aside the judgment and order of the Tribunal in batch of the Original Applications

and Review Applications, as aforesaid has categorically observed that if the Tribunal decides to take a different view, then it could refer the matter to the larger Bench for adjudication. Accordingly, the matter was referred to the larger Bench and has been adjudicated taking into consideration the submissions of learned counsel for the parties and points of law involved in threadbare. This Court in exercise of power under Article 226 and 227 of the Constitution of India should not interfere with the said findings. There is also no infirmity in the impugned judgment and order under Annexures-6 and 7. Hence, he submitted that this writ petition being devoid of any merit is liable to be dismissed.

12. Upon hearing learned counsel for the parties at length, it appears that the dispute revolves around the issue that whether the larger Bench of the Tribunal has arrived at a just conclusion while answering the reference made by the Division Bench of the Tribunal.

13. The contention raised by Mr. Rajeev Roy, learned counsel for the petitioner that the Tribunal has fundamentally violated the doctrine of *stare decisis* (See ***Gamon India Limited -v- Commissioner of Customs, Mumbai, reported in (2011) 12 SCC 499***) in not following the judgment and order passed in T.A.

No. 1 of 1989 does not hold good in view of the observation of the Hon'ble Apex Court (supra). While remitting the matter back to the Tribunal, the Hon'ble Supreme Court held that the collateral Bench of the Tribunal could not have taken a different view contrary to the earlier decision. If the collateral Bench takes a different view, then it should refer the matter to a larger Bench to answer the reference. Accordingly, when the Division Bench of the Tribunal did not agree with the decision taken by the collateral Bench earlier, it referred the matter to the larger Bench framing questions to be answered by it. The said decision of referring the matter to the larger Bench was never challenged. Thus, the principle of *stare decisis* is not applicable to the case at hand.

Section 2(j) of the Indian Police Service (Appointment by Promotion) Regulations, 1955 provides as under:

“State Police Service” means:

- (i) xxx xxx xxx
- (ii) *in all other cases, the Principal Police service of a State, a member of which normally holds charge of a sub-division or a district for purposes of police administration and includes any other duly constituted police service functioning in a State which is declared by the State Government to be equivalent thereto.”*

14. From the aforesaid provision, it is clear that the cadre of Deputy Superintendent of Police constituted the cadre of Principal Police Service of the State, as the officer normally holds charge of a Sub-Division. However, the Principal Police Service of a State also includes any other duly constituted police service functioning in the State which is declared as such by the State Government to be equivalent thereto. In the case at hand, admittedly, there is no such declaration of equivalency of the Assistant Commandant with the Deputy Superintendent of Police by the State Government. Merely because the pay scale and allowances of both the posts were similar, it cannot be said that both the cadres are equal in absence of a declaration to that effect by the State Government. Thus, the finding of the Tribunal in the case of **Gopapabdhhu Biswal** in T.A. No. 1 of 1989 to the effect that both the aforesaid posts belonged to a single cadre prior to 05.11.1980, only because the pay scale, allowances as well as status of the aforesaid posts were similar, cannot hold good in view of the specific provision under Section 2(j) of the Regulations, 1955. Referring to Rules 7 and 7-A of the Indian Police Service (Recruitment) Rules, 1954 (for short 'the Rules, 1954'). Rule-7 provides recruitment to the post of Indian Police

Service through competitive examination. Further, Rule 7-A provides recruitment by selection of persons from among released Emergency Commissioned Officers and Short Service Commissioned Officers commissioned in the Armed Forces of the Union after 01.11.1962. Rule 9 provides for recruitment by promotion. Admittedly, the petitioner does not fall under Rule 7-A of the Rules, 1954. He claims to be absorbed in the cadre of Indian Police Service through promotion. Rule 9 (1) of the Rules, 1954 provides that the Central Government may on the recommendation of the State Government concerned and in consultation with the UPSC, recruit to the service persons by promotion from amongst the (substantive) members of a State Police in accordance with such regulation as the Central Government may after consultation with the State Government and UPSC from time to time make. As already discussed above, neither the petitioner was ever a member of the Principal Police Services of the State holding charge of a sub-division or district for the purpose of Police Administration nor any equivalency to that effect has been declared by the State at any point of time. Hence, the petitioner lacks the primary eligibility to be

considered for promotion to the cadre of Deputy Superintendent of Police.

15. The petitioner placed reliance on resolution dated 22.02.1973 regarding augmentation of the Orissa Police Service Cadre which refers to 12 posts of Assistant Commandants having been made permanent in the Orissa Police Services and also refers to 16 Duty posts of Assistant Commandant. Reliance was also placed on the correction Slip No.5 of 1989 of the Orissa Police Manual. Further reliance was placed on the resolution dated 05.11.1980, whereby 16 Duty posts of Assistant Commandants were excluded from the Orissa Police Services to constitute a separate cadre because no Assistant Commandant performs the duty of a Deputy Superintendent of Police. The arrangement made in the resolution dated 22.02.1973 was due to the shortage of officers in the cadre of Deputy Superintendent of Police. That does not take away the rigour of Rule 2(j)(ii) of the Regulations, 1955, as stated above. Moreover, there is nothing on record to come to a conclusion that the post of Assistant Commandant of the Orissa Military Police had ever been merged with the cadre of Deputy Superintendent of Police at any point of time. The letter dated 14.07.1947 and the resolution

dated 22.02.1973 contents, inter alia, that the posts of Deputy Superintendent of Police in the Orissa Police Force were 59 in number, whereas 16 posts of Assistant Commandants of the Orissa Military Police were shown separately in the said resolution. Learned Tribunal on a threadbare discussion of the relevant provisions at paragraphs-20 to 34 have categorically found that both the posts belonged to separate and distinct cadres and cannot be treated to be equivalent in absence of any declaration to that effect. Accordingly, at paragraph-35, the larger Bench of the Tribunal answered the reference holding that the Assistant Commandants of the Orissa Military Police and Deputy Superintendent of Police did not form one cadre prior to 05.11.1980. It was further held that a specific declaration of equivalence by the State Government is necessary for the purpose of considering Assistant Commandants for promotion to I.P.S. till 04.11.1980. In view of the findings of the larger Bench, the Division Bench of the Tribunal dismissed the Original Application of the petitioner along with batch of Original Applications.

16. There cannot be any quarrel over the fact that Special Leave Petition filed by the State Government assailing the

judgment and order passed in T.A. No.1 of 1989 filed by **Gopabandhu Biswal** was dismissed in *lemini*. In that view of the matter, it cannot be said that the Tribunal has to follow the said judgment and order, more particularly when the Hon'ble Apex Court while remitting O.A. No. 276 of 1993 and other similar Original Applications to the Tribunal for fresh adjudication has categorically opined that if the Tribunal comes to a conclusion that its earlier judgment requires reconsideration, the Tribunal can refer the question to a larger Bench.

17. There is no dispute about the correctness of the ratio of the judgments relied upon by learned counsel for the petitioner but learned counsel for the petitioner failed to substantiate the applicability thereof to the instant case.

18. In that view of the matter, this writ petition fails and is dismissed. Resultantly, the impugned judgment and order passed by the Tribunal under Annexures-6 and 7 are confirmed. In the circumstances, there shall be no order as to costs.

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K.R. MOHAPATRA
(JUDGE)

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MOHAMMAD RAFIQ
(CHIEF JUSTICE)