

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
Original Application No. 040/00008/2016
Date of Decision: 02.09.2019

THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. N. NEHSIAL, ADMINISTRATIVE MEMBER

Shri Swadesh Kumar Das
Son of Late Balahari Das
Presently working as Section Officer (now retired)
Central Administrative Tribunal
Guwahati Bench, Guwahati – 5.

.....Applicant

By Advocate(s): Sri M. Chanda
 Ms. S. Begum
 Mr. A. K. Das

-AND-

1. The Union of India
 Represented by the Secretary to the Government of India
 Ministry of personnel, Public Grievances and Pensions
 Department of Personnel and Training
 New Delhi – 110001.

2. The Principal Registrar
 Central Administrative Tribunal
 Principal bench, 61.35
 Copernicus Marg, New Delhi – 110001.

3. Shri Bandi Bhagat
 Deputy Registrar
 Central Administrative Tribunal
 88/A, Sri Krishnanagar
 Patna – 800001.

.....Respondents

By Advocate: Sri S. K. Ghosh, learned Addl. CGSC

ORDER

MANJULA DAS, JUDICIAL MEMBER:

The instant O.A. has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- 8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned promotion order bearing letter No. A-12013/5/2013-AT dated 08.01.2014 (Annexure – A3) as well as office order bearing letter No. PB/15/2/2013-Estt. 1 dated 10.01.2014 (Annexure – A4) so far respondent No. 3 is concerned.
- 8.1A The Hon'ble Tribunal be pleased to set aside the impugned seniority list dated 15.12.2015 (Annexure – A 10) and the impugned letters dated 12.01.2016 (Annexure – A 11) and 20.01.2016 (Annexure – A 12) in respect of the applicant.
- 8.1B The Hon'ble Tribunal be pleased to direct the respondents to hold review DPC and promote the applicant to the post of Deputy Registrar at least w.e.f. 01.10.2012 if not earlier or alternatively to open the sealed cover and to give effect of the same with immediate effect.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to promote the applicant to the grade of Deputy Registrar in the grade pay of Rs. 6,600 and the pay band – 3 (15,600 – 39,100) by holding review DPC/DPC with a further direction to grant the benefit of promotion of the applicant with retrospective effect atleast from the date of ad hoc/regular promotion of the respondent No. 3, or against the SC vacancy against which Shri Arun Kumar was promoted on adhoc basis who is junior to the present applicant, along with the seniority above the respondent No. 3 in the grade of Deputy Registrar with immediate effect with arrear monetary benefits with 9% interest in the light of the judgement and order dated 31.01.2014, passed by the Hon'ble Adhmadbad Bench of the Ld. CAT, in the case of Sunil Kumar Jain –VS- Secretary Ministry of Finance, Govt. of India in O.A. No. 3/2015.

2. Sri M. Chanda, learned counsel for the applicant submitted that the applicant while serving in the cadre of Assistant in the Central Administrative Tribunal, Guwahati Bench, he was promoted to Section Officer/Court Officer w.e.f. 01.01.2004 on

notional basis and actual basis w.e.f. 10.05.2006. The applicant belongs to SC Community and as such he is entitled to special privilege as granted by the constitution of India. According to learned counsel, in the meantime, the applicant attained eligibility for promotion to the grade of Deputy Registrar in grade pay of Rs. 6,600/- in the pay band-3 (15,600 – 39,100). However, vide office order bearing letter no. 1/3/2008/E-1(Part) dated 11.01.2013 the respondent authority promoted as many as 12 Section Officer/Court Officer/Private Secretaries to the post of Deputy Registrar on ad-hoc basis. But the case of the applicant has not been considered even for ad-hoc promotion. Thereafter, the respondents vide office order bearing letter No. A-12013/5/2013-AT dated 08.01.2014 promoted as many as 12 officers on regular basis from the cadre of Private Secretary/Section Officer/ Court Officer of different benches of Central Administrative Tribunal and the respondent No. 3, who is junior to the applicant also had been promoted to the post of Deputy Registrar on regular basis, ignoring and overlooking the claim of promotion of the applicant, while the applicant was due to retire on 31.01.2016.

3. Learned counsel submitted that while working as Section Officer in the Central Administrative Tribunal, Guwahati Bench, Guwahati, a criminal proceeding was initiated against the applicant during the year 2010 which was registered as Special Case No. 16/2010 before the Ld. Special judge, CBI Chandmari, Guwahati,

Assam. However, after receipt of the summon from the court of the Ld. Special Judge, CBI, the applicant preferred a criminal petition No. 279/2013 before the Hon'ble Gauhati High Court for quashing of the criminal proceeding. The Hon'ble Gauhati High Court vide its judgement and order dated 09.05.2014 was pleased to allow the criminal petition and thereby discharged the applicant from criminal proceeding.

4. Thereafter, the applicant immediately made a representation 23.07.2015 to the Principal Registrar, New Delhi, with a request to reconsider the case of the applicant for appointment to the post of Deputy Registrar, which, according to him, was lying vacant against the SC quota, and the same was forwarded by the Joint Registrar vide letter dated 29.07.2015.

5. According to learned counsel, once a Government servant is exonerated or discharged from the disciplinary/criminal proceeding, he is entitled to be promoted from the date of his junior/batch mates were promoted with all consequential benefits.

6. Learned counsel further submitted that a seniority list was circulated by the Registry of the Principal Bench vide letter dated 26.07.2013, wherein name of the applicant was shown at serial No. 14 under SC quota whereas name of the respondent No. 3 was shown at serial No 16 under ST quota, as such it is quite clear that the respondent No. 3, who was promoted as Deputy Registrar on ad-hoc

basis way back in the year 2013 and subsequently got regular promotion in the month of January 2014, was junior to the applicant. When the applicant was discharged from the criminal proceeding, the respondent authorities failed to take any steps for retrospective promotion of the applicant atleast from the date of promotion of his junior i.e. respondent No. 3, which has caused irreparable loss and injury to the present applicant.

7. It was further submitted by learned counsel that vide office order dated 28.10.2015, as many as four officers were promoted to the grade of Deputy Registrar on ad-hoc basis for a period of one year or till the post are filled up on regular basis, but while issuing the office order dated 28.10.2015, the respondent authorities did not consider the repeated request for consideration of promotion of the applicant. Due to negligence and inaction of the respondent the applicant was adversely affected in the matter of promotion to the post of Deputy Registrar with retrospective effect. According to learned counsel, being the senior, the applicant's case ought to have been considered by following procedure of sealed cover. However, in the case of the applicant no such sealed cover procedure was adopted. Thus, they violated the DOPT instruction issued time to time.

8. Sri M. Chanda, learned counsel vociferously argued that from the statement of the respondents came to know that the

applicant earlier date of absorption as UDC viz on 01.11.1989 has been changed as the date of absorption as LDC, and the date of his promotion as UDC has been deferred to 01.10.1991 and for the aforesaid change in the date of absorption as LDC/UDC, the date of promotion of the applicant in the grade of SO/CO got postponed from 01.01.2004 to 01.01.2008 and the applicant was held to have not completed 8 years of regular service as SO/CO/PS and not eligible for promotion to Deputy Registrar as on 01.01.2012.

9. On the other hand, Sri S. K. Ghosh, learned Addl. CGSC for the respondents submitted that the case of the applicant could not be considered being not eligible even opening of the sealed cover case after his discharge from criminal proceedings due to change in eligibility service and seniority position in the grade of SO/CO. Moreover, recommendation in his respect was not accepted by the DOPT in the order of appointment which was issued on 08.01.2014. The eligibility for promotion as Deputy Registrar as well as placement in the seniority list in the grade of SO/CO had undergone change as per the draft list which was issued on 21.05.2014 and was finalised on 15.12.2015. The placement of applicant in the said seniority list is at serial No. 38. No junior to the applicant has so far been promoted as Deputy Registrar either on ad-hoc or regular basis.

10. Learned Addl. CGSC further submitted that the position of the applicant shown in the seniority list dated 26.07.2013 has got

changed and the seniority list was finalised on 15.12.2015, hence the claim for promotion to the post of Deputy Registrar on the basis of his seniority over respondent No. 3 has no legal basis and is not sustainable in law. According to learned Addl. CGSC, the applicant was not in the zone of consideration due to the alteration of seniority position of the applicant in the seniority list of SO/CO. Hence, his claim of seniority over private respondent No. 3 i.e. Bandi Bhagat is not tenable under the law.

11. Having heard the learned counsel for the parties, perusal of the pleadings and material placed before us, we noted that though the applicant's seniority position was above the respondent No. 3 in the list of SO/CO as on 01.01.2013 where the applicant found the place against serial No. 14 and the private respondent No. 3 who got promotion to the Deputy Registrar, was placed at serial No.

12. However, subsequently, the said seniority list was changed and finalised on 15.12.2015 and the applicant's seniority was fixed serial No. 38. The said change of seniority occurred due to the change of date of his absorption as LDC instead of UDC w.e.f. 01.11.1989 and accordingly, the date of promotion in the grade of UDC/Assistant & SO/CO have undergone change which reads as hereunder:

Name of the Post	Previous date of appointment	Revised date of appointment
LDC	20.04.1983 Parent Deptt 13.11.1985	01.11.1989 Absorbed in CAT

	Dep to CAT	
UDC	26.09.1988 UDC on contd. Deputation 29.11.1990 Regular	01.10.1991
Asstt	01.10.1995	01.01.1999
SO/CO	01.01.2004	01.01.2008

Accordingly, the placement of the applicant in the seniority list of SO/CO and the eligibility for promotion as Deputy Registrar has also undergone change and he was not in the zone of consideration at the relevant points of time as claimed by the applicant.

13. Now two questions arise i.e. (a) before changing the date of absorption whether the applicant was given opportunity or any intimation for correction of date of absorption in LDC, if any? (b) Whether the applicant has put his objection to the seniority list dated 15.12.2015 in which the applicant found his place at serial No. 38 lower than the position of respondent No. 3?

14. According to learned counsel for the applicant, no such opportunity was given to the applicant before any alteration of change of absorption in LDC. However, learned counsel failed to reply as regards making any objection to the draft seniority list dated 15.12.2015.

15. From the annexure A-10 of the present O.A. dated 15.12.2015 it appears that the Deputy Registrar, CAT, Principal Bench,

New Delhi had intimated all the Registrar / Joint Registrar of all outlying Benches on the subject of revised seniority list where the authority after consideration of representation received in response to the revised draft seniority list, the final seniority list in the grade of SO/CO in CAT as on 01.05.2014 has been prepared and the same is sent for circulating amongst the concerned officers.

16. Sri M. Chanda, learned counsel for the applicant, however submitted before this court that one representation dated 23.07.2015 has been made before the Principal Registrar, CAT Principal Bench, New Delhi prior to the preparation of draft seniority list dated 15.12.2015 with a request to re-consider his claim for appointment to the post of Deputy Registrar against the SC quota and as he would be retiring on 31.01.2016. According to him, the said representation of the applicant may be re-considered for appointment to the post Deputy Registrar which is lying vacant against the SC quota. The relevant prayer of the representation dated 23.07.2015 reads as hereunder:

"However, I am to state you that twelve (12) persons from the cadre of SO/CO/PS of the Central Administrative Tribunal have been appointed/promoted to the post Deputy Registrar in PB-3, Pay Band Rs. 15600-39100/-. But unfortunately amongst the twelve persons namely Shri Arun Kumar, and Shri Bandi Bhagat are junior to me, who were promoted to the post of Deputy Registrar without considering my case. It may be further mentioned that I will be retiring (superannuation) from my duties as on dated 31.01.2016."

17. Further it appears that the said representation dated 23.07.2015 was sent to the Principal Registrar, CAT Principal Bench, New Delhi through Joint Registrar, CAT Guwahati Bench vide forwarding letter dated 29.07.2015. According to the learned counsel the said representation is still pending before the respondent No. 1 and not yet attended to. The learned counsel for the applicant further fervently prayed before this court that the said representation dated 23.07.2015 may be disposed of by the respondent No. 1 within a time frame and the similar suggestion is also put forwarded by Sri S.K. Ghosh, learned Addl. CGSC for disposal of the said representation dated 23.07.2015.

18. In view of the above and by accepting the prayer made by the learned counsel for both the parties, we are of the view that in the interest of justice let the respondents authority more particularly respondent No. 1 to decide the representation dated 23.07.2015 pending before the department and dispose of it within a period of four months' from the date of receipt of copy of the order. Ordered accordingly.

19. Further directed to the applicant to furnish the amended O.A. No. 040/00008/2016 along with the copy of this order to the respondent No. 1 within a period of 15 days from the date of receipt of the copy of this order so as to pass appropriate order. It is made

clear that whatever decision so arrived by the respondents authority shall be communicated to the applicant forthwith.

21. With the above observations and directions, O.A. stands disposed of. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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