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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO.136 of 1987.

Date of decision : July 14, 1987.

M.C.Bhowal ... Applicant.

Versus

Union of India and others ... Respondents.

For Applicant ... M/s. B. Pal, B. Baug,
O. N. Ghosh, S. C. Parija,
Advocates.

For Respondents ... Mr. A. B. Mishra, Senior Standing
Counsel (Central).

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C O R A M :

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

A N D

THE HON'BLE MR.S.D.PRASAD, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985; the order passed by the competent authority under Annexure-A/9 reverting the applicant to his substantive post of Assistant Teacher is under challenge.

2. Succinctly stated, the case of the applicant is that he was an Assistant Teacher appointed under Dandakaranya Development Authority and he continued as such for some time. Later, the question of promoting teachers to the post of untrained Graduate teachers came up for consideration. According to the applicant, there were altogether 25 vacancies. Out of these 25 vacancies, 6 vacancies were reserved for Scheduled Castes and Scheduled Tribes and therefore, 19 vacancies were to go to the general candidates. On the basis of the recommendation made by the Departmental Promotion Committee, the competent authority under Annexure-A/1 dated 30th/31st December, 1983 directed that 24 persons ^{be} given promotion to the posts of untrained Graduate Teachers. While recommending the names of 25 candidates for promotion, the applicant remained in the waiting list against serial no.1. By the same order contained in Annexure-A/1 the competent authority found that long before 30th December, 1983 i.e., ^{on} 25th November, 1983 one Shri S.C.Sarkar whose name had been recommended by the Departmental Promotion Committee for promotion, had resigned and therefore, under Annexure-A/1 (paragraph 3) the applicant who was in the waiting list against serial no.1, was promoted on ad hoc basis for a period of three months against the post reserved for

Scheduled Castes/Scheduled Tribes. The applicant continued as such for about a little more than three years and ultimately the applicant vide Annexure-A/9 dated 11th May, 1987 has been ordered to be reverted. Being aggrieved by this order passed in Annexure-A/9 the applicant has invoked the jurisdiction of this Bench for interference.

3. In their counter, the Respondents maintained that no illegality has been committed while passing the order contained in Annexure-A/9 because admittedly the applicant does not belong to the Scheduled Castes/Scheduled Tribes. The applicant being a general candidate, was given promotion on ad hoc basis so that the work of the organisation could be carried on and after this mistake was detected the applicant has been rightly ordered to be reverted to his substantive post and therefore no illegality having been committed by the competent authority the petition is liable to be dismissed being devoid of any merits.

4. We have heard Mr. B. Pal, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) at some length. We have also given our anxious consideration to the averments finding place in the counter. The following facts are admitted. (i) There were 25 posts vacant to be filled up on promotion as untrained Graduate teacher from the feeder post i.e. Assistant teacher; (ii) Out of the above mentioned 25 posts, 6 posts were meant for Scheduled Castes/Scheduled Tribes; (iii) Under Annexure-A/1 24 persons were appointed to the promotional posts even though

there were 25 vacancies; and (iv) Out of these 24 posts filled up on promotion, 6 posts were reserved for Scheduled Castes/Scheduled Tribes and they have been filled up in pursuance to the same order contained in Annexure-A/1.

Mr. Pal, learned counsel for the applicant urged before us that the 25th post having fallen vacant it was most unjustifiable on the part of the competent authority to have given promotion to the applicant on ad hoc basis against Scheduled Castes/Scheduled Tribes quota which was not in existence by then. Hence, it was further urged by Mr. Pal that for the mistake committed by the competent authority the applicant should not be made to suffer though he was made to suffer for a little more than 3 years as promotion order in his favour was not regularised. On the other hand, it was submitted by learned Senior Standing Counsel (Central) that true it is that the 25th post was not filled up but it was meant for the Scheduled caste candidate which would have been carried over to the next year. Hence, according to learned Senior Standing Counsel (Central) no illegality has been committed by the competent authority in ordering reversion of the applicant.

We have also given our anxious consideration to the arguments advanced at the Bar. In view of the above mentioned admitted facts coupled with the fact that Shri S.C. Sarkar whose name had been recommended by the Departmental Promotion Committee for appointment to one of the promotional posts, having resigned on 25th November, 1983 the competent authority under Annexure-A/1 at paragraph 3 rightly observed that the post would

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be filled up in view of the resignation tendered by Shri S.C. Sarkar and having been accepted and Shri Sarkar having been relieved. Therefore, by no stretch of imagination we can conceive that there was another post available in addition to the 25th post as contended by learned Senior Standing Counsel (Central). That apart, there is absolutely no mention of this fact in the counter substantiating the contention of learned Senior Standing Counsel (Central). In our opinion, Mr. Mishra, learned Senior Standing Counsel (Central) in his usual ingenious way has been trying to make out a third case for the Department. A party cannot be permitted to go beyond the pleadings and therefore we can neither permit the Senior Standing Counsel (Central) to make out a third case nor can we permit ourselves to entertain a third case. That apart, this contention of Mr. Mishra is not based on any documentary evidence. It is only a conjecture on the part of the learned Senior Standing Counsel. In addition to the above, we have no doubt in our mind to mention on the basis of the case put forward by the Respondents in their counter that Shri S.C. Sarkar was a general candidate and the post to which he would have been promoted was to be given to a general candidate and therefore non-appointment of a person after resignation of Shri S.C. Sarkar having been accepted, the post is bound to go to a general candidate. Hence we find no merit in the contention of the learned Senior Standing Counsel (Central). The petitioner being admittedly placed against serial no.1 in the waiting list, as a matter of right he should have been promoted on regular basis to the 25th post in the order contained in Annexure-A/1. The plea of mistake put

forward by the Respondents cannot be worked out against an employee, if legally he is entitled to any redress from a judicial forum. In the circumstances stated above, there is no escape from the conclusion that the petitioner is definitely entitled to the 25th post which is meant for a general candidate.

In view of the discussions made above, we would quash the order contained in Annexure-A/9 and we would further direct that it should be deemed that the applicant has been promoted on 30th December, 1983 as against the 25th post as a general candidate and on regular basis and therefore we would further direct that the applicant should continue as such.

5. Thus, this application stands allowed leaving the parties to bear their own costs.

kae/s
14.7.87
Member (Judicial)

S.D.PRASAD, MEMBER (ADMINISTRATIVE),

I agree.

S. Sarangi
14.7.87
Member (Admn.)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 14, 1987/S. Sarangi.