

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 183 of 1987

Date of Decision: 22.9.92

K.S. Rotela

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. P. Palit, B. Mohanty,
S. Mohanty, D. Mohanty
S. K. Satpathy, Advocates

For the respondents

Mr. Ashok Mohanty, Sr. Standing
Counsel (Central Government)

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C O R A M

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to the respondents to order promotion of the applicant as Senior Mechanic with effect from 3.1.1964 i.e. the date on which his juniors were promoted and on promotion the seniority of the applicant in the post of Senior Mechanic be refixed by placing him above Respondents 5, 6, 7, 8, 9, 10 & 11.

2. Shortly stated, the case of the applicant is that the applicant was initially appointed as a Tractor Driver vide Annexure-1 on 6.4.1961 under the Dandakaranya Development Project and the applicant joined the post. The grievance of the applicant is that though Respondents 5, 6 & 7 were junior to the applicant and were in the lower scale of pay, yet Respondent No. 5 was promoted to the post of Senior Mechanic in 1964 whereas Respondents 6 & 7 were promoted to the post of Senior Mechanic in the year 1976. According to the applicant, Respondents 8, 10 and 11 were given promotion in the year 1976 whereas Respondent No. 9 was given promotion in the year 1964. The applicant challenges all these promotions and claims promotion over these respondents.

3. In their counter, the respondents maintained that not only the case is grossly barred by limitation but also the applicant was not an applicant for the post of Senior Mechanic for which an advertisement was published and therefore, he could neither be interviewed nor selected by the Departmental Selection Committee which met at

Ambaguda on 17.2.1965. Therefore, the claim of the applicant
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is misconceived. After the recruitment rules came into force from 1973 the cases of all the incumbents including the applicant was considered and the applicant not having been found to be suitable, promotion could not be given to him and therefore, his claim on this account is misconceived.

4. We have heard Mr.P.Palit, learned counsel for the applicant and Mr.Ashok Mohanty, learned Standing Counsel (Central) for the respondents on the merits of the case.

5. At the outset it may be stated that vide order No.3 dated 29.11.1990, Respondents 5 to 11(over whom the applicant claims promotion) have been deleted from the records as it was submitted by learned counsel for the applicant on the basis of a memo filed by him that it is not possible to provide the present correct address of Respondents 5 to 11. Therefore, these necessary parties who are to be heard in the matter have been expunged from the records for the reasons stated above, this case definitely suffers from incurable infirmity of non-joinder of necessary parties which is fatal.

6. Apart from the above, according to the applicant, promotions were given to Respondents 5 to 11 ranging from a period between 1964 and 1976. The applicant has asserted in his application that several representations filed by him did not yield any response from the appropriate authority. Copy of a single representation has not been filed in this case. Therefore, we find that there is considerable force in the averments finding place in the counter that no representation was ever received by the competent authority and we are not prepared to accept the statement of the

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applicant on this count to be correct. Law is well settled that the Tribunal cannot take cognizance of any cause of action said to have accrued in favour of the affected party, prior to 1.11.1982. Therefore, we find there is substantial force in the contention of Mr. Ashok Mohanty, learned Standing Counsel (Central) that the case is grossly barred by limitation. In view of the facts and circumstances stated above, we find no merit in this case which stands dismissed leaving the parties to bear their own costs.

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MEMBER (ADMN.)

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VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack,
22.9.1992/San

