

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION No. 58 of 1987.

Date of decision : September 25 1987

Narayan Mohapatra ... Applicant

Versus

Union of India and others ... Respondents.

M/s. Devand Misra,
Deepak Misra,
R. N. Naik, Advocates ... For Applicant.

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

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

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

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 (JUDICIAL) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority in not giving due promotion to the applicant to the Lower Selection Grade.

2. Shortly stated, the case of the applicant is that the applicant is an employee in the Postal Department for a long time. In course of time it was found that there was stagnation for promotion and therefore, the employees of the Postal Department made representations to the Government of India and ultimately the Government of India promulgated a time bound promotion scheme wherein it was envisaged that any employee having completed 16 years of active service by 30th November, 1983 is to be considered for promotion in the Lower Selection Grade to the next higher pay scale so that the grievance of the employees on account of stagnation could be redressed. Accordingly, a Departmental Promotion Committee was held in the year 1984 to consider the cases of several employees who had reached the consideration zone for getting due promotion under the time bound promotion scheme. The case of the applicant is that though according to law, he was fit to come within the consideration zone yet his case was not considered by the Departmental Promotion Committee which met in the year 1984 and therefore the prayer of the applicant is that the competent authority should be directed to convene a review Departmental Promotion Committee which would consider the case of the applicant and give due promotion

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3. In their counter, the respondents maintained that a departmental proceeding was initiated against the applicant and in spite of such proceeding having been initiated against the applicant his case had been sent to the Departmental Promotion Committee which met on 28th March, 1984 and the Departmental Promotion Committee found him to be 'not fit' and therefore, the applicant was not given promotion under the time bound promotion scheme. It is further-more maintained by the respondents that no illegality having been committed by the Departmental Promotion Committee or the competent authority in connection with the case of the applicant, the petition is liable to be dismissed as it is devoid of any merit.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) at some length. It was contended by Mr. Deepak Misra, that even though the case of the applicant was considered by the Departmental Promotion Committee, the applicant not having been found fit by the Departmental Promotion Committee yet there was no difficulty for the competent authority to give promotion to the applicant because the finding of the Departmental Promotion Committee is not in regard to the merit cum suitability of the applicant but it is due to the fact that a departmental proceeding was pending against the applicant. On the other hand, it was contended by learned Senior Standing Counsel (Central) that the Departmental Promotion Committee having found the applicant to be not fit for promotion, such finding could be assailed only on the ground of malafide.

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or bias to be pleaded against the members of the Departmental Promotion Committee. Such a case not having been put forward by the applicant this Bench should not interfere. We have no dispute with learned Senior Standing Counsel (Central) that the findings of the Departmental Promotion Committee cannot be interfered with if no bias or malafide is proved against the members of the Departmental Promotion Committee. But one would find that the applicant has been found unfit because of the pendency of the Departmental proceeding. This fact stands corroborated from the contents of Annexure-3 which is a letter issued to the Senior Superintendent of Post Offices, Cuttack (City) Division addressed by the Assistant Postmaster General and this has been written by the Asst. Postmaster General on behalf of the Postmaster General. It runs thus :

" I have been directed by the Postmaster General, Orissa Circle, Bhubaneswar to inform that the PMG has carefully considered the two identical representations from Sri N. Mohapatra, Kanika Rajabati S.O. (Cuttack-8) and Sri A.K. Sen, P/A Tulsipur S.O. (Cuttack-8) regarding their non-promotion to the LSG grade under the time bound one promotion scheme.

At the time the DPC considered the question of promotion of eligible officials to the LSG under the time bound one promotion scheme, departmental proceedings were pending against the officials

as follows :-
Par

(16)

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1. Sri N. Mohapatra xxx
2. Sri A.K. Sen. xxx

The Departmental Promotion Committee did not take a final decision on the fitness or otherwise of these two officials for promotion on account of the pendency of disciplinary proceedings as above. As such, the cases of these officials will be reviewed by the D.P.C. in the light of the final decision taken in the departmental proceedings referred to. The question of their promotion or otherwise to the LSG cadre will, therefore have to await finalisation of the departmental proceedings.

The above decisions of the P.M.G. should at once be communicated to the above officials and compliance reported. "

From the contents of the above quoted letter it is patently clear that promotion was not given to the applicant to the Lower Selection Grade due to the pendency of a departmental proceeding. It was not disputed by learned Senior Standing Counsel (Central) that the only departmental proceeding which was then pending now forms subject matter of Original Application No. 149 of 1986. We have to-day disposed of O.A. 149 of 1986 by a separate judgment. Hence, no proceeding is now pending against the applicant. Rightly, the Postmaster General took the view that the case of this official would be reviewed by the Departmental Promotion Committee in the light of the final decision taken in the departmental proceedings. Since we

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have disposed of O.A.149 of 1986 and admittedly there being no other proceeding pending against the applicant we think in all fitness of things, the case of the applicant should now be considered by convening a review Departmental Promotion Committee and we would accordingly direct the competent authority to convene a review Departmental Promotion Committee within three months from the date of receipt of a copy of this judgment and the review Departmental Promotion Committee should consider the suitability of the applicant for promotion under time bound promotion scheme.

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

Legal M/s
25/9/87
Member (Judicial)

B.R. PATEL, VICE-CHAIRMAN,

I agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 25, 1987/Sarangi.

Ranjan
25-9-87
Vice-Chairman