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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACKBENCH

ORIGINAL APPLICATION No. 88 OF 1987.

Date of decision .. September 18, 1987.

Jaya Krushna Behera, aged about 34 years,
s/o- late Raghab Behera, at present working
as Junior Accounts Officer, Office of the
Telecom District Engineer, A-15, Cantonment
Road, Cuttack- 753 001. .. Applicant.

Versus

1. Union of India, represented by its
Secretary, Department of Communication,
New Delhi.
2. General Manager, TELECOM, At/P.O-Bhubaneswar,
District- Puri.
3. Telecom District Engineer, Dhenkanal,
At- 15, Cantonment Road, Cuttack,
P.O/Dist- Cuttack.
4. Director General,
Department of Telecommunication,
New Delhi. .. Respondents.

For Applicant : M/s Devananda Misra,
Deepak Misra,
R.N.Naik &
S.S.Hota, Advocates.

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

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

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)

J U D G M E N T

K.P. ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, Annexure- 1 is under challenge.

2. Succinctly stated, the case of the applicant is that he was a Junior Accounts Officer attached to the Office of the Telecommunication District Engineer whose office is situated at Cuttack. On 7th November 1985, a Departmental Promotion Committee was held to consider the cases of several officers who would be found fit for being promoted to the post of Accounts Officer. The cases of present

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applicant and some other incumbents were under consideration by the Departmental Promotion Committee. The applicant was found to be fit for promotion and accordingly the D.P.C. recommended the case of the applicant and in furtherance thereof the applicant was ordered to be promoted vide order dated 12.6.1986. For some reason or the other, the actual promotion was not given to the applicant soon after 12.6.1986 and the matter lingered till 1.8.1986- the date on which a charge-sheet was delivered to the applicant on an allegation that he had submitted false T.A.Bill in regard to his travel under Leave Travel Concession Scheme. Soon after the charge-sheet was delivered, vide Annexure- 1 dated 8.9.1986, the promotional order was cancelled . Cancellation of the promotional order contained in Annexure-1 is under challenge .

3. In their counter , the respondents maintained that the applicant while worked as Junior Accounts Officer availed L.T.C. for the block period 1978-81 and he claimed to have undergone the journey during the period from 31.5.1981 to 25.6.1981 with his family members from Puri to Pahalgaon and back by Bharat Darshan special train. The applicant claimed to have actually travelled with the family members in first class by special train and since it was later found that the applicant had not travelled in first class and had submitted false T.A.bill, a disciplinary proceeding was drawn up against the applicant and since the applicant was involved in a disciplinary proceeding relating to the

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financial impropriety, his promotion was withheld and cancelled and thereafter the disciplinary authority having ordered withholding of promotion by six months, the promotional order has not been given effect to which cannot amount to any illegality. It is further maintained by the respondents that in view of the circumstances stated above, the application being devoid of merit, it is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A.B.Misra, learned Sr. Standing Counsel for the Central Government at some length. The above dates mentioned in paragraphs-2 and 3 of the judgment are not disputed. Admittedly, charge-sheet was delivered on 1.8.1986. It is now a well settled position of law that the departmental/ disciplinary proceeding is deemed to be initiated only on the very date on which the charge-sheet is delivered to the delinquent officer. Our view gains support from the judgment of the Full Bench constituted by Hon'ble Chairman Mr. Justice K.Madhava Reddy, Hon'ble Mr. Justice G. Ramanujam, Vice Chairman, Madras Bench and Hon'ble Mr. B.N.Jayasimha, Vice Chairman, Hyderabad Bench and this arose before the Bench on a reference made by the Hon'ble Chairman on 13.11.1986, reported in A.T.R. 1987 (1) C.A.T. 547 (K.Ch. Vankata Reddy & ors v. Union of India and others). After discussing several judgments of the Hon'ble Supreme Court and different High Courts on this subject, the Full Bench finally

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concluded as follows :

" To ensure uniformity and certainty, the date of initiation of proceedings should be taken as the basis for applying the sealed cover procedure and it is well established that the date of initiation of proceedings is the date when the charge memo is served on the official or the charge sheet is filed before the court ".

Following this dictum laid down by the Full Bench we have already pronounced in the case of A.T.Rao v. Union of India forming subject-matter of Original Application No. 199 of 1986, disposed of on 25.3.1987 that the date of delivery of the charge memo or chargesheet to the delinquent officer is deemed to be the date on which the disciplinary proceeding was initiated against the delinquent officer. Learned Senior Standing Counsel submitted before us that on 29.1.1986 a decision had been taken by the authorities to initiate the proceeding against the applicant and therefore in all justification the promotional order was with-held. This contention has already been over-ruled in the case of A.T.Rao (supra) following the dictum laid down by the Full Bench in the above mentioned judgment and therefore, we find no justifiable reason on the part of the learned Sr. Standing Counsel to again agitate the same point which we cannot but reject. Therefore, we would finally hold that the initiation of the proceeding against the present applicant in this case

cannot but be 1.8.1986. In such circumstances, on the date on which the D.P.C. had met to consider the cases of several incumbents including the petitioner and the promotional order passed on 12.6.1986- there was absolutely no dirty linen pending against the present applicant. In such circumstances, we are of opinion that the General Manager, Telecommunication Department was not at all justified under law to with-hold the promotion of the applicant after giving him promotion vide order dated 12.6.1986. In view of the aforesaid discussions we also find that the impugned order contained in Annexure-1 is not sustainable. On this point there was vehement argument advanced by the learned Sr. Standing Counsel stating that the disciplinary proceeding has already ended in punishment and the promotion of the applicant has been with-held for six months. Legality or illegality of such an order of punishment is not before us and therefore, we do not propose to express any opinion on this point because we may be going beyond our jurisdiction. The only thing which requires determination by this Bench is as to whether Annexure-1 is sustainable or not. We would finally conclude that in view of the discussions made above, Annexure-1 is not sustainable and hence the same is hereby quashed and we further direct that the applicant be given due promotion with effect from 12.6.1986- when the promotional order was passed in favour of the applicant.

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Mr. Deepak Misra, learned counsel for the applicant urged before us that the applicant should be made entitled to all arrear financial benefits which is due to him under the rules. We have no objection if rules permit. We would therefore direct that the competent authority would consider this aspect and give financial/consequential benefits to the applicant as per rules.

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

Passes on
..... (18/9/87)
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, *I agree.*



Prashant
.....
Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench
September 18, 1987/Roy.

~~Pl 5377~~ ~~1/2 S. O~~ ~~6~~ ~~6.12.87~~ ~~AB3~~ SUPREME COURT OF INDIA

PL. bring to
a notice of
Hearings & Hearable v.c
D.No. 126/88/S C/XF-A

Dated this the 28th January 1989

From:

The Assistant Registrar,
Supreme Court of India,
New Delhi.

To

The Registrar, Central
High Court of Administrative Tribunal,
Cuttack Bench
Cuttack.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 2031 OF 1988.

(Petition under Article 136 of the Constitution of India
for Special Leave to appeal to the Supreme Court from the
judgment and order dated the 18th September, 1987 of the
High Court of Administrative Tribunal, Cuttack Bench at Cuttack
in Original Application No. 38 of 1987.)

Union of India and ORs.

.... Petitioner(s)

Versus

Jaya Krishna Bahera Respondent(s)

Sir,

I am to inform you that the Petition above-mentioned for Special Leave to appeal to this Court was/were filed on behalf of the petition(s) above-named from the Administrative Tribunal judgment and order of the High Court noted above and that the same was/were dismissed by this Court on the 16th day of January, 1989.

A certified copy of the record of proceedings dated 16-1-1989 in the matter is enclosed herewith for your information and record.

Yours faithfully,

Diwan
Assistant Registrar

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Item No. 15

COPY 165178

Court No. 7

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Certified to be true copy
D. Saenger
Assistant Registrar (Judl.)
Section 28-1-1989
Supreme Court of India

Petition(s) For Special Leave To Appeal (Civil/Criminal) No (s) 2031 of 19 88

(From the judgment and order dated 18.9.87 of the High Court of Central Admn. in Original Appn. No. 88 of 1987) Tribunal, Cuttack Bench at Cuttack Union of India & Ors.

PETITIONER (S)

Jaya Krushna Bahera
(With appln. for ex-parte stay & condn. of delay) RESPONDENT (S)

Date : 16.1.89 : This/These petition (s) was/were called on for hearing today

CORAM :

Hon'ble Mr. Justice M.M. Dutt
Hon'ble Mr. Justice T.K. Thommen
Hon'ble Mr. Justice

For the Petitioners :

Mr. G.A. Shah, Sr. Adv.
Mr. C.V. Subba Rao, Mr. L.K. Gupta,
Mr. P. Parmeshwaran, Advs.

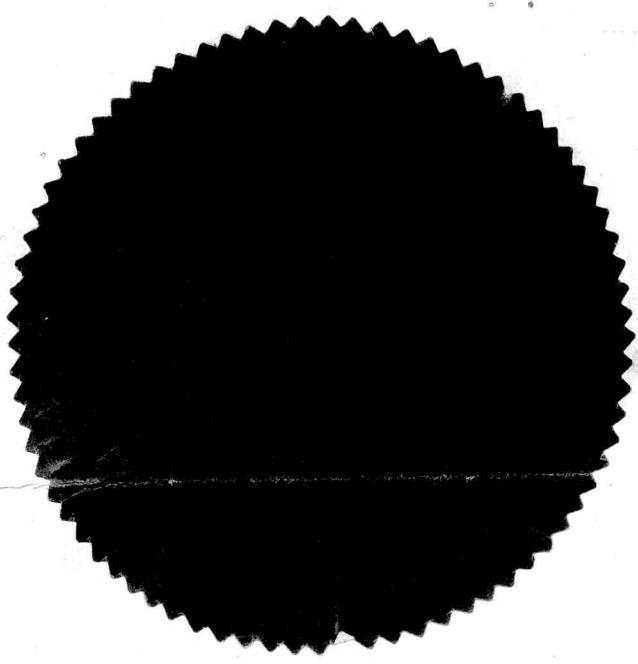
For the Respondents :

**UPON hearing counsel the Court made the following
ORDER**

In the Special facts and circumstances of the case, we are not inclined to interfere in the matter. The Special Leave Petition is accordingly dismissed.

Sd/-
(Vijay Kapur)
Court Master

ds



SEALED IN MY PRESENCE
Pug 30/11/89