

12 36

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO.259 OF 1988.

Date of Decision - 2nd November, 1989.

Dr. Laxmi Narayan Das,
Son of late Dinabandhu Das,
At present working as
Medical Officer in charge of
P. & T. Hospital, At./P.O.-
Cuttack and District-Cuttack.

.... Applicant

Versus.

1. Union of India represented by
its Secretary, Department of Health & F.W.,
Nirman Bhavan, New Delhi-110 001.
2. Under Secretary to Government of India,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi-110 001.
3. Director-General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi- 110 001.
4. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, District-Puri.

.... Respondents

5. Dr. Balakrishna Joshi,
Son of late Braja Kishore Joshi,
Chief Medical Officer,
P. & T. Dispensary,
Bhubaneswar, Dist-Puri.

.... Intervenor.

For Applicant	- Mr. Deepak Misra
For Respondents	- Mr. Aswini Kumar Misra, Standing Counsel (Central)
For Intervenor	- Mr. Basudev Pujari

C O R A M :

THE HONOURABLE MR. B.R. PATEL, VICE- CHAIRMAN

A N D

THE HONOURABLE MR. N. SEN GUPTA, 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.
-

J U D G M E N T.

N. SEN GUPTA, MEMBER (JUDICIAL).

In this application under section 19

of the Administrative Tribunals Act, 1985, the applicant has prayed for a relief of quashing the order of the Under Secretary to Government of India at Annexure-6 and for an order directing the respondents to promote the applicant to the rank of the Chief Medical Officer with effect from 14.3.1988.

2. Briefly stated, the allegations in the application of the applicant are that he was working as Senior Medical Officer in the Postal Department and he was promoted to the rank of the Chief Medical Officer in the scale of Rs.3700 to 5000/-, on an officiating basis and had also received an order of his posting vide Annexures-1 and 3. After receipt of the orders at Annexures-1 and 3, the applicant had not been relieved and subsequently under Annexure-6 the Under Secretary to Government of India in the Ministry of Health and Family Welfare, New Delhi intimated that the order dated 14.3.1988 followed by another dated 21.4.1988

Heaven
2/4

stood cancelled. This order (Annexure-6) communicated by the Under Secretary to Government of India is really the impugned order. The grievance of the applicant is that he was not given any opportunity to be heard before the orders promoting and posting him at Pune conveyed under Annexures-1 and 3 were cancelled, secondly, the Under Secretary was not a person authorised to cancel the order as per Annexure-1 as the letter was purported to have been under the authority of the President and the order of cancellation does not appear to be so made and thirdly, he has stated that even though the promotion might have been in ignorance of the pendency of the departmental proceeding, it cannot be cancelled once made without following the principles of natural justice. The other facts alleged in the application need not be set out in detail.

3. In the counter of the respondents, it has been alleged that as the Committee who recommended for the promotion of the applicant had not had the advantage of knowing the pendency of the departmental proceeding, their recommendation was really not proper and suffered from a defect and should not be acted upon. So far as the allegation in the application that the Under Secretary had no authority to issue the order at Annexure-6, it is the case of the respondents that under the rules of business the Under Secretary was one of the persons authorised to communicate the orders and sign the same. It has also been raised as a contention in the counter that as the applicant had not joined the promotional post, no right accrued to him. Therefore, no question of following or observing the principles of natural justice of hearing him before

Man Singh
27/11/89

cancellation of the order of promotion could arise. ~~The~~ Other pleas have also been raised but as at the hearing these pleas have been urged, it is not necessary to state the other facts alleged in the counter.


4. We have heard Sri Deepak Mishra, learned counsel for the applicant and Sri A.K.Mishra, learned counsel for the respondents. It has been contended by Sri Deepak Mishra that the applicant was inflicted with a punishment of stoppage of one increment for two years with ^{out} cumulative effect. Against this award of punishment, the applicant approached this Tribunal in O.A.No.260 of 1988 where this Tribunal modified the order of punishment to one of "censure" and the respondents have remained content ~~with~~ the final result of that original application. Therefore, that order has already attained ~~the~~ finality. So, the present position is that the departmental proceeding which was pending at the time when the order promoting the applicant was passed has ended with a "censure." On behalf of the respondents, an extract of office memorandum No.22011/2/78-Estt(A) dt. 16.2.79 of the Department of Personnel has been filed. This memorandum is at Annexure-R/1. From Annexure-R/1 it would be found that when the case of an employee for promotion was considered during the pendency of a departmental proceeding, a sealed-cover procedure is to be followed. If after conclusion of the departmental proceeding the penalty is censure, recovery of pecuniary loss to Government or withholding of increments and the recommendation of the D.P.C. is in favour of the employee, the recommendations may not be given effect to at once, but he is to be promoted in his turn if the penalty is that of censure or recovery of pecuniary loss caused to the Government by negligence or breach of orders. In the instant case,

Handwritten signature

as has been shown above, the departmental proceeding shall be deemed to have ended with the penalty of censure. Therefore, the case of the applicant would come squarely within that provision of the office memorandum where he has to be given his promotion in his turn. Once the applicant had been promoted, though of course he could not join his promotional post due to some other intervening circumstances, there can be no doubt that the findings of the D.P.C. were in his favour and the words 'in his turn' would really mean, when he was due to be promoted and in the instant case, it would be the date when he was really promoted. Sri A.K. Mishra has urged that the case of the applicant should again go back to the D.P.C. for reconsideration, but in view of our finding that the applicant had already been promoted, his case need not again be reconsidered.

5. For the view that we have taken, it is not necessary to examine the other contentions raised by Sri Deepak Mishra.

6. In the result, the application succeeds. Annexure-6 is quashed. We direct the respondents to give all consequential benefits as are admissible to the applicant under the rules from the date of his promotion i.e. 14.3.1983. In the circumstances of the case, there shall be no order as to costs.


.....
MEMBER (JUDICIAL)

B.R. PATEL, VICE-CHAIRMAN.

I agree.


.....
VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack
2nd November, 1989/ Jena, SPA.