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CENTRAL ADMINISTRATIVE TRIBUNUAL
CUTTACK BENCH:CUTTACK
Original Application No.284 of 1988

Date of decision:16th May,1989

1. Bidyadhar Pal,Superintendent,Postal Stores Depot.,Bhubaneswar.

..... Applicant

-Versus-

1. The Union of India,represented through The Secretary,Ministry of Communication(Deptt.of Posts)At-Daktar Bhawan,New Delhi.

2. The Director of General Deptt.of Posts. At-Parliament Street,P.O./P.S.New Delhi Pin-110001.

3. The Post Master General,Orissa Postal Circle, At/P.O./P.S.Bhubaneswar,Dist.Puri

4. Rajkishore Das,Superintendent,of Post Offices, Bhadrak Division,At/P.O./P.S-Bhadfak Dist.Balasore

5. Bhagyadhar Kar,Superintendent of Post Offices, Phulbani Division,At/P.O./ P.S/Dist.Phulbani

6. I.V.Narasingha Rao,Superintendent,R.M.S.,Jharsuguda At/P.O./P.S-Jharsuguda,Dist.Sambalpur.

..... Respondents

For the Applicant ..... M/s. S.Misra -1,S.N.Misra, R.C.Praharaj and Miss.R.Sikdar Advocates.

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

C O R A M :

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

AND

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

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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.

JUDGMENT

K.P.ACHARYA,MEMBER(J) In this application under section 19 of the Administrative Tribunals Act,1985, the applicant prays that a direction be issued to the competent authority to give promotion to the applicant with effect from the date his juniors have been promoted to the cadre of Postal Superintendent Services(Group B).

2. Shortly stated, the case of the applicant is that he was appointed in the year 1957 as a Time Scale Postal Clerk. In the year 1964, the applicant was promoted to the post of Postal Inspector and according to the applicant since 1969 ~~the applicant since 1969 the applicant~~ he is entitled to the Postal Superintendent Services(Group B) which has been illegally denied to him. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the case of the applicant has been considered by the Departmental Promotion Committee. No employee has a right to claim promotion but he has a right to urge that his case should be considered. The case of the applicant having been considered by the Departmental Promotion Committee and the applicant having been graded as 'Good', the employees who have been graded as ' very good' and 'outstanding' have been preferred to the applicant as the post in question has to be filled up on the basis of merit-cum-seniority, being a selection post. Hence, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr,S.N.Misra, learned counsel for the

applicant and Mr.A.B.Mishra, learned Senior Standing Counsel (Central) at some length. Mr.S.N.Misra, learned counsel for the applicant submitted before us that in the year 1985, the juniors of the applicant were given promotion and they having been posted outisde Orissa, the applicant did not have any grievance against such supersession. Inthe year 1986 for the same reason the applicant had been seriously prejudiced but in the year 1987 respondents 4, 5 and 6 having superseded the applicant, there was no way left open to the applicant but to approach this Bench. In view of the aforesaid submission of Mr.S.N.Misra, learned counsel for the applicant, we are confining ourselves to consider the grievance of the applicant relating to the year 1987. Mr.S.N.Misra, strenuously urged before us that the Departmental Promotion Committee not having given reasons for the grading assigned by the Departmental Promotion Committee to each of the candidates whose cases were considered, the recommendation of the DepartmentalPromotion Committee and action taken by the competent authority on such recommendation is bound to be quashed. Before we deal with the aforesaid contention of the applicant, it is worthwhile to state the admitted case before us.The case of the applicant was considered by the Departmental Promotion Committee in the year 1987 and he was graded as ' good' whereas others were either graded as ' very good' or 'outstanding'. Rightly and fairly there was no dispute at the Bar presented before us that an employee has no right to claim promotion but he has a right to urge that his case should be considered for

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promotion. In the present case, the applicant had been duly considered by the Departmental Promotion Committee and the applicant was graded as ' good' about which Mr.S.N.Misra has a very serious grievance because reasons were not stated as to why the applicant was ~~granted~~ graded as ' good' and others were graded as ' very good' or 'outstanding'. To support his contention Mr.Misra relied upon a judgment of the Central Administrative Tribunal, Hyderabad Bench reported in 1987(3) SLR 550(S.Rama Rao v. Commissioner of IncomeTax, Andhra Pradesh and others). Mr.S.N.Misra serious laid emphasis on the following observations of the Hon'ble Judges of the Hyderabad Bench which run thus :

> " In the absence of any reasons given by the Committee for singling out one officer alone as 'outstanding' even though the records of others are similar to his, and since there is no indication available what other factors besides the annual confidential reports weighed with the Committee, we find it difficult to accept the assessment made by the Committee. "

Unfortunately, the judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 593(R.S.Dass v. Union of India and others) was not placed and hence not taken notice of by the Hyderabad Bench. The case of R.S.Dass arose out of Section 3 of the All India Services Act(61 of 1951)read with Indian Administrative Service(Appointment by Promotion)Regulations (1955). Previous to the amendment of Regulation 5 as amended by Notification dt.3.1.1977 the highest court of the land was always stressing hard to give reasons as would be found from the case of Union of India v. Mohan Lal Capoor reported in AIR 1974 SC 87 and in the case of Gurdayal Singh Fiji v. State of Punjab reported in AIR 1981 SC 2015.

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But after Regulation 5 was amended by virtue of the above mentioned notification, Their Lordships in the case of R.S. Dass were pleased to hold that no reasons need be given by the Departmental Promotion Committee, as by virtue of the amended notification the provision contained earlier to give reasons was deleted by the Government of India. In order to apply the dictum laid down by Their Lordships in the case of R.S.Dass v. Union of India (supra) to the present case, we also find that in the Office memorandum No.22011/6/75-Estt (D) dated 30.12.1976, no where it has been mentioned that reasons should be given. Inour view, the Hon'ble Judges of the Hyderabad Bench have quoted the aforesaid office memorandum in their judgment and therefore, we are of opinion that the notification amending Regulation 5 of the Indian Administrative Service (Appointment by Promotion) Regulations, dropping the words, ' giving reasons' is exactly similar to the language employed in the Office Memorandum No.22011/6/75 dt.30.12.1976. Hence, due to the aforesaid reasons, we are of opinion that the dictum laid down by Their Lordships of the Supreme Court in the case of R.S.Dass applies mutatis mutandis to the facts of the present case and with our greatest of respect we cannot persuade ourselves to follow the view taken by the Hyderabad Bench with which we respectfully differ. In the premises of the aforesaid facts and circumstances, especially because of the dictum laid down by Their Lordships of the Supreme Court in the case of R.S. Das v. Union of India (supra), we find no merit in the aforesaid contention of Mr.S.N.Misra, learned counsel for the applicant.

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5. Lastly, it was urged by Mr.S.N.Misra that while the Departmental Promotion Committee considered the case of the petitioner in the years 1987 and 1988 it must have considered the adverse remarks recorded in the Confidential Character Roll of the applicant namely the applicant was cautioned for some irregularity having been committed by him. Mr.S.N.Misra submitted that such adverse entry having been expunged vide order dated 9.8.1988, a fresh consideration of the case of the applicant should be made by theDepartmental Promotion Committee. We find from Annexure-1 that in reply to the representation of the applicant addressed to the Director General, Posts, New Delhi, it has been stated as follows :

> " The existing remarks "Severely cautioned by PMG,Orissa, vide No.ST.63-1/85 dated.24.3.87" may kindly be expunged and substituted with the word , "No"."

We feel that there is substantial force in the aforesaid contention of Mr.S.N.Misra that after expunction of the adverse remarks , the case of the applicant should be considered afresh. In this connection, we may quote the observations of Their Lordships of the Hon'ble Supreme Court in the case of Amar Kant Choudhury, v. State of Bihar and others reported in AIR 1984 SC 531. At paragraph 8 of the judgment, Their Lordships have been pleased to observe as follows :

> " After giving our anxious consideration to the uncontroverted material placed before us we have reached the conclusion that the case of the appellant for promotion to the Indian Police Service Cadre has not been considered by the Committee in a just and fair way

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> and his case has been disposed ofcontrary to the principles laid down in Gurdial Singh Fijji's case (AIR 1979 SC 1622) (supra). The decisions of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reasons of reliance being placed on the adverse remarks which were later on expunged. The High Court committed an error in dismissing the petition of the appellant and its order is, therefore, liable to be set aside. We accordingly set aside the order of the High Court. We hold that the appellant has made out a case for reconsideration of the question of his promotion to the Indian Police Service Cadre of the State of Bihar as on December 22,1976 and if he is not selected as on that date for being considered again as on March 12, 1981. "

At the cost of repetition, we may say that the Departmental Promotion Committee which met in the year 1987 having considered the adverse remarks recorded in the confidential character roll of the applicant - expunged in the year 1988 not only invalidates the recommendation of the Departmental Promotion Committee grading the applicant to be 'Good', but the case of the applicant deserves reconsideration by convening a review Departmental Promotion Committee which should review the case of the applicant in regard to his promotion with effect from the date his juniors were promoted. We hope, the competent authority would convene a review Departmental Promotion Committee meeting within a couple of months from the date of receipt of a copy of this judgment and the matter should be finalised within four months from the date of receipt of a copy of this judgment. If the applicant is not found fit in the year 1987, then his case should also be considered in the year 1988.

6. Thus, this case stands partly allowed leaving the

parties to bear their own costs.

16/5/89
Member (Judicial)

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

16.5.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 16, 1989/Sarangi.