

(2) II

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No.310 of 1988.

Date of decision : February 28, 1990.

Prafulla Chandra Das ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. P.V. Ramdas,
B.K. Panda, Advocates.

For the respondents ... Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

-...-

C O R A M:

THE HON'BLE MR. P. S. HABEEB MOHD., MEMBER (ADMN.)

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

-
1. Whether reporters of the 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. SENGUPTA, MEMBER (J) In this application the reliefs sought for relate promotion to Higher Selection Grade II and consequential benefits.

2. The case of the applicant, put in brief, is that he was appointed as a Time Scale Clerk in the Postal Department on 3.2.1949. In due course he was promoted to Lower Selection Grade and confirmed in that grade on 1.3.1976. On

*Heard by
28.2.90.*

29.10.1985 the Post Master General, Orissa passed an order promoting him temporarily on ad hoc basis to Higher Selection Grade II and ordered him to join as Postmaster, Jajpur but due to domestic difficulties he could not join and he informed the authorities of his predicament by representation dated 1.11.1985, copy of it is Annexure-A/2. Thereafter, he was asked by a letter dated 15.1.1986 (copy Annexure-A/3) to intimate the date when he would join. In reply to that he wanted time till June, 1986, but without sending any further intimation to him about the fate of his letter dated 15.1.1986 asking for time, on 16.12.1987 some juniors to him were promoted to H.S.G.II and his Case was ignored. He again made representations but they have remained unanswered. Ofcourse, in a proceeding under Rule 16 of the Central Civil Services (Classification, Control & Appeal) Rules, in 1986 he was visited with a minor penalty but that could not reverse the order of promotion passed on 29.12.1985. On 31.5.1988 he had to retire on superannuation. Making these allegations, he has prayed for a direction to the respondents to give him promotional benefits from October, 1983 or at least from 16.12.1987 when his juniors were promoted and to fix his seniority in H.S.G.II accordingly, giving him all consequential benefits.

3. The respondents in their counter have stated that no doubt an order promoting the applicant to H.S.G.II was passed on 29.10.1985 but it was subject to condition of there

Man Singh
28/12

being no disciplinary or vigilance case pending against him. At the date of issue of the said order of promotion a disciplinary proceeding, started on 4.7.1979, was pending against the applicant. Against that disciplinary proceeding the applicant filed O.J.C.No.1006 of 1979 in the High Court of Orissa which stood transferred to this Tribunal and was registered as T.A.29 of 1986. This Tribunal by its order in that T.A.29 of 1986 let off the applicant with the punishment of censure. With regard to the representation of the applicant of 1.11.1985, it is said that the applicant was informed by a letter dated 3.11.1985 that he was to accept the promotion immediately or decline and no time could be granted. Another proceeding against the applicant, started on 10.7.1987, was pending and his case for promotion was ignored. In that proceeding started in July, 1987, the applicant was punished and an order of recovery of Rs.154.75 paise was passed and the effect of this punishment was in force till the superannuation of the applicant on 31.5.1988. Infact the Departmental Promotion Committee which met on 3.3.1988 considered the case of the applicant but found him unfit for promotion on account of his unsatisfactory work.

4. After the filing of the counter, the applicant filed a rejoinder in which he has denied the receipt of the intimation regarding the department not allowing him time to join at Jajpur and that in the proceeding of 10.7.1987 one P.N.Chand was also involved but he has been promoted to H.S.G.II and Chand was junior to him. As regards the

*Heu Eup 1/2
28/4/90*



D.P.C. of 30.3.1988, it is stated that all the materials were not placed before it.

5. We have heard Mr.P.V.Ramdas, learned counsel for the applicant and Mr.Tahali Dalai, learned Addl. Standing Counsel (Central) for the respondents. Mr.Ramdas has contended that when the applicant was really promoted to H.S.G.II long before his juniors were promoted, there could be no question of the applicant being unfit for promotion, only his domestic problem compelled him to ask for time to join the promotional post at Jajpur. Mr.Dalai has referred to Annexure-R/4 and has contended that when the applicant was asked to join at Jajpur immediately and as he did not, he must be deemed to have declined acceptance of the promotional post. As may be gathered from Annexure-3 to the application, the applicant reiterated his inability to accept the promotion for the time being and he was asked to specify the period of his inability to go on promotion. In reply to Annexure-3, Annexure-4 dated 16.1.1986 was sent. There does not appear to have been any further correspondence, hence Mr.Dalai's contention cannot be accepted.

6. Mr.Ramdas has next contended that the second proceeding was started on 10.7.1987 and the final order in that departmental proceeding was passed in January, 1988, the promotion of the juniors took place on 16.12.1987, so the sealed cover procedure should have been followed. In this connection Mr.Ramdas has invited our attention to K.C.Venkata Reddy's case reported in A.T.R.1987(1)CAT 547.

Handwritten signature: Euph...
1972

(9) (W)

In that case a Full Bench of this Tribunal taking note of the provisions of Article 20 of the Constitution said that if the question of promotion arises during the pendency of a disciplinary proceeding, the sealed cover procedure is to be followed and even if the proceeding ends in punishment of the concerned officer, a review D.P.C. is to be convened to consider the case of that officer for promotion as on the original date when the question of promotion arose. In the instant case though the applicant has specifically alleged that the department did not place all the materials before the D.P.C. in March, 1988, the respondents have not either controverted this allegation by filing an additional counter or by producing the proceedings of the D.P.C., therefore the applicant's allegations have to be accepted.

7. There is no dispute that the juniors to the applicant were promoted on 16.12.1987, the applicant was once found fit to be promoted to H.S.G.II and he retired on 31.5.1988. Though it is function of the administration to pass orders of promotion and it is not for the Tribunal to arrogate to itself the function of a D.P.C., in the peculiar circumstances of the case we would direct that the applicant be deemed to have been promoted to H.S.G.II on 16.12.1987 and his pay be fixed accordingly. The application is allowed in part but without costs.

PJH 28/2/1990

 Member (Administrative)



Member 28/2/90

 Member (Judicial)