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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.315 of 1988.

Date of decision: July 13, 1989.

Sri Nathaniel Bernard Toppo, aged about 57 years, son of late Francis Toppo, At present working as Head Record Officer, R.M.S., BG Division, Berhampur5, District-Ganjam.

... Applicant.

Versus

1. Union of India, represented by its Secretary, in the Department of Posts, Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle, Bhubaneswar, District-Puri.

... Respondents.

For the applicant ... M/s. Devanand Misra, Deepak Misra, Anil Deo, R.N. Naik, Advocates.

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

C O R A M :

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

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 His Lordship wishes to see the fair copy of the judgment ? Yes.

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JUDGMENT

B.R.PATEL, VICE-CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant who is at present working as Head Record Officer (H.S.G.I) in the Railway Mail Service, BG Division, Berhampur in the district of Ganjam, has prayed for setting aside the order contained in Annexure-4, to direct the respondents to give him back wages from 24.4.1978 when he was promoted to H.S.G.II till 14.9.1982 and to direct the respondents to regulate his promotion to H.S.G.I cadre and pay him the consequential arrear emoluments.

2. In order to appreciate the case, it is necessary to briefly mention the circumstances leading to filing of this application. The applicant claimed seniority over one Shri Bhubaneswar Nayak and filed a writ petition before the Hon'ble High Court of Orissa, which formed the subject matter of O.J.C. No. 634 of 1980. The Hon'ble High Court vide their order dated 10.2.1985 directed as follows :

" The petitioner is allowed two weeks' time to file a representation before the Post Master General, Orissa Circle, Bhubaneswar raising all the contentions which have been raised in this petition. If such a representation is filed by the petitioner, after receipt of the fresh representation the Opposite Party No. 3, the Post Master General, Orissa Circle, Bhubaneswar shall dispose of the same in accordance with law within three months from the date of receipt of the fresh representation of the petitioner. "

In compliance with the aforesaid direction of the High Court the Post Master General, Orissa Circle, Bhubaneswar, considered the ~~inten~~ se seniority of the applicant and

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Bhubaneswar Nayak and by his order dated 17.11.1987 (Annexure-2) held the applicant senior to the said Bhubaneswar Nayak, in the following words.

" According to the decision of Orissa High Court, and instructions of Directorate letter No.4-59/86-SPB-II dt.14.4.87 Sri M.B.Toppo will rank senior to Sri Bhubaneswar Naik and is entitled to promotion in HSG-II cadre w.e.f. 24.4.78 i.e., from which date Sri B.S.Naik has been promoted to HSG-II cadre. "

The Post Master General further decided,

" Further promotion to HSG I may be regulated with reference to date of notional promotion in HSG -II. "

On the applicant's entitlement to back wages, the order of the Post Master General was as follows :

" On notional promotion the official will be entitled to notional pay fixation without arrears. "

In pursuance of the order of the Post Master General, the applicant has been promoted with effect from 24.4.1978 to the cadre of Higher Selection Grade II. Earlier he had been promoted to this cadre with effect from 14.9.1982. He now wants arrears of pay from 24.4.1978 to 14.9.1982.

3. The respondents have maintained in their counter affidavit that as the applicant did not work in the post of Higher Selection Grade-II from 24.4.1978 and it was only a notional promotion which was decided by the Post Master General vide Annexure-2, he is not entitled to arrears of emoluments with effect from 24.4.1978 to 14.9.1982. His pay will be fixed notionally in the grade of HSG-II. As regards his prayer for regulation of his promotion to

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HSG-I cadre the respondents have stated in their counter that the applicant was given promotion to HSG-I cadre on ad hoc basis with effect from 1.8.1986 vide Post Master General's order dated 29.7.1986 (Annexure-R-6) and subsequently both the applicant and his colleague Shri Bhubaneswar Nayak were approved and appointed to HSG-I (RMS) posts on regular basis under Post Master General, Orissa's memo No. ST/24-17/83 dated 17.11.1987, a copy of which is at Annexure-R-7. But this order was cancelled by Post Master General, Orissa's memo No. ST/24-17/83 dated 1.12.1987 (Annexure-R-8) in pursuance of the interim order of this Bench dated 27.1.1986, in Original Application No.2 of 1986 filed by one Shri Basanta Kumar Samanta. As Shri B.K.Samanta was senior to the applicant in HSG-II cadre, the applicant's promotion to HSG-I cadre would be considered only after final decision of the Central Administrative Tribunal in that case.

4. I have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing Counsel (Central) for the respondents. Mr. Deepak Misra drew my attention to the judgment dated 19.6.1989 of this Bench passed in O.A.302 of 1988 and contended that the applicant's case is similar to that of the applicant in O.A.302 of 1988 and as such, the benefit given to the applicant in that case in the matter of arrears of pay, should also be given to the applicant of this case. Mr. A.B. Mishra on the other hand, has contended that the

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applicant has sought more than one relief and plural reliefs are not permissible under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 and as such, the petition should be dismissed. Mr. Deepak Misra has countered this argument on the ground that the two reliefs sought by the applicant are consequential to one another arising out of the same cause of action as per Annexure-2 and as such, the reliefs sought for by the applicant cannot be treated as plural remedies. Rule 10 of the C.A.T. (Procedure) Rules, 1987 reads as follows :

" 10. Plural remedies.- An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another."

The point to be determined is whether in this case there has been one cause of action or more and whether reliefs sought are consequential in nature to one another. As the facts stated above would indicate the grievance of the applicant has arisen because he was not given his due seniority over one Shri Bhubaneswar Nayak. The question of promotion and arrear emoluments are but consequences that flow from his seniority and as such I do not hold that the remedies sought for by the applicant in this case amount to plural remedies as has been contended by Mr. A. B. Mishra.

5. On the question of the applicant's promotion to the grade of HSG I, Mr. A. B. Mishra has drawn my attention to the portion of the counter affidavit which has been quoted above and argued that the applicant's promotion would depend on the outcome of the case, O.A. 2 of 1986.

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Mr. Deepak Misra has pointed out that O.A.2 of 1986 has since been disposed of vide order of this Bench dated 3.5.1989. Now that the case has been disposed of, the applicant's promotion should be considered in the light of the judgment passed in O.A.2 of 1986. Relevant portion of the judgment of this Bench in O.A.2 of 1986 is reproduced below.

" Since the seniority has been fixed as per the dictum laid down by Their Lordships in the case of Union of India v- Rabi Verma (Supra) we do not like to travel into that aspect of the matter but we would direct that a Departmental Promotion Committee be convened and suitability of different incumbents coming within the consideration zone be adjudged and he/she who is/are found suitable for the post of H.S.G.I, be given promotion as per the recommendation of the Departmental Promotion Committee. Till the D.P.C. finalises the matter, the applicant may continue in the post of H.S.G.I. Before we close this aspect we would mention that the services rendered by the applicant in the post of H.S.G.I on ad hoc basis shall not be counted for the purpose of seniority in H.S.G.I. The D.P.C. should finalise this matter within six weeks from the date of receipt of a copy of this judgment and the competent authority would pass necessary orders within 15(fifteen) days therefrom which means within two months from the date of receipt of a copy of this judgment, the entire matter should be finalised. "

If the applicant by virtue of his seniority, as has been determined by the Post Master General by his order dated 17.11.1987 (Annexure-2) would come within the zone of consideration for promotion to H.S.G.-I cadre, his case should be considered by the Departmental Promotion Committee to be convened in terms of the judgment passed by this Bench in O.A.2 of 1986 and his promotion should be considered by the competent authority in the light of the recommendation

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of the Departmental Promotion Committee.

6. The remaining point relates to the applicant's claim for arrear emoluments. Mr. Deepak Misra in this connection, drew my attention to the judgment of this Bench passed in Original Application No. 302 of 1988 which was delivered on 19.6.1989 and contended that the facts of the two cases being similar in nature, the relief given to the applicant in O.A. 302 of 1988 should also be given to the applicant.

Mr. A.B. Mishra however contended that the judgment in O.A. 302 of 1988 has not yet reached the Department and it has not been possible for the Department to examine the issue further with a view to take appropriate action. According to the information available, this judgment was issued by the Office on 6.7.1989 and probably it has not reached the Department as yet. But the judgment was duly delivered in the open court on 19.6.1989 and the parties must have been aware of it. This is however beside the point. The point before me is whether this case is similar to the one of which judgment was delivered on 19.6.1989. Mr. A.B. Mishra has further submitted that there are still time for the Department to go in appeal to the Hon'ble Supreme Court and the judgment of this Bench passed in O.A. 302 of 1988 cannot be construed as final. I agree with Mr. A.B. Mishra that this judgment cannot be taken to be final unless the prescribed period of appeal expires. Mr. A.B. Mishra has further referred to Fundamental Rule 17 and Government of India's instructions

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No.8 under F.R.27 read with F.R.22-C and says that these Rules do not allow back wages and the Fundamental Rules having the force of law as they have not been held to be ultravires the Constitution by this Bench in the judgment of O.A.302 of 1988, they still prevail and no back wages should be allowed to the applicant. I have given my anxious consideration to the arguments of Mr.A.B.Mishra but I find that these points had also been raised before the Bench in the case of O.A.302 of 1988. I agree with Mr.Deepak Misra that the facts of the present case are similar to those in the case of O.A.302 of 1988. In that case, the applicant was promoted to the rank of Accounts Officer with effect from 12.6.1986. This order was subsequently cancelled on 8.9.1986 as a sequel to a departmental proceeding. Being aggrieved by that order, the applicant moved the Tribunal in O.A.88 of 1987 for appropriate orders. In the judgment in the case of O.A.88 of 1987 the order cancelling the promotion of the applicant was quashed and as a consequence the applicant in that case was treated to have been promoted with effect from 12.6.1986. The applicant then asked for back wages with effect from 12.6.86 in O.A.302 of 1988. In the judgment in O.A.302 of 1988 we have held as follows :

" The facts of the case before us are similar to those in the cases cited above. These judgments have persuaded us to hold that the applicant is entitled to the pay of an Accounts Officer with effect from 12.6.1986 even though he did not actually do the work of an Accounts Officer till 7.12.1987. F.R.17(1), provisions of which we have quoted above, does not prohibit payment of back wages in the circumstances of the

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present case. As such, we allow the prayer of the applicant and direct that the amount due to him should be calculated and payment made within two months from the date of receipt of a copy of this judgment."

In the present case, due to wrong determination of seniority the applicant could not be promoted from the due date. This wrong has been righted by the order dated 17.11.1987 of the Post Master General, Orissa Circle, Bhubaneswar by giving him promotion with effect from 24.4.1978 i.e. the date from which his junior had been promoted. This being the case, the applicant should be deemed to have been working in one of the posts of H.S.G.II cadre with effect from 24.4.1978 and he should be given the pay of H.S.G.II cadre with effect from this date. The arrear emoluments should accordingly be calculated and paid to the applicant within three months from the date of receipt of a copy of this judgment.

7. In regard to the applicant's claim for arrears of pay in the grade, H.S.G.I cadre it would depend upon his promotion to that cadre on the recommendation of the Departmental Promotion Committee. If he is given promotion with retrospective effect, he will be entitled to arrears of pay otherwise he would get the usual pay of H.S.G.I cadre with effect from the date of his promotion.

8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

..... 13.7.89
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 13, 1989/Sarangi.

