

(17)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 65 OF 1988

Date of decision: 31.5.91

Ananga Mohan Das Applicant

Versus

Union of India and others Respondents

For the applicant: M/s. B.Pal, D.B.Das,
O.N.Ghosh, Advocates.

For the Respondents: Mr.T.Dalai, Addl .Standing Counse
(Central).

C O R A M:

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

A N D

THE HONOURABLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted 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.

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JUDGMENT

B.R.PATEL, VICE-CHAIRMAN: Briefly stated the facts are that the applicant was promoted to the Post of Junior Accounts Officer with effect from 2.1.1980 consequent upon his success in the SAS examination held for the Dandakaranya Development Authority (DDA) in the year 1979. The Promotional post of Junior Accounts Officer (JAO) is the post of Pay & Accounts Officer. One of the Pay and Accounts Officers, Shri B.B.Nayak placed at Sl.No.6 in the gradation list at Annexure-A/1 retired on 31.12.87 and a post of Pay & Accounts Officer (PAO) fell vacant on 1.1.1988 to be filled up by one of the JAOs. The applicant's case is that he was the senior most amongst the JAOs as per the gradation list at Annexure-1 and as such was entitled to be promoted to the Post of PAO with effect from 1.1.1988. As the Respondents have not promoted him to the post of Pay & Accounts Officer he has approached the Tribunal for quashing the order No. FA/Admn.II/2661 dated 6.1.1988 issued by the Office of the Financial Adviser and Chief Accounts Officer, Dandakaranya Development Authority, Jagdalpur (MP), a copy of which is at Annexure-A/8 and R/1 and for directing the Respondents to consider the applicant's case for promotion to the post of P.A.O.

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on the basis of seniority as a regular measure.

2. The Respondents have contested the right of the applicant for promotion mainly on the following grounds; (1) promotion to higher post is not a matter of right; (2) none of his juniors has superseded him as such he has no grievance; (3) the service conditions of the applicant have not been violated and none of the existing rights has been affected; (4) Government is not bound to promote the applicant and there is no administrative need now for the post of Pay & Accounts Officer to which the applicant claims promotion as most of the staff of the project are surrendered and posts abolished due to reduction in the work of the project. The Post of Pay and Accounts Officer which fell vacant on the retirement of Shri B.B.Nayak has been abolished with effect from 1.1.1988 by order dated 5.1.1988 vide Annexure-R/1.

3. We have Heard Mr. B.Pal the learned Counsel for the applicant and Mr. Tahali Dalai the learned Additional Standing Counsel (Central) for the respondents and carefully gone through the relevant papers. Mr.Pal has contested the submission of the Respondents that the posts of Pay & Accounts Officer had been abolished vide Annexure-R/1. The ground urged by him is that had the post been abolished on 5.1.1988, the applicant should have been informed of it on 6.1.1988 when the Memo

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dated 6.1.1988 was issued to the applicant. He has further contended that neither the Respondent No.2 nor Respondent No.3 has the authority to abolish the post of Pay & Accounts Officer which is a Gr.'E' gazetted post. According to him respondent No.2 has ~~not~~ been declared as Head of the Department. Heads of the department can create and abolish posts in Gr.'C' and 'D' only. Annexure-R/1, according to Mr.Pal, makes out a case of retrospective abolition of the posts only to deny the applicant his right for promotion. In this connection Mr.Pal has cited the cases of Shri K.J.Raisinghani, and T.K.Jayadevan both Junior Accounts Officer who have been promoted to the rank of Pay and Accounts Officers vide order dated 31.7.1987 (Annexure A/2) and by ~~the~~ order dated 23.9.1987 (Annexure A/3). He has also drawn our attention to Annexure-A/5 which is an Office order dated 17th August, 1987 promoting two officers to the rank of Assistant Executive Officers. His plea is that in ordinary course the case of the applicant should be considered for promotion against the vacancy caused by the retirement of Shri B.B.Nayak when the above mentioned officers had been promoted immediately before that. Denial of opportunities for promotion to the applicant is the result of a pick and choose policy adopted and discriminatory treatment meted



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out to the applicant. Mr. Dalai on the other hand has contended that it is the prerogative of the administration to fillup a vacancy or not to fill it up. On consideration of the reduction of work the D.D.A. did not think it necessary to fill up the vacancy caused by the retirement of Shri Nayak and as per the policy and gradual reduction in the Staff Strength , in keeping with the reduction in work the respondents abolished the post of Pay & Accounts Officer on the retirement of the incumbent. As no Junior has been promoted to the rank of Pay & Accounts Officer in supersession of the applicant's claim for promotion , the applicant had no grievance and the application should be dismissed with costs. Mr. Dalai has also taken the plea that the application was barred by limitation Under Section 21 of the Administrative Tribunals Act, 1985.

4. Before coming to the merit of the case we consider it necessary to examine the question of limitation. The impugned order i.e. Annexure-A/8 is dated 6.1.1988. The Office Order at Annexure-R/1 abolishing one post of Pay & Accounts Officer which has given rise to the grievance of the applicant is dated 5.1.1988. The application has been filed on 19.2.1988 i.e. within two months of the issue of the impugned order. As such we have no hesitation in ruling that the case is not

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barred by limitation.

5. The order dated 5.1.1988 abolishing one post of Pay & Accounts Officer/AFA has been issued with the approval of respondent No.2 from the office of the respondent No.3. No Government order has been produced by the respondents to show that respondent No.2 has been empowered to abolish Group 'B' gazetted Posts. They have however, referred to para C-I of Annexure to Office Memorandum No. 1/8/87-CS-III dated 30.4.1987 (Annexure-A/6) which is general instructions issued by the Government to deal with the staff rendered surplus due to various development and as such cannot be construed to have authorised respondent No.2 for issuing order abolishing any Post. We would therefore agree with Mr. Pal that no reliance can be placed on this order and the post would have to be assumed to be available from 1.1.1988. However, as Mr. Dala¹ has averred it is the prerogative of the respondents to fill up a vacancy or not to do so. We do appreciate the stand taken by the respondents that since the Dandakaranya Development Project is in the process of normalisation, existing posts have got to be reviewed and reduced at all levels commensurate with availability of work. The project work, as has been

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mentioned by Mr. Dalai is being progressively reduced which has its effect on the staff strength of all Departments of the Dandakaranya Development Authority. Moreover none of the juniors of the applicant has been promoted superseding the claims of the applicant for such promotion. Non-filling of the Post of Pay & Accounts Officer in no way, in our opinion, adversely affect the existing service conditions of the applicant. At the cost of the repetition we would like to say that it is up to the administration to fillup the vacancy or not to do so depending on the work load existing at a particular time. However, since two of the Junior Accounts Officers have been promoted to the rank of Pay & Accounts Officer/AFA, a few months earlier to 31.12.1987, the Respondents should consider the case of the applicant for promotion to the Post of Pay Accounts Officer according to the recruitment rules in order to avoid any charge of discrimination. This, in our opinion ^{best} would be in the interest of justice and fair play.

A meeting of the DPC may be convened within three months from the date of receipt of a copy of this judgment to consider the applicant's case for promotion as aforesaid.

6. This case is accordingly disposed of. No costs.

New Encls 31.5.7
.....
MEMBER (JUDICIAL)



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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench: K. M. Chanty.

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Central Admin. Tribunal
Cuttack Bench
By. No 131/Small
Date 12.2.96
File No.

03.50 12.2.96

D.NO. 59192/1/1
SUPREME COURT OF INDIA
DATED: 15 february, 1996

FROM:

THE REGISTRAR
SUPREME COURT OF INDIA
NEW DELHI.

TO :

THE REGISTRAR
HIGH COURT OF JUDICATURE
AT ALLAHABAD
Central Administrative Tribunal,
Cuttack Bench, Cuttack

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 4434 of 1992
(Petition under Article 136 of the Constitution of
India from the Special leave to appeal to the Supreme
Court from the Judgment and Order dated 31st May, 1991
of the High Court of Central Adminis

tral Tribunal, Cuttack Bench, Cuttack in O.A. No. 65 of
1988).

Union of India vs.

.... PETITIONER(S)

VERSUS

Ange Mahomed

.... RESPONDENT(S)

Sir,

I am to inform you that the Petition above-mentioned
for special leave to appeal to this Court was filed on behalf
of the Petitioners above named from the Judgment and Order of
the High Court noted above and that the same was dismissed
by this Court on the 2nd day of January, 1996.

A Certified copy of this Court's Proceedings dated
2nd January, 1996, is enclosed herewith for your information
and necessary action.

Yours faithfully,

15/2/96
ASSISTANT REGISTRAR.

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Copy - as a new copy
 K.D. Shaw
 Additional Registrar (Jad.)
 199
 Supreme Court of India

LICM NO. 52

COURT REGD. NO.

ELECTION TRIBUNAL
A/N MATTER

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S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No. 4434/92
 (From the judgement and order dated 31/05/91 in OA 65/93
 of the ~~Regd. No. 52~~ CAT Cuttak Bench, Cuttack)

UNION OF INDIA & ORS.

Petitioner (s)

VERSUS

PRAGA MOHAN DAS

Respondent (s)

(With Appn(s). for c/delay in filing SLP/Stay)
 (With Office Report)

Date : 02/01/96 this Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KULDIP SINGH
 HON'BLE MR. JUSTICE S. SAGHIR AHMAD

For Petitioner (s)

Mr. P. Venugopal Reddy, Sr. adv
 Mr. P. Parasuraman, adv
 Mr. C.S. Babu, adv
 Mr. CVS Rao, adv
 Mr. Jitendra Sharma, Sr. adv
 Mr. F.K. Nigam, adv
 Mr. Gurwant Dora, adv
 Mr. B.K. Patil, adv

For Respondent (s)

Upon hearing counsel the Court made the following
 ORDER

By its order dated 26.5.1991, the Tribunal directed the
 appellant herein to convene a meeting of the DPC within 3 months
 from the receipt of the copy of the order and consider the
 respondent's case for promotion. We have no doubt that the order
 of the Tribunal which was not stayed by this Court, must have
 been complied with by now.

The SLP is dismissed.

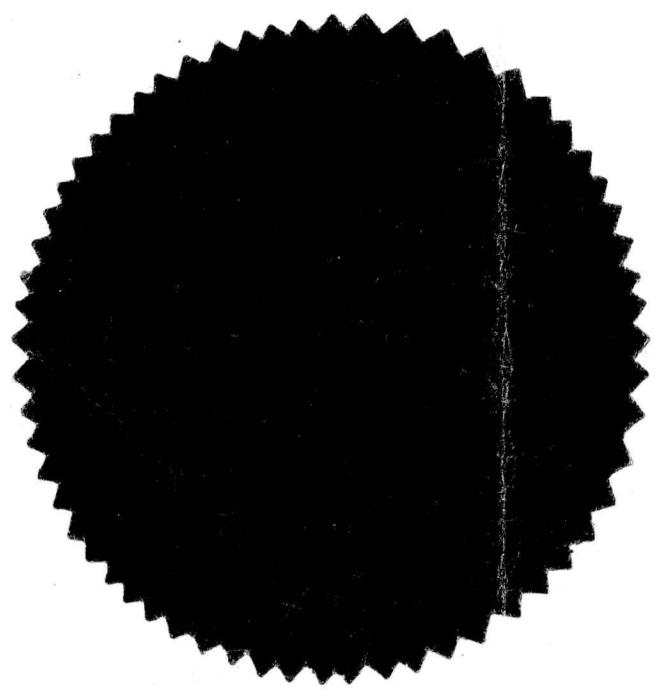

 (CSK Duleep)
 Court Master


 (T.K. Viswanathan)
 Court Master

4.1.96


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SEALED IN MY PRESENCE

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