

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 99 of 1988

Date of decision 29th March, 1989

1. Shri Arvind Kumar Gu ta
Assistant Project Officer,
Orissa State Social Welfare
Advisory Board, Bhubaneswar-12

..... Applicant

-Versus-

1. Executive Director,
Central Social Welfare Board,
Jeevan Deep Building,
Parliament Street,
New Delhi-10001
2. Chairman,
Central Social Welfare Board,
Jeevan Deep Building,
Parliament Street,
New Delhi-110001.
3. Sri D.D. Burman,
Project Officer,
Assam State Social Welfare Advisory Board
F.C. Road, Uzan Bazar, Gwahati.
4. Sri B.N. Singh,
Project Officer,
C/o Chairman,
Delhi State Social Welfare Advisory Board,
6, Bhagwan Das Road
New Delhi. Respondents

For Applicant Mrs. R. Sikdar, Advocate

For Respondents No. 1 and 2 ... 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)

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

: - J U D G M E N T : -

K.P.ACHARYA, MEMBER(J) In this application under section 19 of the Administrative Tribunal's Act, 1985 the Petitioner prays to direct the Opposite parties to give promotion to the applicant to the Post of Project Officer retrospectively with effect from 21.2.1986 (when his immediate juniors were promoted) and allow him consequential benefits arising therefrom viz arrears of pay from 21.2.86.

2. Shortly stated, the case of the Petitioner is that he is at present working as Asst. Project officer in the Central Social Welfare Board at Bhubaneswar. Shortly promotions were given to the post of Project Officer and incumbents serving as Asst. Project Officer were to be considered for promotion to the post of Project Officer. For the said purpose a Departmental promotion Committee met on 4th December, 1985 and though the D.P.C. considered the case of the petitioner yet the petitioner was not given promotion and Opposite Party No. 3 and 4 have been given promotion by the Competent authority over the head of the Petitioner thereby superceding the claim of the petitioner. Hence this application with the aforesaid prayer.

3. In their Counter, the Opposite parties maintained that the case of the petitioner was considered by the D.P.C. Even though the D.P.C. had recommended the case of the petitioner for promotion yet it had observed that promotion should be given after finalisation of the Departmental Enquiry initiated against the Petitioner. Hence the Opposite parties 3 and 4 were given promotion and the petitioner was made to wait till the finalisation of

the Departmental Enquiry initiated against him. Further case of the respondent is that this case being devoid of merit is liable to be dismissed.

4. We have heard from Mrs.R.Sikdar, learned Counsel for the petitioner and Mr.T.Dalei, learned Additional Standing Counsel(Central) at some length. At the outset we may say that vide order No.14 dated 16th February, 1989 we had called upon the Opposite parties to cause production of the minutes of the D.I.C. held on 20th March, 1989 but they are not produced for the reasons best known to the Opposite Parties. After having heard Mrs.Sikdar, learned Counsel for the applicant we are of opinion ^{that} _{in} the peculiar facts and circumstances of the case the minutes of the D.P.C. is no longer required. The case can be disposed of on the averments made in the Counter. In paragraph 2(a) of the Counter following is stated on behalf of the Opposite Parties. It runs thus:-

" The D.P.C. held on 4th December, 1985 considered the case of applicant along with others and recommended 11 names including the applicant. But though the applicant was placed in the merit list that the D.P.C. recorded that his actual promotion would be made only after the enquiry against him is finalised. Respondent no.3 and 4 were put in the pannel of promotion also. As on 4.12.85 departmental enquiry was pending against the applicant and

on consideration of his A.C.R., the D.P.C. though selected the applicant, recommended for actual consideration for promotion after conclusion of enquiry and thereby adopted the sealed cover theory."

From the above it is clear that the case of the Petitioner had been considered along with 10 others including opposite party no.3 and 4 and petitioner was found to be suitable and recommended by the D.P.C. for promotion but actual promotion has to be given after conclusion of the Departmental proceeding.

5. The moot question that needs determination by this Bench is as to whether on the date of promotion given to Opposite party No.3 and 4, a departmental proceeding was pending against the petitioner. If the disciplinary proceeding was pending then the order passed by the Competent Authority not to give promotion to the petitioner is bound to be sustained otherwise to be vacated. Law is well settled in plethora of judicial pronouncements including the Judgement pronounced by the Full Bench which is reported in 1987(2)SLJ,CAT-115 (K.Ch.Venkata Reddy and others-Versus-Union of India & others). It is held that disciplinary proceeding is deemed to have been initiated on the date on which charges are delivered to the delinquent officer. This settled position of law was not rightly and fairly disputed at the Bar. Therefore one has to find out the date on which charges have been delivered to the

present petitioner, Mrs. Sikdar on behalf on behalf of the Petitioner emphatically contended before us that as yet no charge had been delivered to the Petitioner and we find from the Counter that no specific date has been given by the Opposite Parties as to date on which charge if any was delivered to the petitioner. We find that nothing has been stated by the Opposite Parties in their counter that charge has been delivered and proceeding has been initiated. On the contrary it is found from the Counter as follows:-

"On enquiry charges were made against the applicant vide Annexure-A/6."

Therefore the Bench is required to find out whether Annexure A/6 contains the charge against the petitioner. In the concluding portion of Annexure A/6 it is found as follows:-

"Sri A.K. Gupta is directed to show cause as to why disciplinary action should not be taken against him for the acts of omission and commission during his tenure as Secretary, Rajasthan State Board. If his explanation is not received by 31st March, 1986 it would be presumed that he has nothing to say in the matter"

Annexure A/6 contains confidential memo no. F 22-1/76 ADMN(P) dated 18.3.86 addressed to Sri A.K. Gupta, Asst. Project Officer. Nowhere it states that it contains the charge framed against the petitioner Sri A.K. Gupta. Perhaps it is sort of preliminary enquiry by the disciplinary

authority calling upon Sri A.K.Gupta to ^{submit}~~subordinate~~ his explanation so that the disciplinary authority could make up his mind as to whether charge be framed or not.

6. We cannot take this piece of document to be a set of charges delivered to the petitioner in connection with the initiation of the Departmental proceeding because from the portion quoted above it is clear that the petitioner was called upon to show cause as to why disciplinary proceeding shall not be initiated against him. Till 18th March, 1986 no disciplinary proceeding was initiated against the petitioner far less to speak of any disciplinary proceeding to have remained pending against the petitioner on 4th December, 1985, the date on which the D.P.C. met to consider the case of the petitioner and other incumbents. Conceding for the sake of argument, that Annexure-6 can be construed as a set of charge delivered to the petitioner, yet it cannot but be stated either on or before 4.12.85 ^{or} ~~that~~ on 18.3.86 charge was delivered to the petitioner and proceeding was deemed to have been initiated on those days. In no circumstances it can be said that on 4th December, 1985 any disciplinary proceeding was pending against the petitioner. Neither the D.P.C. nor the Appointing authority were justified in saying that the promotion of the petitioner could be withheld till the disciplinary proceeding is completed. The matters stated in Annexure-6 cannot be taken into consideration for the purpose of withholding promotion of the

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Petitioner as on 4th December, 1985 there was ^{no} charge against the Petitioner. In the case of Dr. Susila Misra - Versus - Union of India reported in A.T.R. 1986(1) CAT-433 Calcutta Bench ^{has} circuit at Cuttack, it ^{has} been held that any act of commission or omission on the part of the ~~proposed~~ delinquent officer said to have been committed after the Departmental promotion Committee had met would amount to extraneous consideration by the Departmental Promotion Committee ^{which} is illegal and unjustified. With respect we would follow the same view as in the present case, at the cost of repetition we may say that by 4.12.85 there was no charge against the petitioner and therefore the disciplinary proceeding not having been initiated by 4.12.1985, such alleged acts of commissions or omissions on the part of the petitioner amounts to extraneous consideration and is not supported under the law. Therefore, depriving the petitioner of the promotion resulting from the view expressed by the Departmental Promotion Committee is illegal and inoperative and therefore, we would hereby quash the recommendation of the Departmental Promotion Committee to the extent to with hold the promotion of the petitioner till the finalisation of the disciplinary proceeding. Ordinarily the Bench has no powers to direct promotion of particular incumbent. His suitability has to be adjudged by the competent authority. But in the present case the suitability of the petitioner having been adjudged in his favour, the Bench could direct his promotion. Hence, we would direct that promotion be given to the petitioner with effect

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from the date on which the Opposite Parties No.3 and 4 were given promotion. The petitioner is entitled to all consequential service benefits as per the Rules.

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

[Signature]
.....29.3.89.....
MEMBER (JUDICIAL)

B.R. PATEL, VICE-CHAIRMAN

I agree.



[Signature]
.....29.3.89.....
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
29th March, 1989/Mohapatra