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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 146 of 1989

Date of Decision: 2.11.1992

Biraja Prasad Mishra Applicant

Versus

Union of India & Others Respondents

For the applicant Mr. Antaryami Rath
Advocate

For the respondents Mr. P. N. Mohapatra
Standing Counsel
(Central Government)

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C O R A M

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. K. J. RAMAN, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner had claimed seniority and other service benefits against all the opposite parties viz. Opposite Party Nos. 4 to 25. Subsequently the original application was amended and the amendment has stood allowed vide order dated 15.2.1991 and a consolidated application was directed to be filed incorporating the amendment. This was carried out. In the consolidated application prayer of the petitioner has been confined to direct the opposite parties to ^{renew} ~~revise~~ the seniority list published on 22.8.1990 contained in Annexure-16 and to fix the position of the petitioner below Shri Prafulla Kumar Das (OP No.6) and above Elizar Barla and other Opposite Party Nos. 10 to 24 and grant all other service benefits to the petitioner viz. to order his confirmation in the basic cadre of Sub-Inspector from the date his immediate junior was confirmed and to give him promotion to the rank of Inspector (O.G.) and S.G. from the date/dates his immediate junior was promoted and to confirm him in the cadre of Inspector from the date his immediate junior was confirmed and to give him promotion to the rank of Superintendent within Group B with all financial benefits from the date his immediate junior was promoted.

2. Shortly stated the case of the petitioner is that he was appointed as a Sub-Inspector in the Office of the Collector, Central Excise and Customs with effect from 17.5.1955. According to the petitioner in the original ~~application~~ ^{application} it was stated that filed earlier to the consolidated application the Opposite Party Nos. 10 to 24 were appointed much later than the

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present petitioner to the said grade and therefore the petitioner had claimed seniority over these opposite parties. In the seniority list published in the year 1973, the petitioner was shown to be junior to the opposite party Nos. 10 to 24. While the matter stood thus, one Shri Bhaskar Mohan Uppadhyay and one Shri Jagabandhu Dash had filed an application/under Article 226 of the Constitution of India laying their grievance against the opposite parties in those cases relating to their seniority and consequential promotions. Hence the petitioner in the said O.J.C. had prayed to quash the seniority list. This case was received on transfer under Section 29 of the Administrative Tribunals Act, 1985 by this Bench and it was renumbered as Transferred Application No. 49 of 1987. By its judgment dated 9.3.1989, this Bench held that the petitioners in that case were senior to OP Nos. 4 to 9 and accordingly the seniority list should be revised and published. Incidentally it may be mentioned that the present petitioner Shri Biraja Prasad Mishra was not ~~present~~ a party in the said O.J.C. In pursuance to the directions given by this Bench stated above, the seniority list was recasted in the grade of Inspector as contained in Annexure-16 dated 2.8.1990. In this seniority list against Sl.No.22 name of Shri Biraja Prasad Mishra finds place and it is mentioned 'assigned notional seniority in the Grade of Sub-Inspector antedating the same to 20th May, 1964 by order dated 15.5.1975 and in the first page of Annexure-16 it is mentioned that the seniority list in the grade of Inspector has been re-casted in view of

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the directions given in the Transferred Application No.49 of 1987. Due to the changed circumstances, the petitioner filed an amendment as stated above and the amendment was allowed and the consolidated application was filed in which there is no further grievance ~~in~~ respect of Opposite Party Nos. 4 to 9 and 25. The grievance ~~is~~ confined to rest of the opposite parties.

3. In their counter which was filed to the original application the opposite parties naturally maintained that the case is devoid of merit and liable to be dismissed as barred by limitation. Though liberty was given to the opposite parties to file a counter to the consolidated application, no counter has been filed for the reasons best known to the opposite parties.

4. To-day we have heard Mr. Antaryami Rath, learned counsel for the petitioner and Mr. P.N. Mohapatra, learned Standing Counsel.

5. In view of the prayer made in the consolidated application as stated above, and in view of the changed circumstances, promotion was given subsequent to ^{publication of} the seniority list contained in Annexure-16, about which the petitioner has grievance against the opposite parties. No representation has been filed by the petitioner relating to which we had put a question to the learned counsel for the petitioner and though he replied that series of representations were pending consideration by the competent authority filed by the different incumbents including that of the petitioner, not a single copy could be placed before us by way of representation filed by the petitioner


augmenting his grievance relating to non-promotion of the petitioner and his supersession, if any, claimed subsequently as his juniors are said to have been promoted. There was absolutely no dispute about the fact that there is a statutory appeal prescribed to be preferred against any illegality or irregularity committed by the concerned authority in relation to the promotion or denial of promotion to a senior officer and preferring the juniors for promotion. The statutory requirement not having been complied, we would unhesitatingly hold that Section 20 of the Administrative Tribunals Act, 1985 has not been complied. We would fail in our duty if we do not point out that Mr. Rath, learned counsel for the petitioner wanted to place some papers containing a representation of the petitioner. We refused to look at it because admittedly copy of such representation has not been annexed either to the original application or to the consolidated application. Without giving notice regarding the contents of this document to the opposite parties, it will be most unfair to consider the document and arrive at a conclusion which may go against the opposite parties. Therefore, from equitable point of view we refuse to look at it. However, we are not in a position to ascertain the truth or otherwise of the statement that the case of the petitioner was not considered for promotion to the post of Superintendent and the case of the juniors was considered and juniors of the petitioner were given promotion. Since counter has not been filed to the consolidated application, we are unable to come to a definite conclusion. At the same time, we feel reluctant to accept the statement made by the learned counsel for

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the petitioner on instructions with utmost certainty. Therefore we find that this is a fit case in which the entire matter should be reconsidered by the appropriate authority. We would direct that if the petitioner feels that his grievances are legally tenable or sustainable, he should ~~make~~ a detailed representation to ~~the~~ appropriate authority laying his grievances against the seniority, promotion etc. and if such representation is filed within sixty days from to-day, then the competent authority should devote his attention to the representation and dispose it of according to law by giving a reasoned ^{and speaking} order. In case the petitioner still feels aggrieved by the reasoned order given by the competent authority on the representation filed by him, liberty is given to the petitioner to approach this Bench.

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


MEMBER (ADMINISTRATIVE)


VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 2.11.1992 B.K. Sahoo

