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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 170 of 1989.

Date of decision : December 18, 1989.

Chandramani Balabant Ray, son of Daitari
Balabant Ray, at present working as O.S./Stores/
Grade -I, in the office of the District Engineer
(Construction) S.E.Railway, Cuttack and residing
at Mr. No. MISC/2/F, Railway Colony, Cuttack-753003,
Town and District-Cuttack.

... Applicant.

Versus

1. Union of India, represented by the
General Manager, S.E.Rly., Garden Reach,
Calcutta-43, West Bengal.
2. Chief Engineer (Construction),
S.E.Rly., Garden Reach, Calcutta-43,
West Bengal.
3. Deputy Chief Engineer (Construction),
South Eastern Railway, Cuttack-753003,
Town and District-Cuttack.
4. District Engineer (Construction),
South Eastern Railway, Cuttack-753003,
Town and District-Cuttack.

... Respondents.

For the applicant ... M/s. Md. Y.A. Rahim,
R.C. Behera,
B.P. Panda,
S.Dash, D.R. Pattnayak,
P.R. Barik, Advocates.

For the respondents ... M/s. B.Pal,
O.N. Ghosh, Advocates.

C O R A M:

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

A N D

THE HON'BLE MR. N. SENGUPTA, 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 ? No.
3. Whether Their Lordships wish to see the fair copy
of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J)

The applicant in this case was admittedly allowed to officiate in a promotional post of Office Superintendent (Stores), Grade II in the scale of pay of Rs.550-750 (RS) with effect from 1.4.1982. This appointment by promotion was on ad hoc basis. This ad hoc appointment was followed by a regular appointment in the same scale and to the same post with effect from 1.11.1985 vide Annexure-2. The grievance of the applicant is that even though he worked in the post of Office Superintendent (Stores) from 1.4.1982 to 30.10.1985, the salary in that scale has not been released in his favour on the ground that the appointment order was issued by a person not having the authority to appoint, the applicant was paid his salary in the scale of the lower post carrying the pay scale of Rs.425-700/- from which he was promoted on ad hoc basis as Office Superintendent. The applicant has further alleged that even though his salary in the scale of Rs.550-750/- was drawn, due to want of approval of the Respondent No.2 the Accounts Department of the Railways objected to the disbursement. Thereafter, the applicant made a number of representations but as yet the approval has not been received. Hence, the salary in that scale has not been disbursed to him.

2. The respondents in their counter have stated that the claim of the applicant is barred by limitation and further that the District Engineer who issued the order of promotion had no authority to do so, it was only the Chief Engineer who was competent to pass an order of promotion.

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Therefore, the order of promotion and ~~for~~ that matter the officiation of the applicant from 1.4.1982 to 30.10.1985, was wholly invalid and irregular and cannot clothe him with any right. That in substance represents the stand taken by the respondents.

3. We have heard Mr. Md. Y. A. Rahim, learned counsel for the applicant and Mr. B. Pal, learned Senior Standing Counsel for the Railway Administration in the matter and have perused the annexures filed in this case. On a perusal of the annexures it would appear that under Annexure-1 the District Engineer (Respondent No. 4) issued the appointment order by promotion to the applicant and forwarded the copies of that order to different persons including the Chief Engineer (Construction), Garden Reach and that was in continuation of a previous letter dated 18.9.1980. It would thus be found that the Chief Engineer (Construction) was made aware of the order of promotion of the applicant to the rank of Office Superintendent (Stores), Grade II in the scale of pay of Rs. 550-750/- immediately after the issue of the order, copy of which is at Annexure-1 and he did not object to that promotion, rather this ad hoc officiating appointment was regularised by another order dated 13/14.11.1985 (copy of which is at Annexure-2). Thus, it could be found that the applicant really worked in the promotional post and is entitled to draw salary in the scale of pay of Rs. 550-750/- from 1.4.1982. Mr. Pal contends that the relief claimed by the applicant is in substance for arrears of salary. Therefore, usually the period of limitation of three years from the date of accrual of salary would apply. No doubt the relief claimed may

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prima facie appear to be one for recovery of unpaid salary but in substance it is not so. We take this view as there has been no specific denial though there is a general and vague denial in the counter about the fact that his salary had been drawn in the scale of Rs.550-750/- but had not been released to the applicant, on objection by the Accounts Department. It is also apparent from the pleadings of the parties that the applicant's salary was drawn in the scale of pay attached to the lower post i.e. in reality his pay was not fixed in the higher grade. Therefore, strictly speaking the law of limitation applicable to arrears of salary would not apply. The relief that the applicant substantially seeks is a direction to fix his pay in the scale of Rs.550-750/- attached to the promotional post. In this regard it appears that even inspite of some correspondence as yet the refixation has not been done. Accordingly we direct the respondents to fix his pay in the scale of pay of Rs.550-750/- with effect from the date he assumed charge of the office of Office Superintendent (Stores), Grade II and the difference of pay be paid to him within four months from the date of receipt of a copy of this judgment.

4. This application is accordingly disposed of leaving the parties to bear their own costs.

B.R. PATEL, VICE-CHAIRMAN,

I agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 18, 1989/Sarangi.

.....(8.12.89.)
Member (Judicial)

.....18.12.89
Vice-Chairman