

(11)

Central Administrative Tribunal
Cuttack Bench, Cuttack

Original Application No.193 of 1989

Date of decision:- 23.2.93.

Peter Pradhan ... Petitioner

Versus

Union of India and others Opp.Parties

For the petitioner : M/s S.Misra-l,
S.N.Misra,
R.S.Praharaj,
S.B.Misra,
Advocates.

For the Opp.Parties: Mr.P.N.Mohapatra,
Additional Standing Counsel.

CORAM:

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

And

THE HONOURABLE MR. C.S.PANDEY, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? ~~Yes~~ ASD
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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(19)

J U D G M E N T

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to give him the benefit of promotional post with effect from 1st August, 1975 when his juniors Silas Kerketta as ~~Line Inspector~~ and others were given promotion.

2. Shortly stated the case of the petitioner is that he belongs to Scheduled Tribe being 'KANDH' by caste. The Petitioner was appointed as a line-man in the Telegraph Department with effect from 17th April, 1947. The next promotional avenue for lineman is Sub-Inspector Telegraphs. Grievance of the Petitioner is that his case not having been considered as a Scheduled Tribe candidate and due promotion not having been given to him when his juniors have been promoted has seriously prejudiced him and therefore, this application has been filed with the aforesaid prayer.

3. In their counter the Opposite Parties maintained that at the time of entering into service, the petitioner had not declared himself as a Scheduled Tribe. In the service book, it has been specifically mentioned that the petitioner is 'Oriya Christian' M/s S. Karketa and K. Kairon said to have been promoted to the cadre of Line Inspector on 1.8.1975 and 1.11.1975 belong to Scheduled Tribe Community as found from their service book. Therefore, reserved posts were given to them. It is further maintained that pursuant to the judgment in

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Transferred Application No. 315 of 1986, the petitioner was personally heard and vide Annexure 4 dated 11.11.1987 a reasoned order was passed by the competent Authority declining to accept the contention of the petitioner. The order was duly communicated to the petitioner within time and the application having been filed on 2nd February, 1989, hence the case is grossly barred by limitation.

4. We have heard Mr. S.N. Misra learned counsel appearing for the Petitioner and Mr. P.N. Mohapatra, learned Additional Standing Counsel (Central) for the Opposite Parties at a considerable length.

5. Before we deal with the contentions put forward on behalf of the either parties, it is worthwhile to mention that the petitioner felt aggrieved by not giving him reserved posts for having belonged to Scheduled Tribe Community. This application formed subject matter of Original Jurisdiction Case No. 1594 of 1983. This case was received on transfer by this Bench and renumbered as Transferred Application No. 315 of 1986 which was disposed of on 4th March, 1987. Since certain important facts were not disclosed by either parties in their pleadings, the competent authority was directed to reconsider the matter in the light of the submissions made by the petitioner giving him an opportunity of personal hearing and thereafter the competent authority may pass orders according to law. The competent authority vide Annexure 4 dated 10th November, 1987 passed a reasoned order holding that the caste certificate was


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produced as late as 4th October, 1982 though it was obtained on 2nd July, 1980 and after the caste certificate was filed, the petitioner was given the benefit as contemplated under the law. From the averment finding place in the pleadings of the parties, we have no doubt in our mind to hold that at no point of time, before the 4th October, 1982, the petitioner had ever pleaded a case of having belonged to a Scheduled Tribe community. Therefore, rightly the competent authority did not give him the benefit prior to 4.10.1982. Admittedly, the impugned order contained in Annexure 4 was passed on 11.11.1987 and keeping in view the provisions contained in Section 21 of the Administrative Tribunals Act, 1985, the application should have been filed within one year from the date of passing of the impugned order. But the present application has been filed on 2nd February, 1989 without giving any explanation as to the cause of delay. We find there is substantial force in the contention of Mr. P.N. Mohapatra learned Additional Standing Counsel (Central) ^{that} the case is grossly barred by limitation.

6. Apart from the above, the petitioner has prayed to strike down the promotion given to M/s Bhima Khatua and Govind Das. This prayer is untenable because neither of them are parties ~~to~~ this petition. Striking down their promotions would adversely affect them and therefore, they are necessary parties. Without giving them an opportunity of being heard, it would be against all canons of Justice, Equity and Fairplay to pass an order which may adversely affect them. Therefore, in our opinion

in view of the aforesaid lacunae and informities
the case is devoid of merit and is dismissed. There
would be no order as to costs.


MEMBER (ADMINISTRATIVE)


23.2.93
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.

23.2.93

