

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.17 of 1989.

Date of decision : 1st May, 1989.

Sri Jagannath Jethi, Retired Section Supervisor,
Central Telegraph Office Cuttack (Orissa), residing
at 'Neelkanchan' Tulasipur, Nath Road, Cuttack-8.

... Applicant.

Versus

1. Union of India represented by the
Director General, Telecommunication,
Department Sanchar Bhawan New Delhi.
2. The General Manager Telecommunication
Orissa Circle, Bhubaneswar,
Dist: Puri (Orissa).
3. Sri P.C. Panda,
Telegraph Master Office of DTO,
Berhampur, Ganjam.

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Respondents.

For the applicant ... In person.

For the respondents 1 & 2 ... Mr. A.B. Mishra,
Sr. Standing Counsel (Central)

For the respondent No. 3 ... M/s. C.V. Murty,
C.M.K. Murty,
S.K. Ratha, Advocates.

C O R A M :

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

A N D

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.
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J U D G M E N T

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to direct the Respondents 1 and 2 to promote the applicant to the post of Assistant Superintendent Telegraph Traffic with effect from 1983 with all consequential service benefits.

2. Shortly stated, the case of the applicant is that he joined the Telecommunication Department as a Boy Peon on 1st November, 1958. On 31.1.1987 the applicant retired from service voluntarily from the post of Section Supervisor (Operative). According to the applicant, there were 6 posts of Assistant Superintendent, Telegraph Traffic available out of which one post was reserved for scheduled caste candidate and an examination was held for filling up the posts by departmental candidates and the applicant was one of the examinees. According to the applicant, he was placed against serial No.6 but could not be given promotion as the first five vacancies were meant for candidates belonging to other communities and the sixth one was meant for reserved community. The applicant being a member of the other community he was not selected for promotion in the category of other community. The further case of the applicant is that the sixth post having been dereserved, it is bound to go to a candidate of other community and the applicant having been placed at serial No.6 he should have been given promotion with retrospective effect. Hence, this application with the aforesaid prayer.

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In their counter, the respondents maintained that

the dereservation of this particular post meant for reserved community was passed in the year 1987 and to be more specific it was so ordered on 23.11.1987 and by that date the applicant having obtained voluntary retirement, promotion was given to ^{the} next candidate and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Jethi, the applicant in person and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) as also Mr. C. V. Murty, learned counsel appearing for respondent No. 3 at some length. A preliminary objection was raised by learned Senior Standing Counsel (Central) that the case being grossly barred by limitation it should be ~~in limini~~ dismissed. According to learned Senior Standing Counsel (Central) the grievance of the applicant, even if accepted to be correct and undeniable, yet it relates back to the year 1983 and such being the situation, the case is barred by limitation under section 21 of the Administrative Tribunals Act, 1985. We keep this question open till we arrive at our final conclusion on merits of the case.

5. Mr. Jethi strenuously urged before us that the dereservation ~~order~~ was never passed in 1987 as contended by learned Senior Standing Counsel (Central), but it was passed in the year 1983 itself and therefore, the competent authority should have ordered promotion in favour of Mr. Jethi, the applicant. To counteract this argument, learned Senior Standing Counsel (Central) relied upon

Annexure-R4 to indicate that the dereservation order was

never passed before 23.11.1987. Since Mr.Jethi strenuously urged before us that dereservation order was passed in the year 1983 heavy onus lies on him to prove to the hilt that the dereservation order was passed in the year 1983 and not in the year 1987. We may say at the outset that no direct evidence could be placed before us by Mr.Jethi to substantiate his contention that dereservation order was passed in the year 1983. Mr-Jethi relied upon Annexure-6 and submitted that from this document it could be easily said that the dereservation order was passed in the year 1983. Mr.Jethi relied upon paragraph 2 of Annexure-6 which runs thus :

" The matter has been considered and it has been decided that the qualified O/C candidate (Departmental) for the year 1983 examination be immediately deputed for the training of A.S.T.T. and the approval of the Directorate be obtained by making a de-novo proposal for de-reservation of an SC vacancy of 1983 examination to be filled by an O/C qualified candidate through SCT Cell of the Directorate."

The above quoted direction of the competent authority goes more against the contention of Mr.Jethi than lending support to his arguments. Had the dereservation order been issued, then there was no occasion for the competent authority to say that de novo proposal be given for de-reservation through SCT Cell of the Directorate. Mr.Jethi contended that the very fact that the competent authority has asked in this letter to send the O/C candidate for training of A.S.T.T. sufficiently indicates that dereservation had been ordered. We are unable to subscribe to this view propounded by Mr.Jethi. At the cost of repetition we may say that had dereservation been allowed by this letter then there is no

scope for the competent authority to say that denove proposal be given through SCT Cell for necessary orders. In such circumstances, we find no merit in the aforesaid contention of Mr. Jethi.

6. Secondly, it was urged by Mr. Jethi that conceding for the sake of argument that dereservation order ^{was} passed on 23.11.1987, such order is unconstitutional, illegal and hence inoperative under the law. According to Mr. Jethi, the dereservation order should have been passed in the year 1983 and the vacancy should have been carried over till 1986. The dereservation order having been passed in 1987, such carrying over cannot be made effective till 1986. Conceding for the sake of argument that this contention of Mr. Joshi is acceptable then in that case we have to hold that dereservation order passed in the year 1987 is unconstitutional, hence inoperative under the law. If such dereservation order is inoperative and unconstitutional, then from 1983 till 1987 the reserved post has been dereserved and the post still remains reserved for a scheduled caste candidate. In such circumstances, the applicant Mr. Jethi is also out of court and cannot claim any relief to be given by us because the post is bound to go to a reserved candidate. On the contrary, from Annexure-R/5 it is clear that the ^{Asst.} Director General while addressing letter to the General Manager, Telecommunication on 16.11.1987 stated that Shri J.N. Jethi Roll No. ORT/50 who has obtained the 6th position in the merit list has been selected for appointment to T.T.S.Gr. 'C'. He may be sent for training. This appointment

cannot work out in his favour because admittedly, the applicant Mr. Jethi had retired voluntarily on 31.1.1987. Hence, this post cannot be given to Mr. Jethi.

7. Lastly, it was submitted by Mr. Jethi that in the year 1984 one Hari Sethi (a scheduled caste candidate) was appointed in the year 1984 against 1983 carried forward reserved quota. If this position is accepted, then Mr. Jethi has absolutely no case to be ventilated before this Bench.

8. Even though Mr. Jethi ^{did not} pressed for the second relief prayed for being re-employed, we also find from the Rules that we have no powers to direct the respondents to reemploy the applicant.

So far as the question of limitation is concerned, the case being dismissed on merits we do not like to express any opinion on the preliminary objection raised by learned Senior Standing Counsel (Central).

9. The first prayer having been denied and the second prayer not having been pressed, we find no merit in this case, which stands dismissed leaving the parties to bear their own costs.

B.R.PATEL, VICE-CHAIRMAN,

9 agree



Member (Judicial)

Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 1, 1989/Saranggi.