

78/118/10 (9)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 311 of 1989

Date of Decision: 22.9.92

Gobinda Chandra Patra Applicant

Versus

Union of India & Others Respondents

For the applicant

M/s. Devanand Mishra,
Deepak Mishra,
A. Deo, R. N. Naik,
P. Panda, B. S.
Tripathy, Advocates

For the respondents

Mr. P. N. Mohapatra,
Addl. Standing Counsel
(Central Government)

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C O R A M

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

AND

THE HONOURABLE MESS USHA SAHARA, MEMBER (ADMN.)

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1. Reporters of local newspapers
asked to see the judgment ? Yes

2. Referred to reporters or not ? 16

3. Their Lordships wish to see the
copy of the judgment ? Yes

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J U D G M E N T

(10)

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, it is prayed by the applicant to quash Annexure-3 and to direct the respondents to implement the directions contained in the judgment passed in T.A. 50 of 1987 in its proper perspective and to direct the respondents to confirm the applicant in the post of Telegraph Master and to consider the case of the applicant for the post of Senior Telegraph Master with effect from 1.5.1982 and to pass order to release the stagnation increment in favour of the applicant in view of the disposal of O.A. 93 of 1988.

2. Shortly stated, the case of the applicant is that at the time of filing of the application the applicant was working as Telegraph Master in Rourkela Sector. Having been aggrieved by certain departmental inaction, an application under Article 226 of the Constitution of India was filed before the Hon'ble High Court of Orissa praying for disposal of such grievance which formed the subject matter of O.J.C.No.1697 of 1985, which subsequently stood transferred to this Tribunal, under section 19 of the Administrative Tribunals Act, 1985 and was considered as T.A. 50 of 1987. The prayer of the applicant in the said application was that he should have been confirmed in the post of Telegraph Master with effect from 1.5.1982 and he should have been given promotion selection at higher grade with effect from 1.5.1982 as Sr. Telegraph Master and on 1.11.1983 he should have been released the stagnation increment. While disposing of T.A. 50 of 1987 this Tribunal by its judgment dated 11.11.1988

gave certain directions which would be dealt in detail at the appropriate stage. Those directions not having been implemented the applicant filed miscellaneous application forming subject matter of Misc.application No.186 of 1989 and the same was disposed of on 19.6.1989. While disposing of the Misc.application the Bench directed the Chief General Manager to devote his personal attention and implement the judgment within stipulated period. Vide Annexure-3 dated 7.7.1989, the Chief General Manager passed certain orders by way of implementing the judgment passed in T.A.50 of 1987 and Misc.Application No.186 of 1989. Being aggrieved by the order contained in Annexure-3 this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that pursuant to the direction contained in T.A.No.50 of 1987, the claim of the applicant for confirmation and promotion to the post of Senior Telegraph Master was considered and orders have been passed in Annexure-3 and so far as the claim of the applicant for releasing the stagnation increment is concerned, it has been decided to give benefit of stagnation increment which are due to the applicant and the arrears would be paid.

So far as the promotion to the post of Senior Telegraph Master is concerned, it is maintained by the respondents that the claim of the applicant for promotion to the grade of Senior Telegraph Master with effect from 1.5.1982 is not tenable as there was only one post of Senior Telegraph Master in Orissa which was subsequently abolished with effect from 26.2.1986 and since then there is no such post in existence. Since a single post was

available in the said cadre, it was therefore, given to a general candidate and cannot be treated as reserved one. In the cadre of Telegraph Masters the applicant is placed against serial No.5. In such circumstances, the applicant's claim for promotion is ill-founded and therefore, the case is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central), for the respondents at a considerable length. Before we express our opinion on the other prayers of the applicants indicated above, it is worthwhile to state at this stage that in paragraph 3 of the counter it is stated as follows:

" That in accordance with the above judgments, it has been decided, after scrutiny, to give the benefit of stagnation increments which are due to the applicant and arrears are to be paid. "

In view of the above quoted averments made in the counter, it can safely be found that the respondents considered the claim of the applicant for allowing stagnation increment and have agreed to make necessary payment due to him. In such circumstances, the prayer of the applicant to the above effect becomes infructuous but we would direct that in case, stagnation increments have not been paid, it should be calculated and paid to the applicant within 90 days from the date of receipt of a copy of this judgment.

5. As regards the claim for confirmation in the post of Telegraph Master, it is stated in paragraph 2(a) of Annexure-3 as follows:

" You have been declared confirmed in the basic cadre of Telegraphist. Hence, according to the orders now in force, no further confirmation in the subsequent cadre of Telegraphmaster is necessary. "

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In view of the matters stated in paragraph 2(a) of Annexure-3 quoted above, the departmental authorities have specifically indicated that no further confirmation is necessary in the cadre of Telegraph Master as the applicant has already been confirmed in the cadre of Telegraphists. In such circumstances, no further direction is necessary to be issued by this Bench.

6. As regards the prayer of the applicant that his case should be considered for promotion to the post of Senior Telegraph Master it may be stated that in the judgment passed in T.A.50 of 1987 it was observed as follows:

" ... the case of the petitioner should be considered for the period he has claimed his confirmation as a Telegraph Master, promotion to Higher Selection Grade and grant of stagnation increment
xx xx xx . "

At the cost of repetition it may be stated that in the present original application the applicant has no claim or grievance for promotion to the higher selection grade. His claim is confined to ^{the} promotional post of Senior Telegraph Master. In regard to this claim, the respondents maintained that there is no post in existence in the cadre of Senior Telegraph Master except a single post which had to be given to a general candidate. In O.A.372 of 1990 disposed of on 25.7.1991 it has been held by this Bench that whenever there is a single post in a particular cadre, it has to go to the general candidate. Therefore, we find no illegality to have been committed by the departmental authorities in giving such a post to a general candidate. Since there is no vacant post in the cadre of Senior Telegraph Master, the question of consideration

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of the case of the applicant to the promotional post does not arise and therefore, we find no merit in this part of the case of the applicant. As regards other prayers of the applicant, the case is disposed of according to the directions given above. No costs.

M. Lavare

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MEMBER (ADMINISTRATIVE)

h. a. 22.9.92

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
22.9.1992/Saranghi.

