

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

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Original Application No. 342 of 1989

Date of Decision: 13.10.1992.

J.L. Debabtrate

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Devanand Mishra
Deepak Mishra,
B.S.Tripathy,
Advocates

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. C. S. PANDEY, MEMBER (ADMN.)

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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 ? *Ans yes*
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 prays for a direction to be issued to the Opposite parties to give to the petitioner the promotional post to which he was found to be suitable and had been selected.

2. Shortly stated the case of the petitioner is that he is working as Telegraph Assistant in the Central Telegraph Office at Bhubaneswar. The petitioner ~~is~~ said to be in charge of booking trunk calls. An examination for promotion to the post of Upper Division Clerk was held on 10.8.1988. Eleven candidates including the petitioner ~~were~~ selected for appointment, vide Annexure-1. Vide Annexure-2 dated 3.3.1989 eight candidates have been given promotion out of the eleven candidates. Grievance of the petitioner is that though he was selected, yet, he was not given promotion which needs to be determined and therefore this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the petitioner was in charge of the booking trunk calls. It was found that the petitioner had misappropriated a sum of Rs.13.40. The result was published on 10.2.1989 and prior to said day a disciplinary proceeding was initiated against the petitioner vide order dated 6.2.1989. Hence promotion of the petitioner has been rightly withheld in view of the judgment of the Full Bench reported in A.T.R. 1987(1) C.A.T. 547. The post has been kept reserved for the petitioner and the petitioner if exonerated from the charges, he will be given notional promotion from the date on which his juniors have been promoted. Hence according to the opposite parties, the

case is devoid of merit and is liable to be dismissed.

4. We have heard Mr. Deepak Mishra, learned counsel for the petitioner and Mr. P. N. Mohapatra, learned Standing Counsel on behalf of the opposite parties. Law is well settled that the ~~deemed~~ date of initiation of the proceeding is the date of delivery of the chargesheet. According to the opposite parties the result was published on 10.2.1989 and chargesheet was delivered to the petitioner on 6.2.1989. If this position is correct then the grievance of the petitioner in not giving him promotion is baseless. Incase, the departmental proceeding has been initiated after 10.2.1989, promotion of the petitioner should not have been withheld. The principles laid down by the Hon'ble Judges of the Full Bench in the case reported in 1987 (1) C.A.T. 547 (K.Ch. Venkat Reddy & others vs. Union of India & Others) was considered by the Hon'ble Supreme Court in the case of Union of India vs. K.V. Janakiraman reported in AIR 1991 SC 2010. Their Lordships at paragraph-6 of the judgment were pleased to observe as follows :

" On the first question, viz., as to when for the purposes of the sealed cover the disciplinary/ criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it cannot be said that the departmental proceeding/criminal prosecution is initiated against the employee. The sealed cover procedure is to be restored to only after the charge-memo/ charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point".

In view of the above quoted observations of Their Lordships, it cannot but be said that the date of delivery

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of the chargesheet is the deemed date of initiation of the proceeding. The averment in the pleadings of the parties was vague on this point and therefore we had called upon the petitioner to file an affidavit as to the date on which the chargesheet was delivered to him. In the affidavit dated 26.4.1992, the petitioner stated that the chargesheet was served and received by him on 7.3.1989. We had also called upon the opposite parties to produce the relevant file and from the letter No.S/DISC-3/88 dated 9.3.1989, addressed to the Senior Superintendent, D.T.E, Division, Bhubaneswar by the Superintendent-in-charge, C.T.O.Bhubaneswar it is clear that the chargesheet was delivered to the petitioner on 7.3.1989. Therefore the admitted case of the parties is that the chargesheet was delivered on 7.3.1989 and that is the deemed date of initiation of the proceeding. According to the opposite parties, the result for promotion to the post of Upper Division Clerk was published on 10.2.1989. Therefore by such date or even till 6.3.1989, there was no proceeding pending against the petitioner to deprive him of the promotion. If one takes into consideration anything against the petitioner between 10.2.1989 and 6.3.1989 relating to the charges forming subject matter of the disciplinary proceeding, then it will be clearly amount to taking into consideration extraneous circumstances which is not permitted under the law. Therefore we find there is substantial force in the contention of Mr.Deepak Mishra, learned counsel for the petitioner that prior to the initiation of the disciplinary proceeding, the petitioner

should have been given the benefit of the result published on 10.2.1989.

5. We would therefore direct that the petitioner be given promotion to the post of U.D.C. with effect from the date on which his juniors were promoted.

6. As regards entitlement of the arrear emoluments to which the petitioner would be entitled in regard to the promotional post, Their Lordships ~~of the Supreme Court in the~~
(Supra)
case of Union of India v.K.V.Jankiraman were pleased to observe as follows :

"Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated from disciplinary/ criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz. "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum :

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reason for doing so."

Therefore this aspect ^{though} ~~is~~ left for consideration of the
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concerned authority we are sure the authority will not loose sight of the fact that a clear wrong view was taken by the concerned authority in withholding the promotion of the petitioner at the time not warranted under the law. If such a wrong view would not have been taken then the petitioner would have gained the promotional post and would have earned his wages from which he was deprived only because of the wrong view taken by the authority and such wrong view has been set aside by us. We hope the concerned authority would pass ^a reasoned order. Thus the application is accordingly disposed of. No cost.

G. Chaudhury
MEMBER ADMINISTRATIVE

K. T. Acharya
VICE-CHAIRMAN

13/10/92



Central Administrative Tribunal
Cuttack Bench/Cuttack
13.10.92, /BKSahoo/