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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.47 of 1989.

Date of decision : November 1 ,1989.

Pradipta Kumar Das, son of late Prana Kishore Das,
Office of the Director of Census, Janapath, Saheed Nagar,
Bhubaneswar.

... Applicant.

Versus

1. Union of India, represented through
the Registrar General of India,
2-A, Mansingh Road, Kotha House,
New Delhi- 110022.
2. Director of Census Operation/
Deputy Director of Census now in charge,
Janaganana Bhawan, Sahid Nagar,
Bhubaneswar, Dist-Puri.

... Respondents.

For the applicant : M/s. J. M. Mohanty,
A. Swain,
N. K. Mohapatra,
P. K. Mohanty,
P. Das, Advocates.

For the respondents : Mr. Tahali Dalai,
Additional Standing Counsel (Central)

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

JUDGMENT

B.R.PATEL, VICE-CHAIRMAN The applicant in this case was appointed as a Computer in the Directorate of Census Operation, Bhubaneswar on 2.11.1970. He was confirmed in the post in 1979. He was also promoted to the next promotional post of Statistical Assistant on 8.12.1980. He was to cross the Efficiency Bar on 1.12.1984 but he was not allowed to do so. Because there was some enquiry by the Central Bureau of Investigation into the allegation that he made false claim for Travelling allowance for his parents under the Leave Travel Concession. Subsequently, a disciplinary proceeding was instituted against him which was concluded in the year 1986 resulting in a punishment of Censure.

2. The respondents have maintained in their counter that since the Central Bureau of Investigation was enquiring into the allegation prior to 1.12.1984 the applicant could not have been allowed to cross the Efficiency Bar. As the order of the Department was according to the rules and instructions, there is no ground on which the relief sought by the applicant could be granted.

3. We have heard Mr. J. M. Mohanty, learned counsel for the applicant and Mr. Tahali Dalai, learned Additional Standing Counsel (Central) and perused the relevant papers. Mr. Mohanty has maintained that on the due date i.e. 1.12.1984 there was no proceedings either criminal or departmental pending against the applicant and as such there was no justification on the part of the department to deny him the opportunity of crossing the Efficiency Bar. In this connection, he drew our attention to the judgment of the Full Bench of Central Administrative Tribunal, Hyderabad Bench reported in

M.M.W.

1987(4)SIR 46 (K.Ch.Venkata Reddy and others v. Union of India and others). This Full Bench referring to a number of decisions of various High Courts and Supreme Court laid down certain principles which are at paragraph 39. At page 70 of the report the conclusion of the Full Bench have been summarised. The first conclusion of the Full Bench is that consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official. In this case, admittedly, disciplinary proceeding was instituted in the year 1986 i.e. much after 1.12.1984 when the applicant was due to cross the Efficiency Bar. Mr.Dalai referred to the Office Memorandum No.29014/2/75-Estt. (A). dated 6th April, 1979 which says that a Government servant against whom disciplinary proceedings are pending, who is due to cross the efficiency bar prescribed in his time scale of pay, may not be allowed to cross the efficiency bar until after the conclusion of the proceedings. This principle would apply only when disciplinary proceeding is pending on the due date. In the judgment of the Full Bench referred to above it has been held that an officer can be said to be under investigation only when a charge memo under C.C.A.Rules is issued to the official concerned. According to this principle there was no disciplinary proceeding pending on 1.12.1984. It was started subsequently only in the year 1986. As such, the consideration of the case of the applicant to cross the efficiency bar should not have been deferred till the conclusion of the disciplinary proceeding. We, therefore, direct that his case for crossing the efficiency bar should be considered as on due date without taking into account the

initial

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subsequent disciplinary proceeding. In case, he is considered fit to cross the efficiency bar on the due date, without taking into account the disciplinary proceeding, other benefits including financial benefits under the Rules should be given to the applicant.

4. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

N. SENGUPTA, MEMBER (J)



I agree.

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Vice-Chairman

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Member (Judicial)

Central Administrative Tribunal,,
Cuttack Bench, Cuttack.
November 1, 1989/Sarangi.