

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 349 of 1990

Date of Decision: 17.1.1994

Surath Ch. Moharana

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *yes*

2. Whether it be circulated to all the Benches of the *yes*
Central Administrative Tribunals or not ?

1.2.1.1
 MEMBER (ADMINISTRATIVE)

17 JAN 94.

VICE-CHAIRMAN

km, 17.1.94.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No.349 of 1990

Date of Decision: 17.1.1994

Surath Ch. Moharana

Applicant

Versus

Union of India & Others

Respondents

For the respondents

M/s. S. K. Das,
S. B. Jena,
Advocate

For the respondents

Mr.Ashok Mishra,
Sr.Standing Counsel

C O R A M:

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

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

JUDGMENT

MR .K.P.ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to direct Opposite Party Nos. 1 to 3 to reconsider the case of the petitioner for promotion to the post of Chargeman Gr-I on the date on which his juniors i.e. OP Nos.4,5 and 6 have been given promotion.

2. Shortly stated the case of the petitioner is that he was initially appointed as Electrician in the Proof and Experimental Office at Chandipur on 16.1.1963 and he got promotion to the post of Chargeman Gr-II on 5.4.1993. On 15.9.1988, the Departmental Promotion Committee met to consider the cases of ~~the~~ several officer for promotion to the post of Chargeman Gr-I. The petitioner was superseded by his juniors, i.e. OP Nos. 4 to 6. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the case of the petitioner was duly considered, but he having been found to be unsuitable promotion was not given to him to the post of Chargeman Grade-I. Hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.A.K.Mishra, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel.

5. Admitted case of the parties before us is that the case of the petitioner was duly considered by the Selection Committee to adjudicate his suitability. Law is well settled that an employee cannot claim promotion as a matter of right, but his case has to be considered to adjudicate his suitability and if not considered the process of selection becomes null and void. In case a particular employee has been found to be unsuitable, such opinion of the DPC can be interfered with only when there is a case of malafide or bias. In the present case no plea of malafide or bias has been put forth by the petitioner. Therefore, we cannot but being slow in laying our hands for interference relating to the opinion of the members of the Selection Committee. Mr.A.K.Mishra, learned counsel for the petitioner submitted that an appeal preferred by the petitioner contained in Annexure-1 has been rejected and though the petitioner vide Annexure-5 dated 22.2.1990 had asked for a personal hearing, this benefit was not given to the petitioner and without giving a personal hearing to the petitioner his appeal has been dismissed. In the case of *W.*

Ramachander vs. Union of India and Others reported in AIR 1986 SC 1173 Their Lordships ruled that the Railway Board should have given a reasoned and speaking order which would invoke the confidence of the employees and it was incumbent upon the Railway Board to give a personal hearing to the delinquent employee, who had asked for a personal hearing. Their Lordships were pleased to observe as follows:

"Professor de Smith at Pp. 242-43 refers to the recent greater readiness of the Courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal, (1981)2 SCR 533: (AIR 1981 SC 818) although the majority held that the expression "that immediate action is necessary" in S.18AA (1)(a) of the Industries (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the audi alteram partem rule, Chinnappa Reddy, J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the ~~rules~~ of the rules of natural justice since the majority in Tulsiram Patel's case (AIR 1985 SC 1416) unequivocally lays down that the only stage at which a Government servant

gets a reasonable opportunity of showing cause against the action proposed to be taken in regard to him i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position it is of utmost importance after the forty Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given".

6. Following the view taken by the Hon'ble Supreme Court in the case of Ramchander Vs. Union of India and others (supra) we would direct the petitioner to file another appeal before the competent authority and such appeal should be disposed of after giving a personal hearing to the petitioner. The delay in filing the appeal is condoned. The appeal should be filed by the petitioner within 30

days from today and within 60 days therefrom, the appeal should be disposed of by the competent authority after giving a personal hearing to the Petitioner and a reasoned order should be passed.

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

.....
.....
Member(Administrative)

17 JAN 98.

.....
.....
Vice-Chairman

17-1-94.

Central Administrative Tribunal,
Cuttack Bench,
Cuttack,
B.K.Sahoo/17.1.94.