

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.491 of 1990

Date of Decision: 6.11.1992

Gobinda Chandra Patra Applicant

Versus

Union of India & Others Respondents

For the applicant M/s. Devanand Mishra,
Deepak Mishra,
R.N.Nani, A. Deo,
B.S.Tripathy,
Advocates

For the respondents Mr. P. N. Mohapatra,
Standing Counsel
(Central Government)

C O R A M:

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

AND

THE HONOURABLE MR. K. J. RAMAN, MEMBER (ADMINISTRATIVE)

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? No
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, The petitioner, an employee under the Telecommunication Department has a grievance relating to pay scale claimed by the petitioner under the biennial cadre review scheme. Hence this application has been filed with a prayer to issue appropriate directions to the opposite parties to give him such benefit.

2. In their counter the opposite parties maintain that the petitioner being under proceedings for having misc-conducted himself, the petitioner was rightly not given such benefit. The case being devoid of merit is liable to be dismissed.

3. We have heard Mr.Deepak Mishra, learned counsel for the petitioner and Mr.P.N.Mohapatra, learned Standing Counsel appearing for the opposite parties.

4. Mr.Deepak Mishra, learned counsel contended that at the relevant time there was no dirty linen pending against the petitioner and therefore the petitioner should have been given the benefit of the biennial cadre review scheme. Mr. Mishra further submitted that the rules and procedures governing promotions have no relevance to the extra benefit awarded to the different government employees under such scheme; and therefore on completion of services of 26 years, the petitioner should have been given automatically the benefit conferred under the said scheme.

5. On the other hand Mr.P.N.Mohapatra, learned Standing Counsel basing on the contents of Annexure-R/2, which contains conditions laid in the scheme submitted that it is futile

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to urge that automatic promotions are to be given. An employee would receive benefit under particular orders of the Government only when he is found ~~found~~ to be suitable to receive such benefit. It was further submitted by Mr. Mohapatra that the contention raised by Mr. Mishra that there was no dirty linen pending against the petitioner is not correct. According to Mr. Mohapatra, the scheme came into ~~enforce~~ on 16.10.1990 as would be unfolded from Annexure-R/2. On a reading of the different conditions etc. embodied in the scheme contained in Annexure-R/2, it would be found that the benefit to be awarded to the employees is prospective and not retrospective. Prior to 1990, the petitioner ~~was under proceeding~~. Chargesheet had been delivered and therefore proceeding had been initiated. In such circumstances rightly the petitioner was not given the benefit.

6. In the case of Union of India and others vs. K.V.Janaki Raman reported in A.I.R. 1991 Supreme Court 2010 Their Lordships while approving the dictum laid down by the Full Bench of the Central Administrative Tribunal pronounced in the case of K.C.H.Venkata Reddy vs. Union of India & Others have laid down that the ~~deemed~~ date of initiation of a disciplinary proceeding is the date of delivery of the charge sheet. There was no dispute presented before us that chargesheet was delivered to the petitioner much prior to October, 1990. Therefore, there is no escape from the conclusion that the petitioner was under proceeding by the date when the scheme came into force and the undisputed position is that till the year 1992, the proceeding had not been disposed; which has been disposed of very recently ordering removal of the petitioner from service,

which is also under challenge before this Bench forming subject matter of Original Application No.510 of 1992. We take no judicial notice of the fact of punishment awarded to the petitioner so far as the present case is concerned, because of obvious reasons, but we are bound to take judicial notice of the fact that prior to 1990 the petitioner being under proceeding, rightly the competent authority did not give him promotion or benefit of the scheme. In R/2, at many places the word 'promotion' has been used. Therefore we are of the opinion that rules of procedure ^{for promotion} has to be adopted while adjudicating the suitability of a particular officer and giving him promotion. Hence while accepting the contention of Mr. Mohapatra that suitability of a particular incumbent has to be adjudged, we cannot lose sight of the fact that in the case of K.V.Janki Raman (SUPRA) Their Lordships have also approved of the view taken in Venkata Reddy's case that sealed cover procedure has to be adopted. Therefore, while considering the cases of other incumbents, who were in par with the petitioner in all other respects, the case of the petitioner was bound to be considered. No body has a right to claim promotion, but every Government servant has a right to urge that his case must be considered. While considering his case, the sealed cover procedure should have been adopted and the view of the competent authority regarding the performance of the petitioner during the relevant period should have been recorded and kept in a sealed cover. Such procedure admittedly not having been adopted, we cannot but find that there has been a clear illegality.

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7. Therefore we would direct that sealed cover procedure be adopted and the competent authority may record its views regarding the performance of the petitioner during the relevant period and the same be kept in a sealed cover awaiting the final result of the Original Application No. 510 of 1992.

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

W.M.A
MEMBER (ADMINISTRATIVE)

K. A. S. S.
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VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 6.11.1992/ B.K. Sahoo

