

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

Original Application No.13 of 1991

Date of decision - October 4, 1993

Ch. Maheswar Rao ... ... Applicant  
Vs.  
Union of India & Others ... Respondents

**(For Instructions)**

1. Whether it be referred to the reporters or not? ↗
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? ↗

(H.RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)  
04 OCT 93

(K. P. ACHARYA)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO : 13 OF 1991

DATE OF DECISION - OCTOBER 4, 1993

Ch. Maheswar Rao	...	...	Applicant
Vs.			
Union of India & Others	...	...	Respondents
For the Applicant	...	M/s. S. K. Dash, P. R. Panda, P. R. Barik, Advocates	
For the Respondents	...	Mr. Ashok Mohanty, Standing Counsel (Rly.)	

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C O R A M : -

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

A. N. D

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

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J U D G M E N T

K. P. ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the Annexure 5 which is an order passed by the competent authority cancelling the examination held for the vacancy arising in the cadre of Commercial Inspector Grade-III.

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2. Shortly stated the case of the petitioner is that he was initially appointed in the year 1975 as a Booking Clerk. Ultimately, in course of time, he was promoted to the post of Commercial Controller and he is now functioning in an Extra Cadre post of Commercial Controller. An advertisement was published inviting applications from different candidates to fillup the post of Commercial Inspector (LR). Petitioner was one of the applicants. According to the Petitioner, he had done very well in the Examination but unfortunately examination itself was cancelled and therefore, the results were not published. Hence this application has been filed with a prayer to quash the order contained in Annexure 5 dated 2nd November, 1990.

3. In their counter, the Opposite Parties maintain that due to certain irregularities namely persons who were ineligible for making applications including the petitioner, had filed applications and those applications were entertained and ineligible persons were allowed to take the examination. Therefore, there being a clear irregularities in this regard, the examination was cancelled. In a crux it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

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3. We have heard Mr.S.K.Dash learned counsel appearing for the petitioner and Mr.Ashok Mishra learned Senior Standing Counsel (Central) for the Opposite Parties.

Mr.Dash learned counsel appearing for the petitioner seriously challenged the order contained in Annexure 5 dated 2nd November 1990 on the ground that the petitioner should not suffer on account of the laches committed by the authorities. According to Mr.Dash learned counsel appearing for the petitioner once the petitioner's application has been entertained and the petitioner has been allowed to sit for the examination, no adverse order should have been passed against the petitioner cancelling the examination.

On the other hand Mr.Ashok Misra learned Senior Standing Counsel (Central) vehemently contended that the authority has a right to rectify administrative errors when committed. Since the authority is not debarred from correcting the administrative errors, after it came to the notice of the concerned authority that has been committed to the extent of permitting ineligible candidates to apply, the concerned authority rightly cancelled the examination and therefore, the order contained in Annexure 5 should not be unsettled - rather it should be sustained.

4. We have given our anxious consideration to the argument advanced at the Bar. We think there is substantial force in the contention of Mr. Ashok Misra learned Senior Standing Counsel (Central) that an administrative authority has always the right of correcting the administrative error. Undisputedly, the petitioner was not eligible to make an application for the post of Commercial Inspector and therefore, he was not eligible to take the examination. It was contended by Mr. Dash learned counsel for the petitioner that an oral assurance has been given to the petitioner that his application would be entertained and his suitability would be adjudged after he turns out successful in the examination. We cannot act on an Oral <sup>communication</sup> ~~permission~~. We have to go <sup>by</sup> the documents and the spirit of the law. In case any Oral <sup>assurance</sup> ~~permission~~ has been given to the petitioner that cannot work out against the administrative authority. Therefore, we are not prepared to accept the statement made on behalf of the petitioner. It was next contended by Mr. Dash learned counsel for the petitioner that the promotional avenues for the petitioner has been completely closed. As indicated in the rules, the petitioner is bound to retire as a Commercial Controller. We cannot help the situation. The Petitioner had accepted the appointment to the post of Commercial Controller with eyes open and therefore, it is too late for <sup>in</sup> the day to agitate that

there is no promotional avenue open for the petitioner. Mr. Dash learned counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1988 SC 1033 (Raghunath Prasad Singh V. Secretary, Home (Police) Department, Government of Bihar and others). At paragraph 4 of the judgment, Hon'ble Mr. Justice Ranganath Mishra (As my Lord the Chief Justice of India then was) speaking for the Court observed as follows :

"Before we part with the appeal, we would like to take notice of another aspect. On course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the Wireless organisation within six months from today by appropriate amendments of Rules".

5. In this connection we cannot give a specific direction to the Government but we hope and trust the Government will take into consideration the above quoted observations of Their Lordships and <sup>Wards</sup> <sub>to</sub> take further steps as deemed fit and proper.

6. In view of the aforesaid discussions and reasonings, we find no merit in this application which stands dismissed.

6. There would be no order as to costs.

1.3.1993  
MEMBER (ADMINISTRATIVE)

04 Oct 93

VICE-CHAIRMAN

4/10/93

Central Admn. Tribunal  
Cuttack Bench, K. Mohanty  
4th October, 1993.

