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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No.151 of 1991

Date of decision: November 2, 1994.

Bipin Bihari Mohapatra ...

Applicant.

Versus


Union of India and another ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *no*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)


(D.P. HIREMATH)
VICE-CHAIRMAN.

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CORAM:

THE HON' BLE MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN

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THE HON' BLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN.)

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Bipin Bihari Mohapatra,
aged about 54 years, son of
late Raghunath Mohapatra, Asst.
Postmaster, Koraput HO,
Pin-754020, Dist.Koraput.

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Applicant.

By Advocates ... M/s.P.V.Ramdas,
B.K.Panda,
D.N.Mohapatra.

Versus

1. Union of India, represented by the
Chief Postmaster General, Orissa Circle,
Bhubaneswar-751001, Dist.Puri.
2. Senior Superintendent of post Offices,
Koraput Division, Jeypore-764001,
Dist.Koraput.

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Respondents.

By Advocate Mr.Aswini Kumar Mishra,
Sr.Standing Counsel (CAT)

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ORDER

D.P.HIREMATH, V.C., Heard both the learned counsel.

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2. The applicant working as a Postal Assistant joined service as such on 25.5.1957. When Departmental Promotion Committee meeting was held on 20.11.1981, he was approved for promotion to the higher grade of Lower Selection Grade with effect from 1.8.1983.

In the meanwhile the applicant was facing certain disciplinary proceedings and on 21.4.1980, punishment imposed on him was stoppage of increments for 3 years. This punishment in fact was in existence and in currency when the approval of Departmental Promotion Committee was made. That punishment expired on 31.7.1983. There was again another punishment imposed in another disciplinary proceedings on 1.8.1983 in which punishment imposed was stoppage of increment for 9 months. That again expired on 30.4.1984. Even though there was no other impediment ⁱⁿ ~~on~~ his way for promotion the fact that he was undergoing punishment till 30.4.1984 weighed with the respondents and ultimately he came to be promoted on 1.5.1984 soon after the expiry of the second punishment.

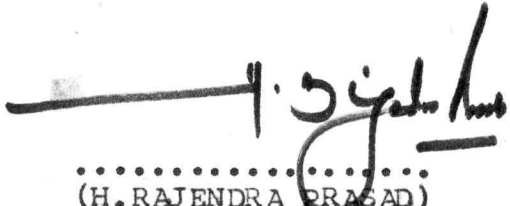
3. The applicant herein has prayed that his promotion should become effective from 1.8.1981 in view of the Departmental Promotion Committee's recommendation.

4. The application is of course opposed on the ground that when the punishment was in currency the applicant could not have been promoted and soon after the second punishment expired, he was so promoted. Though the learned counsel for the applicant relying on a decision of the Chandigarh Bench of the Central Administrative Tribunal, submits that administrative instructions barring promotion during currency of penalty of stoppage of increment are violative of Articles 14 and 16 of the Constitution of India, learned counsel for the respondents


invited our attention to a decision of the Supreme Court in the case of Union of India and others vrs. K. Krishnan reported in AIR 1992 SC 1398. The facts in the case before the Supreme Court ^{were} ~~are~~ similar to the facts of the instant case. Though Rule 157 of the P & T Manual, Volume III inter alia provides that even where the competent authority considers the candidate fit for promotion inspite of punishment in a departmental proceedings the promotion shall not be given effect to during the currency of the penalty, The validity of this provision came before the Supreme Court in the aforementioned case. Their Lordships observed that there is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increments, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a Government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the Government servant concerned to double jeopardy. Therefore, the Supreme Court did not find any merit in the argument that there is no justification or rationale behind the policy nor did they see any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the

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Constitution of India. On the other hand, they reiterated ~~that~~ to punish a servant and at the same time to promote him during the currency of the punishment may justifiably be termed as self-contradictory. It is pertinent to note here that the Supreme Court over-ruled the decision of the Chandigarh Bench(supra). In view of this clear position of fact and law, there is no merit in this application and the same is liable to be dismissed and is dismissed. No costs.


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(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

02 Nov 96


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(D. P. HIREMATH)
VICE-CHAIRMAN.

Sarangi.