

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 218 of 1991

Date of Decision: 14.7.93

Ramesh Chandra Nayak

Applicant (s)

Versus

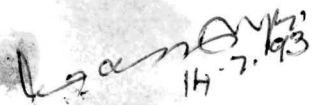
Union of India & Others

Respondent (s)

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(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.


14-7-93
VICE-CHAIRMAN


MEMBER (ADMINISTRATIVE)

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6
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Respondent (s)

For the applicant:

M/s.S.K.Nayak-I
A.K.Baral
J.K.Khuntia,
Advocates

For the respondents

Mr.Ashok Mishra
Sr.Standing Counsel
(Central Government)

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C O R A M:

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

AND

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

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7
JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN). Briefly stated, the petitioner was recruited in 1975 by a due process of selection as Field Assistant(Technical). In 1985, he was again selected and posted as Sr.Field Assistant(Tech) in A.R.C.,Doom Dooma. Also, in 1989, he qualified in the test held for promotion to Asstt.Field Officer(Tech).

2. The petitioner contends that since 1986 he has been performing the duties expected of Asstt.Field Officer(Tech), and also of the Deputy Field Officer(Tech), both of which are promotional posts and carry higher pay. His grievance is that, although he duly qualified in the test for promotion to Asstt.Field Officer(Tech), and despite the fact that he has been for long performing the duties expected of incumbents occupying two ranks higher, he continues to be Sr. Field Assistant(Tech) without the advantage of promotion or the benefit of higher pay.

3. The learned Standing Counsel for the respondents submitted that: the application is vague; that no specific order has been challenged therein; and the petition, being in the nature of money claim, attracts limitation under the common law as well as of Section 21 of the Administrative Tribunals Act.

4. It is, however, conceded by the respondents that the applicant duly qualified in the test for promotion to Asstt. Field Officer(Tech), admittedly a non-selection post covering 50% of the available posts. It was also mentioned that the petitioner was not senior enough in the cadre of Sr. Field Assistant(Tech) to be promoted to Asstt.Field Officer(Tech),

T. Singh
14/7/93

and that there were others, similarly qualified and senior to the applicant, who figured in the list of successful candidates but could not be promoted for want of vacancies.

5. It was further pointed out that the duties and responsibilities of a Senior Field Assistant (Tech), Assistant Field Officer (Tech) and Deputy Field Officer (Tech) are quite clearly marked and distinct from one another, and that the responsibility which is cast on, and skills that are expected of the incumbents are clearly higher as they climb upwards in rank. It was the submission of the respondents that the petitioner had never in fact been asked to discharge the functions and duties of Assistant Field Officer (Tech) which is a higher post, leave alone a Deputy Field Officer (Tech) which is still higher on the hierarchical ladder.

6. A doubt arose as to why and how exactly - if the assertion of the petitioner is true - was he discharging the duties other than what was expected of his cadre and rank, especially in view of his claim that he happens to possess the necessary skills and qualifications of wireless telegraphy, which, he says, is a pre-requisite for all of such duties. It was explained in reply that the skill possessed by the applicant was in Morse telegraphy, which happens to be the most elementary mode of telecommunications and which, in any case, is required to be acquired by the Sr. Field Assistant (Tech), whereas the Assistant Field Officers and Deputy Field Officers are expected to acquire higher & more complicated skills. The crux of the matter is that while a Senior Field Assistant is required to possess no more than a mere proficiency in Morse telegraphy, ^{who occupy the} other two higher

14/7/93
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9

positions are expected to have a ^{with} through familiarity^o and an ability to operate equipment of greater sophistication & complexity, including electronic gadgets, - which the petitioner is understandably unable to do since he received or was imparted no training of this type.

7. It was further explained that, interestingly, the applicant was posted to A.R.C., Charbatia, from Doom Dooma in fulfilment of his persistent pleas of ill-health. And, since no post of Sr. Field Assistant was physically available in Charbatia to absorb him, he was, by way of a specially compassionate gesture, accepted and adjusted against a higher post of Assistant Field Officer under the provisions of Rule-77 of General Financial Rules of the Government of India. This, it was added, was in itself a substantial concession inasmuch as there appeared to be no other way in which the applicant's recurring requests for a posting to Charbatia could have been accommodated. It is worth noting in this context that the official was merely 'adjusted' against the higher post, but the nature, scope and character of his duties remained unaltered and that he has all along been discharging^s the duties of his original post, viz., Sr. Field Assistant (Technical).

8. According to the petitioner, while he (and some of his colleagues) were awaiting promotion after having qualified in the promotional test, the authorities took a decision to fill up the vacant post of Assistant Field Officer (Tech), first, by bringing on deputation officials from the Special Security Bureau, and, subsequently, ^{by} absorbing them on regular basis. This, it was alleged, was done on certain exterior

14/7/93

T. S. Singh

reasons, and was, therefore, untenable and illegal. Furthermore according to the applicant, he, and others like him, who were waiting for promotion, were given to understand that the personnel so brought on deputation from the Special Security Bureau would be returned to their original posts in near future, and that the applicant (and his colleagues) would be promoted soon in their place. It was also added that these officials were given an understanding that they would be entitled to the same pay and allowances as that of an Asstt. Field Officer (Tech) and that the promised promotion failed to materialise due to some ^{unspecified} reason. It was averred that the applicant thereupon represented to the Director, A.R.C., New Delhi, in March 1991 (Annexure-2 to the petition) and that this representation remains unattended till this day.

9. The petitioner finally claimed that, from the time of his posting from Doom Dooma to Charbatia in August, 1988, he had performed the duties of Deputy Field Officer - which, as brought out earlier, is a post which is two rungs higher to his own. In support of this he has produced specimen copies of duty roster (Annexure-2/A series to the petition) of A.R.C., Charbatia. He emphatically pleaded that since there is no post of Sr. Field Assistant (Tech) at Charbatia, he should be deemed to have been discharging the duties of Deputy Field Officer. He, therefore, claimed (1) adhoc financial benefits that would accrue to a Deputy Field Officer and (2) to extend on regular basis, the pay scale of Deputy Field Officer to him.

10. In course of the hearing of this case, the following points emerged which adequately explain the situation with

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14/7/93

regard to the pleadings of the petitioner:

- 1) The petitioner was posted to Charbatia at his own request. (This fact was omitted to be mentioned in his petition as also during the hearing of the case on his behalf)
- 2) He was accommodated against a higher post for want of a suitable vacancy in the cadre of Senior Field Assistant at A.R.C., Charbatia. This action is covered by regulations.

Adjusting the petitioner against a higher post was an act of grace and a gesture of compassion on the part of the authorities concerned.

- 3) The petitioner duly qualified in the promotional test to Assistant Field Officer (Tech) but did not possess adequate seniority to be offered a promotion (a) for want of vacancies, and (b) due to the presence of similarly successful officials who were senior to him.
- 4) The petitioner was not asked to perform the duties of Assistant Field Officer, or Deputy Field Officer, for which he had neither the requisite skill nor an appropriate rank, ^{indeed} nor the necessary seniority.
- 5) The deputation of personnel from Special Security Bureau to A.R.C., Charbatia, in public interest was permissible and entirely legitimate. There is nothing to suggest that they were brought to A.R.C. Charbatia, on any "extraneous consideration" as alleged by the petitioner.
- 6) No understanding or assurance was given either to the petitioner or to any of his colleagues that the personnel brought thus on deputation would be repatriated to their parent unit, and/or that the petitioner, or any of his colleagues, would be promoted in their place. The petitioner has not produced any proof of such undertaking by the

T. S. Singh
 14/7/93

12

authorities.

- 7) The skills required of Assistant Field Officer and Deputy Field Officers are of a distinctly higher order of specialisation, and the petitioner was ~~neither~~ trained in any of these areas nor does he presumably possess any special aptitude or natural talent to operate sophisticated communication equipment without adequate or proper training. The ability merely to operate Morse is an ability of the most basic kind, a pre-requisite for Sr. Field Assistant, but clearly inadequate for higher technical jobs involving greater responsibilities. (Incidentally it may be mentioned that Morse techniques are quite nearly out-dated and are being replaced everywhere as speedier and more reliable means of telecommunications are available now.

11. The claim made by the petitioner - of having performed the duties of post^s higher in rank - is based almost solely on the Duty Roster for Operational Staff, which according to the respondents, is ^a mere disposition-and-deployment record of officials on different duties, during a particular period.

12. Judged by the above arguments, it is clear that the petitioner, who was posted to A.R.C., Charbatia, in response to his own request, is not senior enough to be promoted, nor does he possess the requisite ^{attainments} for the performance of higher duties. His contention that he has been discharging the duties of posts, which are two ranks above his, is not corroborated by any proof except a Duty Roster of limited relevance and dubious value. It is obvious that the petitioner cannot have any complaint against

14/7/93
F. Singh

officials from a sister organisation being brought on deputation, or against their subsequent absorption, as they are in no way ineligible or unqualified. And since the deputations or the eventual absorption do not in any way ^{merited or deserving} injure his interests in any manner, Unless he were qualified and senior enough to be promoted (It has been shown that he was not qualified or senior). There is thus no force or merit in any of the pleadings of the petitioner, and he is not really entitled to any of the reliefs sought for. The petition is, therefore, disallowed without cost.

13. Incidentally, we are constrained to observe that the petitioner chose, and was actually able, to produce copies of certain confidential documents in support of his contention. This is perhaps reflective of an apparent laxity in the organisation as regards confidential and sensitive data and documents. We need scarcely add that a greater ^{concern and} and higher vigil is essential if only to guard against a possible unauthorised outflow of secret information

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VICE-CHAIRMAN

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MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 14.7.1993/ B.K. Sahoo

13 JUL 93
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