

7

2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK



ORIGINAL APPLICATION NO: 226 OF 1991

Date of Decision : 6.10.93

K.A. Ahamedy

...

Applicant

Versus

Union of India & Others ...

Respondents

(FOR INSTRUCTIONS)

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

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

06 OCT 93

*Yes 6/10/93.*  
(K. P. ACHA YA)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH;CUTTACK



Original Application No.226 of 1991

Date of decision :

K.A.Ahamedy ... Applicant

Versus

Union of India & Others ... Respondents

For the Applicant ... M/s.Devanand Misra,  
Deepak Misra,  
R.N.Naik, A.Deo,  
B.S.Tripathy,  
P.Panda, Advocates

For the Respondents ... Mr.P.N.Mohapatra,  
Additional Standing Counsel  
(Central)

-----  
CORAM:

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

AND

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

& \_\_\_\_\_

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 for a direction to the Opposite Parties 1 to 3 to treat the petitioner as senior to Opposite Party Nos.4 to 20 and accordingly fix his seniority with effect from 1980 in the grade of Upper Division Clerk.



2. Shortly stated the case of the petitioner is that he was appointed to the grade of Upper Division Clerk by the Subordinate Service Commission and was posted in the office of the Central Excise and Customs, Indore Collectorate on 12th March, 1979 and thereafter he was transferred to Bhubaneswar Collectorate and joined in the said office as an Upper Division Clerk on 28th August, 1980. The Petitioner appeared in the Departmental Examination for promotion to the grade of Inspector in the year 1981 and turned out successful. According to the Petitioner, Opposite Party Nos. 4 to 20 though juniors to the Petitioner in the grade of Upper Division Clerk were given promotion to the rank of Inspector/ DOS-II over the head of the petitioner thereby superseding the claim of the petitioner. According to the decision taken by the Board, the Post of Inspector shall be filled up from Upper Division Clerks after completion of five years service in the grade of Upper Division Clerks. But this rule was observed more on the side of the breach than compliance while ordering promotion of Opposite Party Nos. 4 to 20 over the head of the petitioner. Due to such illegal action on the part of the Opposite Parties, the petitioner has become a sufferer and even though he had made a representation on 11th July, 1990, no orders have been passed thereon. Therefore, this application has been filed with the aforesaid prayer.



3. In their counter, the Opposite Parties, maintain that the petitioner while being transferred from Indoor to Bhubaneswar had given a written undertaking that as per the rules, his seniority will go down below the list and he would not claim seniority over others and accordingly the petitioner is junior to Opposite Party Nos. 4 to 20. That apart, the petitioner had been selected for the post of cost recovery Inspector and was deputed to IMFA but in course of time, due to shortage of power, factory of the Indian Metal and Ferro Alloys at Therubali was stopped and hence the petitioner was withdrawn from the said post with effect from 1.10.1986 and accordingly the petitioner was reverted to the post of an Upper Division Clerk. That apart the petitioner had filed an application before this Bench claiming regularisation of his services in the post of Inspector with effect from 1980 and had challenged the reversion order as illegal. By the judgment dated 27th February, 1992, the Tribunal had dismissed the case and had negatived the contention of the petitioner claiming promotion since 1984 and therefore, resjudicata operates.

4. We have heard Mr. B. S. Tripathy learned counsel for the Petitioner and Mr. P. N. Mohapatra learned Addl; Standing Counsel (Central). From the records we find that the petitioner had given an undertaking that his position in the seniority list would be down below as the transfer was made on his own request. Apart from the undertaking



4

given by the petitioner, he is bound to be placed down below the list according to the rules. In the judgment passed in Original Application No. 353 of 1986 dated 27th February, 1992 (in which one of us namely Acharya J. was a party to the judgment) held that the petitioner's seniority has to go down below the list as he had been transferred on his own request from Indoor giving a declaration that he would be treated as a new entrant in the grade of Upper Division Clerk and his seniority would be below the temporary Upper Division Clerks in the Central Excise and Customs, Bhubaneswar and apart from the above, reversion of the petitioner from the post of Cost Recovery Inspector which was an ad hoc promotion was sustained by the Bench. Therefore, we find there is substantial force in the contention of Mr. P. N. Mohapatra learned Additional Standing Counsel (Central) that res judicata operates against the petitioner as this substantial issue had already been adjudicated by this Bench. Therefore, we find no merit in this application which stands dismissed. No costs.

.....  
Member (Administrative)

06 OCT 93

.....  
Vice-Chairman

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 6.10/1993/ M. Mohanty