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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 288 of 1991

Date of Decision: 24.6.1994

A.K. Mohanty

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(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.

  
VICE-CHAIRMAN

  
MEMBER (ADMINISTRATIVE)

24 JUN 94

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Union of India & Others

Respondents

For the applicant

M/s.Ganeswar Rath  
P.K.Mohapatra  
A.K.Patnaik  
J.C.Sahoo,  
Advocates

For the respondents

Mr.Aswini Kumar Mishra,  
Standing Counsel (Central)

C O R A M:

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

AND

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

JUDGMENT

MR.H.RAJENDRA PRASAD, MEMBER (ADMN): Shri Akshaya Kumar Mohanty, Assistant Audit Officer, P & T Telecom Office, Cuttack, is the applicant in this case. In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, Shri Mohanty questions his non-selection as Audit Officer and the selection of Res-3, Shri S.Palit, for the same post.

2. Shri Akshaya Kumar Mohanty joined the service as UDC in P & T Audit Office, Cuttack, on 14.9.70, was promoted to Section Officer on 6.10.75, and as Asstt.Audit Officer on 1.3.84. Shri Palit entered the department as LDC in the same office on 1.5.70 and promoted to Section Officer from 3.3.76. The applicant, therefore, claims seniority over the said



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respondent in the cadre of Auditor, Section Officer and Assistant Audit Officer. In the last relevant Gradation List in the feeder cadre, the applicant's name figured at 73 while the said respondent was shown at 78. On 1.1.1991 the Director General/Principal Director of Audit (P&T) issued an order [No.272/Control/16 (A) (8) 90-I] promoting Shri Palit to the post of Audit Officer w.e.f. 7.1.91. The grievance of the applicant is that although he was throughout senior to Shri Palit, he was overlooked for promotion without justification. The applicant prays for as many as seven reliefs. The sum of the reliefs claimed is that he should be considered for promotion to the post of Audit Officer from 7.1.91 on the basis of his seniority and meritorious performance in place of Shri Palit who was promoted from the same date.

3. Shri Mohanty cites : consistently high achievement in the work-sphere; cash awards given to him for his contribution to CAG's report; uniformly impressive gradings in the CRs - in support of his claim.

4. On being denied promotion to the post of Audit Officer, the applicant submitted a representation setting forth his grievance on 16.1.91 but did not receive any reply. Hence this application. Shri Mohanty received a reply subsequently, turning down his plea, in October, 1991, and was also later promoted in June, 1991. However, the reply, according to the applicant, was a non-speaking order, and the subsequent promotion does not undo the



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original injury of non-selection earlier.

4. We have carefully scrutinised the facts relating to each of the aspects or issues raised by the applicant with reference to the record made available to us, and after taking note of the respondent's replies where necessary or acceptable. We proceed now to briefly deal with them.

5. The applicant has cited certain cash incentives given for his contribution to <sup>a</sup> specific item of work. While such awards may well be taken into account in assessing the ~~over~~-all performance of an official during a particular period, they do not by themselves constitute valid or acceptable yardsticks for claiming over-all excellence meriting accelerated promotions. We, therefore, accept the reply of the respondents in this regard.

6. The applicant has questioned the inclusion of Shri Palit in the panel constituting the zone of selection. He calculates the number of existing vacancies as 53. He also questions the procedure followed by the DPC in assessing the relative merits of the candidates. We do not find much merit in the first two contentions. We find that the number of vacancies was in fact correctly computed by the respondents. This is based on sound and verifiable proof, while the figure quoted by the applicant is based on inaccurate surmise. We hold that 36 vacancies, as calculated by the respondents, is correct in every respect.

6. Similarly, the inclusion of Shri Palit in the zone of selection is not incorrect in any way.

7. We have also scrutinised the claims of the applicant concerning his performance as projected by <sup>him with an</sup> actual



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reference to his ACRs pertaining to five years preceding the meeting of the DPC. It needs to be stated rightaway that the applicant's claims as regards his grading are <sup>founded</sup> clearly on presumption since he could not possibly have had access to these confidential documents, once he had completed Parts I and II of the forms and submitted them to the Reporting Officer. This part of his argument is, therefore, rejected wholesale as unsubstantiable and, ipso facto, unwarranted and untenable. The applicant also presumes the existence of a certain bias on the part of the Reviewing Officer by favouring Shri Palit and damaging his own record. This, again, is pure guess-work and an unproven, and therefore, unmerited insinuation. Actually, we are quite satisfied that the Reviewing Officer in this case has been quite even-handed in his approach respecting the Reporting Officer's remarks on the applicant as well as <sup>on</sup> Res.3.

Whatever norms and standards the Reviewing Officer chose to apply for assessing the performances while reviewing the remarks of the Reporting Officer, <sup>these</sup> are uniform as well as non-discriminatory in both the cases. We hold, therefore, that no bias or prejudice is evident in the approach of the Reviewing Authority in favour of or against either of the two officials.

8. Against the above back-drop, we scrutinised, once more, the ACRs of both officials very closely and carefully. In fact, the remarks against every item in the Records of both the officials were very closely examined. The effort revealed the fact that there is absolutely nothing to choose between the two : they share the same



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strengths, display the same traits in identical measure, are shown as having given an equal and mutually undistinguishable account of themselves, as seen from their CRs. Judged purely by these documents, there is, therefore, absolutely not a single factor, characteristic, achievement or failing which could place one above, or apart from, the other. Both are absolutely alike and equal in calibre and performance. Such being the situation, we were dismayed to find that the DFC had erred slightly in assessing the general suitability of the two officials. The lower over-all grading accorded to the applicant does not seem to be warranted by the entries relating to his work

as reflected in the CRs, vis-a-vis those of Respondent-3. Such being our finding on this important facet of the case, the question naturally arises as to why, or how, an official who is acknowledgely junior should have been promoted in preference to, and earlier than, his own immediate senior? This is quite obviously unjustified, and the resultant wrong to the applicant has to be rectified in the interests of justice.

9. In the light of the discussion and findings in the foregoing paras, we hereby quash the orders contained in Director-General/Principal Director of Audit (P&T) Office Order No.272/Control/16(A)(8)90-I dated 1.1.1991, only insofar as they relate to Shri S.Palit, Assistant Audit Officer, P & T Audit Office, Cuttack. We hold too that the applicant in this case, Shri Akshaya Kumar Mohanty, is eligible and entitled to have his name included in



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the said orders in place of Respondent No.3 on the ground that he, the applicant, is fully as meritorious as Shri Palit but is also senior to him in the cadre of Section Officer. Shri Akshaya Kumar Mohanty is deemed to have been promoted to the post of Audit Officer with effect from 7.1.1991.

10. Necessary administrative measures and all follow-up action to implement this direction, including disbursement of consequential monetary benefits, will be completed within sixty (60) days from the date of receipt, by Respondent No.2, of a copy of the judgment.

11. Thus the application is disposed of. No costs.

*B.K. Sahoo*  
24.6.94  
VICE-CHAIRMAN

*[Signature]*  
MEMBER (ADMINISTRATIVE)

24 JUN 94

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 24.6.1994/B.K. Sahoo

