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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 442 of 1991

Date of Decision: 17. 11. 1993

S. K. Mukherjee

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 No., the Central Administrative Tribunals or not ?

KAM 17-XI-93

VICE-CHAIRMAN

T. S. J. [Signature]
MEMBER (ADMINISTRATIVE)

17 Nov 93

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Respondents

For the applicant

M/s. J. Das
B. S. Tripathy
B. K. Sahoo
K. P. Misra
S. Mallick
S. K. Mishra
P. K. Mohapatra,
Advocates

For the respondents

Mr. Aswini Kumar Mishra
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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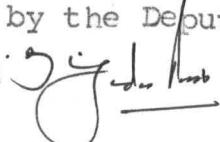
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JUDGMENT

MR. N. RAJENDRA PRASAD, MEMBER (ADMN) : In this application, Shri S.K. Mukherjea, Caretaker, Postal Accountants Office, Cuttack, has questioned the rejection of his representations, by the Deputy Director of Accounts (Postal), for exempting him from appearing at the confirmatory examination prior to promotion to the cadre of Senior Accountants, and has sought a direction to be issued to the respondents: to uphold his claim for such an exemption; to declare him eligible for promotion from the date his immediate junior in the Junior Accountants was promoted as Senior Accountant; and to uphold the validity of the orders earlier issued by the respondents declaring him to be a Junior Accountant with effect from 1st April, 1976.

2. Shri S.K. Mukherjea was appointed as Caretaker in the Office of the Deputy Director, Audit and Accounts, Posts & Telegraphs, Cuttack, on 4th July, 1970. As per his statement this post was equivalent to an Auditor in the Audit and Accounts organisation. He was substantively appointed to the post on 22nd December, 1975.

3. In 1976, a policy decision was taken by the Department to separate the audit and accounts wings. Accordingly, ^{the applicant} on 17th March, 1976 was asked to give his willingness to be transferred and posted to the office of the Deputy Director Accounts (Postal). The applicant gave a conditional willingness on 21st March, 1976. He was thereafter transferred to the Postal Accounts Office on 11th August, 1976. He submitted a representation for promotion to the post of a Senior Accountant on 22nd December, 1978, which was forwarded to higher authorities by the Deputy Director, with a recommendation that the



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applicant might be considered for promotion to Selection Grade Caretaker/Senior Accountant. On receiving no response from his departmental superiors, the applicant continued to make periodical representations. The burden of his repeated representations was that he should be given at least one promotion in his entire service-span. He repeated his request on 26th November, 1986, and again on 11th July, 1988, for either upgrading his post to that of Selection Grade or to promote him to Senior Accountant.

4. On 21st February, 1989, orders were issued treating him as Junior Accountant against the direct recruitment quota, with effect from 1st April, 1987.

5. As per the departmental rules a junior accountant, for being considered for his next promotion to the cadre of senior accountants, is required to appear at, and pass, a confirmation examination. On 15th November, 1989, the official represented again, this time for exempting him from the requirement of passing the confirmation examination, stating that he already fulfilled the only other condition of three years of service as Junior Accountant. The request was turned down on 9th February, 1990, whereupon he sent another representation on 20th June, 1990, which was, again, rejected on 9th October, 90.

Hence this application.

6. The respondents in their counter-affidavit are at pains to explain that the post which was originally offered to the applicant on his release from Army service

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Signature

was that of a caretaker. The post carried with it certain well-defined duties. It is an ex-cadre post and does not fall into any stream leading to further promotions of any kind. It is not even remotely akin to the post of Junior Accountant which requires specialised capabilities and entails a special kind of technical work. The applicant was well aware of the scope, nature and the conditions attached to the post, and accepted the same unconditionally at the time of his initial engagement.

7. On the eve of implementing the policy-decision of the department to separate the audit and account wings, a large-scale processing of options and fitting volunteers into the resultant set-up was involved. It was in these circumstances that an erroneous order was issued at the time of his transfer to the Postal Accounts Office in 1976, whereby, by an obvious clerical mistake, the applicant's appointment was incorrectly indicated as Junior Accountant (Caretaker) from 1st April, 1976. This mistake was discovered subsequently and duly rectified.

8. The respondents further explain that the applicant's terms of initial engagement did not undergo any change after his transfer to Postal Accounts and that he continued to discharge the same duties and handle exactly the same responsibilities as before.

9. As regards the applicant's claim of parity with Junior Accountants and promotion to Senior Accountant, it is mentioned that a candidate has to have a graduation to his credit for appointment as Junior Accountant, has to work for a period of three years in that capacity, and also has

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to pass a confirmation examination before he can be considered for promotion. The applicant, they point out, fulfils none of these conditions. The department has already extended a substantial concession to the applicant by equating him with a Junior Accountant, even though he does not satisfy the basic conditions governing appointments to the post. This was done in consideration of his long association with the department as also his recurring pleas. In doing so, the applicant has also been placed in a stream which would facilitate his advancement provided he fulfils the essential prerequisite for further progress - that of passing the mandatory examination. The applicant, the respondents add, cannot seek additional undue exemptions and none has the authority to so exempt him. It is finally submitted on behalf of the respondents that there is no post of J.A. (Caretaker) in their organisation nor can they create a new post of S.A. (Caretaker) to accommodate the applicant's request, and there being no merit in any of his arguments, and the department having already done all that is possible to accede to the applicant's requests, the present application is devoid of any acceptability and should not be allowed.

10. We have carefully considered all the relevant facts. Shri Mukherji was appointed on a clear understanding of what post he was going to occupy, what duties were going to be performed by him, and what prospects (or lack of prospects) for promotion such appointment would entail. To that extent there is no strength in the claim of the applicant for ^a further promotion when none had promised him and no such prospects existed at all. Since



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the applicant accepted the appointment in full knowledge of all attendant facts and possibilities, he cannot now legitimately project any deprivation or grievance.

12. The claims of the applicant are based largely on the initial mistake, on the part of the respondents, of equating him with a junior accountant at the time of separation of Audit and Accounts Departments. By some strange lapse, the applicant was shown as Caretaker (Junior Accountant). This was entirely un-warranted for the simple reason that, according to the Respondents themselves, there never has been such a post in existence nor is there one now. This mistake has to be ascribed, therefore, to genuine clerical error. An error, however interpreted, cannot be taken to confer any special benefit or advantage, where it is not due, on any official. The authorities have subsequently detected and rectified the error. They have the fullest right to rectify a bonafide clerical error; and once this had been done, the applicant had no case for claiming any advancement on the strength of the earlier mistake.

13. Be that as it may, the department has also been fair to the applicant inasmuch as he was later accorded the status of a Junior Accountant as a special case. By this action, the respondents have not merely shown a measure of special consideration to him but have also in a way fulfilled an ancillary obligation which arose indirectly though inadvertently when the ^{applicant} was erroneously shown as a Junior Accountant. No more concessions or gestures

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can, therefore, be expected after that. The applicant now claims exemption from passing the confirmatory examination for promotion to Senior Accountant. Such exemption is not granted to any one, nor do the department's Rules permit it. Normally, after securing a significant concession originally pressed by him, the applicant was expected, in the usual course, to make an endeavour to add his own further effort by writing the stipulated examination and try to succeed in it. He has instead chosen to seek a further concession which is not admissible. He is ~~is~~ most justified in making a fresh demand and there is no merit in this particular request of the official.

14. Having said so, it is also apparent at the same time that the official, never having had any exposure or experience of accounts, can never prepare adequately to pass a regular departmental examination for further advancement, and try however hard he might, the chances of his success are bleak. The applicant is no doubt aware of this. And the same would be apparent to the respondents as well. Under the circumstances any ^{tangible} equation with junior accountants cannot be of any benefit to him. We fully appreciate that he cannot be exempted from passing the obligatory departmental examination. The position, however, is that, given the nature of his previous duties and experience, the chances of his ever passing any examination on the accounts side are less than minimum.

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15. In this context, we have ^{been} given to understand recently that the Government have / announced a scheme which ensures that every Group 'C' and 'D' employee may get at least one promotion in his service career. Under the scheme employees who are directly recruited to Groups C or D, and whose pay on appointment to such post is fixed at the minimum of the scale, and those who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such posts, are eligible for an in situ promotion. We have been also told that in cases where recruitment to any category of posts is made both by direct recruitment or by promotion, a promotee shall be considered for promotion from the date a direct recruit junior to him in that cadre becomes eligible for in situ promotion, even though in his case (in case of a promotee) it will be second promotion. We were informed that in the said scheme the benefits of FR 22(1) (a) (1) (Old FR 22-C) ^{will} / be allowed while fixing pay on promotion as a special dispensation, even though promotion under the scheme may not involve assumption of higher duties and responsibilities. It was further clarified that the scheme relating to such career advancement is applicable to the incumbents of (a) posts having no avenue of promotion at all or (b) to posts having inadequate avenue of promotion.

16. Considering the totality of circumstances, and the fact that the applicant has been working for

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a long time with the respondents in a post which offers no promotional avenues, and that the applicant is due shortly to retire on superannuation, we hope that his case will be considered, if otherwise permissible, under the provisions of the said scheme.

Thus, the application is disposed of. No costs.

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Vice-Chairman

Central Admn.Tribunal,
Cuttack Bench/K.Mohanty,
November 17, 1993.

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Member (Administrative)

17 Nov 93

