

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application Nos. 481 and 482 of 1991

Date of Decision: September 15, 1993.

Mahendra Kumar Mahana

Applicant(s)

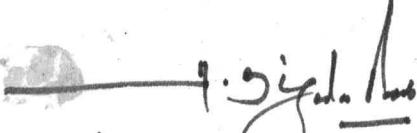
Versus

Union of India and others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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)

17 SEP 93


K.P. ACHARYA
VICE CHAIRMAN

17/9/93

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS : 481 & 482 OF 1991.

Date of decision : 15th September, 1993

Mahendra Kumar Mahana Applicant

Versus

Union of India & Others Respondents

For the Applicant M/s. R.B.Mohapatra,
N.J.Singh,
D.R.Rath,
Advocates

For the Respondents Mr.Ashok Misra,
(1 & 2) Senior St.Counsel (Central).

For the Respondent M/s. Dr.S.C.Dash,
No.4. B.K.Patnaik,
R.C.Mohanty,
Advocates.

C O R A M :-

THE HONOURABLE MR.K.P.ACHARYA, VICE- CHAIRMAN
A N D

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

J U D G M E N T

K.P.ACHARYA, V.C. Since both the applications have been filed by the same person namely Shri Mahendra Kumar Mahana (though the relief claimed is different) yet we would direct that this common judgment would govern both the cases which we have heard ~~to~~ on merits one after the other.

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2. In Original Application No.481 of 1991, the Petitioner Shri Mahendra Kumar Mahana was initially appointed as Lower Division Clerk and he was promoted to the Post of Upper Division Clerk with effect from 1st August, 1962. The Petitioner was directed to work as Junior Stenographer with effect from 3rd March, 1964. In course of time, the petitioner was selected for appearing in the written and viva-voce test which was scheduled to be held in May, 1972 for qualifying to the post of Accountant/Auditor. Result was declared on 12th July, 1972 and the petitioner had turned out successful in the said examination. The Departmental Promotion Committee was held to consider the suitability of the officials and the Departmental Promotion Committee vide its recommendation dated 7th August, 1972 found the petitioner suitable and the petitioner was appointed by the competent authority to hold the post of Senior Auditor with effect from 7th August, 1972. Vide Annexure 8, dated 2nd August, 1975, the petitioner was given a posting to the Bills and Cash Section as the Post of Senior Accountant was transferred to the Administrative Wing. Though specifically, it was not mentioned that the petitioner was reverted back to the post of Senior Auditor yet after transfer of the post, contained in Annexure 8 the petitioner was made to work as Senior Stenographer

which according to the Petitioner amounts to reversion. Thereafter, petitioner made certain representations which did yield fruitful result namely vide Annexure 18 dated 13th September, 1990, the petitioner was again promoted to the post of Superintendent (Audit and Accounts). Again Vide Annexure 20 dated 6th October, 1990, the offer of appointment made on 13th September, 1990 for the post of Senior Auditor was withdrawn retrospectively. Hence this application has been filed with a prayer to quash the orders of reversion contained in Annexures 8 & 20. Further case of the petitioner is to the Opposite Parties. that a direction be given that the petitioner is deemed to have been functioning in the post of Senior Auditor.

3. In their counter, the Opposite Parties maintained that the petitioner has no right to the post of Senior Auditor because appointment was purely on adhoc and therefore, the concerned authority had rightly divested the petitioner from the post of Senior Auditor. Further more, it is maintained that the case is barred by limitation and therefore, should be in limine dismissed.

4. In this case, the President, C.R.R.I, Ministerial staff Association, Cuttack is the intervenor who is supporting the case of the Opposite Parties 1, 2 and 3. The stand taken by Opposite Party No. 4 i.e. the President is practically the same as that of the
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Opposite Party Nos.1 to 3 and in addition to the same, it was maintained by the Intervenor that the petitioner was not at all eligible to appear in the written and viva voce test and the case of the petitioner was illegally considered by the D. P. C. which should not be given effect to.

5. In Original Application No.482 of 1991, the Petitioner claims one increment with effect from the date on which the petitioner had passed the examination conducted for the post of Senior Auditor.

6. In Original Application No.481 of 1991, we have heard Mr.R.B.Mohapatra learned counsel for the petitioner, Mr.Ashok Misra learned Senior Standing Counsel (Central), for the Opposite Party Nos.1 to 3 and Mr.B.K.Patnaik learned counsel appearing for the Opposite Party No.4 i.e. Intervenor.

7. The admitted position before us is that the petitioner had joined as Lower Division Clerk and subsequently promoted to the post of Upper Division Clerk. Further admitted case of the parties is that the petitioner was allowed to appear in the written examination and the viva voce test held for the post of Senior Auditor which is familiarly known as Examination for Audit and Accounts. The Petitioner was
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declared to be successful and his case was considered by the Departmental Promotion Committee which found the petitioner to be suitable and ultimately the petitioner was appointed as a Senior Auditor with effect from 4th August, 1972. Further admitted case of the parties is that the post of Senior Auditor was transferred to another wing and consequently the petitioner was asked to vacate the post of Senior Auditor and according to the petitioner this amounts to reversion. From the documents, filed in this case, in Annexure 18 dated 13th September, 1990, we find that the petitioner had been given promotion again to the post of Senior Auditor, redesignated as Superintendent (Audit and Accounts) and vide Annexure 20 dated 6th October, 1990, the petitioner was again reverted with effect retrospective, namely with effect from 13th September, 1990.

8. Keeping in view of all these facts mentioned above, the Bench is required to address itself regarding the legality, illegality, propriety and impropriety of the orders passed in giving promotion and then ordering reversion of the petitioner. At the outset, we may say that no appointment can be withdrawn with retrospective effect. This part of the order contained in Annexure 20 is nothing but illegal. Now the question arises as to whether the promotion given to the petitioner to the post of Senior Auditor with effect from 4th August, 1972 was legal or not. Recruitment Rules

come into force on 18th April, 1961. Apart from the fact that the petitioner was admittedly found to be successful and admittedly, the Departmental Promotion Committee having recommended him to be suitable and admittedly the petitioner having been appointed by the competent authority to the promotional post, we feel tempted to refer to a document namely Annexure 26 dated 12th March, 1991, addressed to Dr. P.K. Sgingh Director, Central Rice Research Institute, Cuttack by D.K. Srivastava, Director (Finance) of the Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi. Shri Srivastava is of clear opinion that no illegality has been committed in giving promotion to the Petitioner at all stages and he was of further opinion that demotion of the petitioner was not legal. We also feel tempted to quote certain portions of the letter of Shri Srivastava expressing his opinion regarding the illegality committed by the concerned authority in demoting the petitioner which runs thus:

"xx xx. The reason that there was no provision in the recruitment rules for promotion of Stenographers to the post of Superintendent (A&A) is not correct. According to the amended recruitment rules for the post of Superintendent (A&A) circulated by the Council in 1986, Senior Clerk/Stenographer of the concerned institutes with 6 years service in the grade who have passed the ICAR Audit & Accounts Examination were eligible for consideration for promotion to the post of Superintendent. xx xx xx. It was decided that the A&A Examination will continue to be conducted in one part as it was being conducted earlier vide Circular dated 24.4.78.

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In view of the above a clarificatory circular was issued vide letter No.25(2)/75-CDN(A&A) dt. 24.2.1978 (copy enclosed) clarifying that the officials who had passed the first ICAR A&A examination held in 1972 would be exempted from the purview of the revised scheme. It was further clarified that the officials who had already passed the Examination conducted in 1972 were exempted from passing the Examination if they satisfied the conditions laid down in para '5' of the revised scheme. xx xx.

It is not clear from the position explained in your letter as to why Shri Mahana was not considered for promotion when the Recruitment Rules were amended during 1986 according to which Assistant/Stenographers (Rs.425-700) (pre-revised) with three years service in the grade were made eligible for promotion to the post of Superintendent (A&A). It has also been observed from point (B) page-3 of the letter under reference that Shri Mahana was allowed by the Council two absorbably advance increments but the same has not been granted as yet. Moreover, the individual has also not insisted for the same during the last 17-18 years. The entire position for not considering him for promotion as per amended Recruitment Rules of 1986 as well as for not granting absorbable advance increments is required to be thoroughly examined as per your records. It seems that Shri Mahana is already working in the grade similar to that of Superintendent (A&A) and thus, the promotion is not involved. It is only a question of adjustment subject to clearance by the Departmental Promotion Committee. However, as stated by you if Shri Mahana has not opted to retain stenography cadre after passing the examination he can be considered for appointment as Superintendent (A&A) as per the revised Recruitment Rules."

9. Apart from the above, the contents of the letter bearing No.7-9/91-Law dated 1st April, 1992 addressed to the Director, CRRI, Cuttack by Shri B.N. Pattnaik, legal adviser, is a death blow to the case of the Opposite Parties. Therein it is stated that in consultation with the Finance Division, the case of Shri Mahana, present petitioner, to be contested

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appears to be weak from the legal angle. Therefore Shri Mahana should be appointed/reinstated to the post of Superintendent. This view of the legal Adviser is akin to the view expressed by Shri Srivastava and we fully agree with the views expressed by the two officers. Therefore, in our opinion the reversion of the petitioner from such post is nothing but illegal.

10. Mr. Ashok Misra learned Senior Standing Counsel (Central) and Mr. Patnaik learned counsel appearing for the Intervenor vehemently argued before us that the case is barred by limitation. We do not feel inclined to accept this submission made by both the counsel because vide Annexure 18 dated 13th September, 1990, the petitioner had been given the promotional post. Again Vide Annexure 20 dated 6th October, 1990, the Petitioner was reverted from that post. The cause of action arose in favour of the petitioner on 6th October, 1990 and this application has been filed on 4th December, 1991. Therefore, the case is well within the period of limitation and we find no merit in the aforesaid contention of both Mr. Mishra learned Senior Standing Counsel (Central) and Mr. Patnaik learned counsel for the Intervenor.

11. Further more it was urged by Mr. Patnaik learned counsel for the Intervenor that the Members of the Association will be deeply affected if a decree is passed in favour of the petitioner. He further

contended that the petitioner was not eligible for taking the test or for his case being considered by the Departmental Promotion Committee. In our opinion it is too late in the day for the President of the Association to put forward such a grievance when the Members of the Association slept for a goodbit of time and rose from the slumber at a very late stage. Therefore, we are not prepared to accept the aforesaid contention of Mr. Patnaik learned counsel appearing for the Intervenor. In the circumstances stated above, we do hereby quash the orders passed by the Competent authority demoting the petitioner from the post of Senior Auditor and it will be deemed that the petitioner is continuing in the said post from the date of his promotion.

12. So far as Original Application No. 481 of 1991 is concerned, the petitioner has a grievance for denying him two increments in the post of Senior Auditor. From the letter of Mr. Srivastava contained in Annexure 26, referred to above, it is found as follows :

"It has also been observed from Point B page 3 of the letter under reference that Shri Mahana was allowed by the council two absorbably advance increments but the same has not been granted as yet."

From this observation, it appears to us that the prayer of the petitioner to grant him two increments has also been allowed by the council which perhaps has not been sanctioned for payment by the competent authority at Cuttack. We would therefore, direct that the orders of the council be carried into effect by

giving the petitioner two increments retrospectively from the date it has been allowed by the council and after calculation, payment be made to the petitioner within 90 days from the date of receipt of a copy of the judgment. This part of the direction would be effected subject to the condition that, in the meanwhile, if this order of the council has not been withdrawn.

12. Thus, both the applications are accordingly disposed of. No costs.

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MEMBER (ADMINISTRATIVE)

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Keo 15/9/93.
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
15th September, 1993.

