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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 98 of 1991

Date of Decision: January 18, 1994.

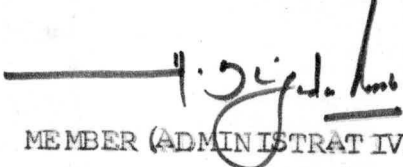
Gyanendra Prasad Tripathy (Applicant(s))

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.

  
MEMBER (ADMINISTRATIVE)  
18 JAN 94

 18/1/94  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 98 of 1991

Date of Decision: January 18, 1994.

Gyanendra Prasad Tripathy Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. B.K. Sahoo  
K.C. Sahoo,  
Advocates

For the respondents

Mr. A.K. Mishra  
Standing Counsel  
(Central)

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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)

JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the ~~Central~~ Administrative Tribunals Act, 1985, the petitioner prays that the adverse entries finding place in the A.C.R. relating to the petitioner for the period mentioned in the petition be quashed and a direction be issued to the opposite parties to give promotion to the petitioner to the post of Audit Officer with effect from 1.1.1991.

2. Shortly stated the case of the petitioner is that, petitioner was appointed as Audit Officer under the Opposite Party No.1 on 23.4.1970 and he was promoted to the post of Section Officer with effect from 4.9.1975 and he was confirmed in the post of Section Officer with effect

20.4.1977. Shorn of unnecessary details regarding his different postings, it would suffice to say that, in course of time, the petitioner was promoted to the post of Assistant Audit Officer. Certain adverse entries were made in the ACR of the petitioner relating to the years 1988-89 and 1989-90. Representations were made by the petitioner for expunction of those adverse remarks, but such representation did not yield any fruitful result. The DPC met for considering the cases of different incumbents for the post of Audit Officer. Though the petitioner is senior to OP Nos. 4 and 5, the case of the petitioner was not considered and OP Nos. 4 and 5 have been given promotion to the post of Audit Officer in supersession of the claim of the present petitioner. Hence this application has been filed with the aforesaid prayer.

3. In their counter Opposite Party Nos. 1, 2 and 6 have maintained that the performance of the petitioner by the Reporting Officer and the Reviewing Officer were correctly and rightly assessed and hence the appropriate authority having found the representations of the petitioner to be devoid of merit, rightly dismissed the same, and such adverse entries were considered by the DPC which found the petitioner to be unfit and his next juniors viz. OP Nos. 4 and 5, having been found to be fit and suitable were rightly given promotion over the head of the petitioner, and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. B. K. Sahoo, learned counsel for the petitioner and Mr. A. K. Mishra, learned Standing Counsel

appearing for the opposite parties at a considerable length.

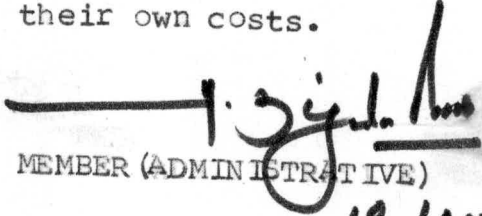
5. We have given our anxious consideration to the argument advanced at the Bar. In the ACR relating to the year 1988-89, the Reporting Officer has stated that the petitioner had not quantified the volume of work done during the year under report. The petitioner was entrusted with a specific work of settlement of outstanding objections and was required to submit regular progress report which he did not do. It was further more observed that the petitioner was not upto the mark and was unable to concentrate in his allotted duties. It is again repeated that the petitioner was unable to concentrate on any work. The Reviewing Officer has graded the petitioner below average. In the A.C.R. relating to the year 1989-90, the Reviewing Officer says that the petitioner was not upto the mark. Personal promptness and quality of performance was poor. Attention to work was below average and the petitioner was graded as below average. The Reviewing Officer agreed with the Reporting Officer.

6. In our considered view, the Reporting Officer and the Reviewing Officer are the only competent authorities to assess the performance of a particular officer working under them. The Court does not have powers and authority to negative the views of the Reporting Officer and the Reviewing Officer unless such views are palpably and manifestly perverse or in the alternative such view has been expressed being backed by malafides. No case of malafide has been putforth by the petitioner nor we find

anything on record to come to an irresistible conclusion that the opinion expressed by the Reporting Officer or the Reviewing Officer are manifestly perverse. In the circumstances stated above, we would not like to interfere in this matter and quash the adverse entries made in the A.C.R. of the petitioner.

7. Next coming to the question of promotion, Law is well settled that nobody has a right to claim promotion though he has a right to urge that his case should be considered, provided that he comes within the consideration zone. The case of the petitioner was admittedly considered by the D.P.C. which did consider the adverse remarks against the petitioner. Minutes of the DPC cannot normally be quashed unless malafide is pleaded against the Members of the DPC. No such case has been put forth by the petitioner except that a general averment has been made in the pleadings that the Members of the DPC illegally came to the conclusion that the petitioner was not fit or suitable for promotion. Even though such a general averments are not acceptable, but we find nothing on record to come to an irresistible conclusion that an illegality was committed by the Members of the DPC. To add to all this, in paragraph-15 of the counter, it is stated in respect of the Confidential Report for the year 1982-83 by the Reporting Officer that the integrity of the petitioner was doubtful and it is further more maintained in the counter that this important fact was illegally withheld from the notice of the Bench.

In its rejoinder the petitioner states that the case does not relate to the ACR for the year 1982-83. Be that as it may, in view of the aforesaid facts and circumstances, we find no merit in this petition which stands dismissed leaving the parties to bear their own costs.

  
MEMBER (ADMINISTRATIVE)

18 JAN 94

  
VICE-CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 18.1. 1994/B.K. Sahoo