

8

14

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 128 of 1992
Cuttack this the 9th day of February, 1999

Rabindranath Behera

Applicant(s)

-Versus-

Union of India & 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 Tribunal or not ? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHIRMAN
9-2-99

9-2-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

9
15

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.128 OF 1992
Cuttack this the 9th day of February, 1999

CORAM:

**THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

...

Rabindra Nath Behera, aged about
59 years, Son of Late Srinath Behera,
t;Purunaghatasahi, P.O.: Baripda
District : Mayurbhanj

...

Applicant

By the Advocates : M/s.B.S.Tripathy,
R.N.Naik, A.Deo,
P.Panda

-Versus-

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhavan, New Delhi
2. Chief Post Master General,
Orissa Circle, At/Po: Bhubaneswar,
Dist: Puri
3. Assistant Director (Staff),
Office of the Chief Post Master General,
Orissa Circle, Bhubaneswr,
Dist: Puri

...

Respondents

By the Advocates : Mr. A.K.Mishra,
Sr.Panel Counsel

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application under Section 19 of the Administrative Tribunals Act, 1985, filed on 6.2.1992, the applicant Rabindranath Behera was promoted to the cadre of Lower Selection Grade (in short L.S.G.) in the year 1974. In the gradation list of the L.S.G. officials corrected upto 1.1.1977, issued in the year 1984 he was erroneously shown at Sl. No.310. On the representation of the applicant this error was corrected and he was shown at Sl. No.198(A), i.e. above Shri Markanda Shil and below Shri Nabakishore Jena (Annexure-1). After this refixation of seniority, he was promoted to Higher Selection Grade-II (in short H.S.G.) on regular basis with effect from 18.12.1990 by the D.P.C. On the representation of the applicant Review D.P.C. recommended notional promotion of the applicant in H.S.G.-II cadre with effect from 4.9.1987, i.e. from the date his junior Shri Markanda Shial was promoted to that cadre, till his regular promotion of this cadre. However, in this order dted 16.5.1991 it was made clear that the applicant would not get any arrear of pay in that cadre during the period of notional promotion. The applicant then represented under Annexure-3 claiming arrear pay, but with any effect. These facts are not in controversy.

2. The applicant seeks a direction to the respondents-department to give him the arrear pay during the notional promotion period and another direction for promotion to the cadre of H.S.G.-I with effect from the date his juniors were considered for promotion.

3. In the counter the respondents denied that any of his juniors have not been promoted to H.S.G. I. Hence consideration of promotion of the applicant to that cadre would not arise. In view of this positive assertion of the respondents in the counter and not challenged by the applicant in rejoinder or during hearing in regard to his promotion to H.S.G. I, this part of the prayer is not maintainable and as such is disallowed.

4. As to the entitlement of his arrear pay of H.S.G. II cadre during notional promotion period, the stand of the respondents is that since he had not physically functioned in the cadre he would not be entitled to pay of that cadre. But the question for consideration is for whose fault the applicant could not function as L.S.G. II from 4.9.1987 to 18.12.1990, i.e., the date of his actual promotion. The fault, in our opinion, lies with the department who committed an error in fixing up his seniority much below in the gradation list corrected upto 1977 issued in the year 1984. It is only on the representation of the applicant this error was rectified and he was assigned correct Sl. No. 198(A) instead of original Sl. No. 310 and on the basis of this Sl.No. 198(A), the Review D.P.C. notionally promoted him to H.S.G. II cadre with effect from 4.9.1987, i.e. the date on which his junior was promoted to H.S.G. II cadre. In otherwords had not the error occurred in the gradation list originally prepared, in normal course the applicant would have been promoted to H.S.G. II cadre, if not prior to 4.9.1987, at least on 4.9.1987 itself and in that case

he would have drawn the regular pay of H.S.G. II cadre.

In Union of India vs. K.V.Janaki Raman reported in 1991 SC 2010, it was held by the Apex Court that normal rule "No Work No Pay" is not applicable to such cases where the employee, although he is willing to work is kept away from work by the authorities for no fault of his. The same principle has also been reiterated by the Apex Court in J.N.Sribastha vs. Union of India reported in 1998 SCC(L&S) 1251.

In view of this legal position it is not right on the part of the respondents to deny the pay of L.S.G. II cadre during the period of notional promotion.

5. In the result while disallowing the prayer of the applicant for promotion to H.S.G. I cadre, we direct the respondents to pay arrear pay in H.S.G. II cadre to the applicant for the period under notional promotion within a period of 60 days from to-day. The application is partly allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
9.2.99
VICE-CHAIRMAN

9.2.99
(G.NRASIMHAM)

MEMBER (JUDICIAL)

B.K.SAHOO