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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.138 of 1992.

DATE OF DECISION : AUGUST 13, 1993.

Jayanta Kumar Bhattacharjee ...

Applicant.

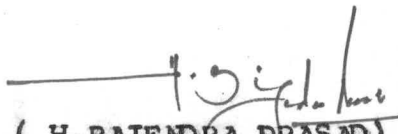
Versus

Union of India and others ...


Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the 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)

13 Aug 93


(K. P. ACHARYA)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK.

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Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Ganeswar Rath,
P.K.Mohapatra,
A.K.Patnaik,
C.S.Laxman, Advocates.

For the respondents ... Mr.Ashok Misra,
Sr.Standing Counsel(Central

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., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant (Jayanta Kumar Bhattacharjee) prays to quash the order of reversion issued by the respondents on 25.3.1992 as per Annexure-6.

2. Shortly stated, the case of the applicant is that he was appointed as Havildar in Aviation Research Centre, Charbatia on 3.12.1970. The applicant was transferred and posted as Lower Division Clerk with effect from 1.7.1971. For some reason or the other the applicant was again retransferred to the post of a Havildar on 22.5.1976 and was then promoted to a
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non-selection post^{of} namely Sub-Inspector on 1.12.1976. One S.N.Samal^{kn}, felt aggrieved by this promotional order and therefore Shri Samal invoked the jurisdiction of the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution of India challenging the promotion of said Jayanta Kumar Bhattacharjee and also ventilated his grievance regarding nonconsideration of his own claim. The writ application^{on} was allowed in favour of the said Shri S.N.Samal. The High Court held that the said Shri Samal was senior to the present applicant, Shri Bhattacharjee and that without disturbing appointment of Shri Bhattacharjee as Sub-Inspector, post should be located to appoint Shri Samal as Sub-Inspector with effect from the date on which Shri Bhattacharjee had been appointed. Similar was the grievance of 8 other senior Havildars of Aviation Research Centre, which formed subject matter of Transferred Application Nos.12, and 15 of 1987, T.A.Nos.35 to 37 of 1987, T.A.Nos.42 , 56 and 57 of 1987. All these transferred applications were disposed of on 29.4.1988 by the Cuttack Bench of the Tribunal holding that the petitioner in T.A.31 of 1987 and all the petitioners in T.A. Nos.12,15,35,36,37,42,56 and 57 of 1987 be treated as senior to Shri J.K.Bhattacharjee, without disturbing the promotion of Shri J.K.Bhattacharjee, as held by the High Court of Orissa and it was further directed that the case of the petitioners^(Sri Samal & others) be considered for promotion to the post of Sub-Inspector and if found suitable, they should be appointed from the date on which

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Shri J.K.Bhattacharjee had been promoted. In the meanwhile on 28.1.1985 Shri J.K.Bhattacharjee had been promoted to the post of Inspector as on such date Shri J.K.Bhattacharjee had been considered to be senior to Shri Samal and others. But in view of the aforesaid judgments of Orissa High Court and that of this Bench, Annexure-6 was passed reverting the applicant, Shri J.K.Bhattacharjee to the post of Sub-Inspector with effect from 1.12.1976 which is under challenge and sought to be quashed.

3. In their counter, the respondents maintained that the appointment of Shri J.K.Bhattacharjee to the post of Inspector was purely on adhoc arrangement and since Shri Samal and others were declared to be senior to Shri Bhattacharjee, there was no option left for the competent authority but to revert the applicant, Shri Bhattacharjee. Hence, according to the respondents, the case being devoid of merit is liable to be dismissed.

4. We propose to first deal with the prayer of the applicant to quash the orders of reversion. In compliance with the judgments passed by the High Court and this Bench Sri Samal and others were placed as seniors to Shri Bhattacharjee. A junior cannot march over the head of his seniors, if not found to be more suitable. There is no such case put up by the applicant. Therefore, the reversion order cannot be held to be tainted with any illegality. It is therefore, sustained.

5. We have heard Mr. Ganeswar Rath, learned counsel for the applicant and Mr. Ashok Misra, learned Senior Standing Counsel (Central). Admittedly, there were five

five posts to be filled up in the grade of Inspector and these vacancies pertain to the year 1985. On 31.8.1992 a Departmental Promotion Committee was held to consider the suitability of different incumbents coming within the consideration zone in regard to three posts and on 1.9.1992 the Departmental Promotion Committee was held to consider the suitability of different incumbents coming within the consideration zone for two posts. The grievance of the applicant on this account is two-fold. Firstly, the amendment to the recruitment rules came into force in November, 1990 and therefore, according to the applicant's counsel the rules prevalent as on 20.12.1983 are to govern the field for calculating the number of ^{various} incumbents who ^{would} come within the consideration zone for being considered for the post in question. But an illegality has been committed by the concerned authority in taking into consideration the amended rule which was made effective from 1.11.1990. Though Mr. Ashok Misra very seriously contended that the Departmental Promotion Committee having been held in the year 1992, the amended rule, coming into force in the year 1990, should govern the field, yet we are of opinion that the rules as in force in the year 1985 should be the basis for calculating the number of incumbents coming within the consideration zone. Our view gains support from a judgment of the Full Bench forming subject matter of O.A. No. 128 of 1990 (in which one of us, Acharya, J. was a member of the Full Bench). The applicant, Shri S.K. Baliarsingh felt aggrieved by the promotion given to

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Shri R.P.Bhalla as Deputy Director, Aviation Research Centre. The Departmental Promotion Committee was held on 8.2.1989 in which Mr.Bhalla was graded as 'very good' and the applicant Shri Baliarsingh was graded as 'good'. Shri Bhalla was appointed and after Shri Bhalla's retirement, it was contended that the applicant Shri S.K.Baliarsingh was to be promoted as he was graded 'good'. This contention of Shri Baliarsingh was rejected on the ground that on 10.4.1989 the guidelines were amended and the rules in force as on 1985 were no longer to be complied. The Full Bench was required to answer whether the guidelines prevalent or in force in July, 1987 should be the basis or the later guidelines issued on 10.4.1989. The Full Bench after considering the case of A.A.Calton vrs. The Director of Education and another, reported in 1983(1)SLR 785 and the case of Smt.Bina Devi vrs. Union of India and others(O.A.No.2055 of 1989) decided on 6.9.1990 by the Principal Bench, held that the office memorandum dated 10.4.1989 would not be applicable to the recommendation made by the Departmental Promotion Committee before it became effective. It became effective only from 10.4.1989. Therefore, the Full Bench was of the view that the earlier guidelines prevalent on the date of vacancies have to be followed. Following the view taken by the Full Bench we are of opinion that the provisions contained in the Rules prevalent on 20.12.1983 and which was in force till the amended rules came into force in 1990, should be taken into consideration in order to fix the number of incumbents who would come within the consideration zone and for consideration and the Departmental Promotion Committee would be required

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to adjudicate the suitability of different incumbents for all the five posts.

6. In addition to the above, we find another infirmity to have crept into this case. At the cost of repetition, we may say that the admitted position is that there are five vacancies in the grade of Inspectors. On 31.8.1992 the Departmental Promotion Committee was held to consider the suitability of different incumbents coming within the consideration zone for three posts only and on the very next day another Departmental Promotion Committee was held to consider the suitability of different incumbents for two posts only in the same cadre. Normally consideration of suitability of different incumbents for the same post should be considered at one and the same time otherwise principles of natural justice is violated. Mr. Ganeswar Rath, contended that by considering the candidature of different incumbents on two different dates for the same post would necessarily minimise the number of incumbents to be considered on two different dates. It was further contended by Mr. Rath that this illegal procedure has been adopted only to deprive the applicant Shri Jayanta Kumar Bhattacharjee from coming within the consideration zone. Mr. Ganeswar Rath had placed before us a list showing the names of officers who could be duly considered for having come within the consideration zone including the applicant, Shri Jayanta Kumar Bhattacharjee if the Departmental Promotion Committee considers the candidature of several incumbents for the same posts at one and the same date. Mr. Rath put forward this contention also on the basis of

the fact that one of the officers has since retired. We refrain ourselves from expressing any opinion as to whether this procedure was adopted only to deprive the applicant Shri Jayanta Kumar Bhattacharjee but we are of the opinion that an illegal procedure has been adopted in considering the cases of different incumbents on two different dates for number of posts in the same cadre. No satisfactory explanation was given by the respondents as to why this procedure was adopted making a departure from the normal procedure. Consideration of several candidates for posts remaining vacant in a particular grade, should, in all fairness, be taken up on the same day and if not possible, to be completed on the same day, it should be taken up on the following day so that a comparison and grading of different candidates could be done in a justifiable manner. Apart from the fact that, the zone of consideration would be minimised by taking into consideration the candidature of three incumbents on a particular day and two incumbents on the next day, one would find that if such a procedure is adopted not only the zone of consideration is minimised but serious prejudice would be caused to the incumbents as comparison might not have been made on the same consideration. Our view gains support from a judgment of this Bench reported in 1987(2) ATR (CAT) 401(K.C. Pattanayak vrs. State of Orissa and others). For the post of Director General of Police Shri K.C. Pattanayak was superseded. Cases of two Opp. parties were considered on a particular date and the consideration of the case of Mr. K.C. Pattanayak was deferred to another day. The Bench observed as follows:

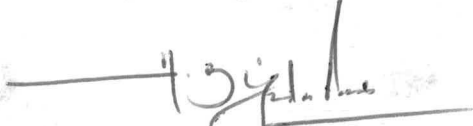
"We agree with learned Advocate General that the Government has ample powers for creation of posts but we cannot persuade ourselves to agree with learned Advocate General that consideration of cases of different officers on different dates after finally concluding the suitability of junior officers, in a piecemeal manner complies with the principles of natural justice. The consideration regarding the suitability of different officers should be at one and the same time so that there cannot be any room or scope to say that the consideration has not been in compliance with the principles of natural justice and therefore, not according to law. "


Normally, we would not have quashed the recommendation of the Departmental Promotion Committee if these persons whose names have been recommended had been appointed as they were not parties in this application. But admittedly, none of the officers who had been recommended suitable by the Departmental Promotion Committee have been appointed to the Promotional posts and especially in view of the fact that clear illegality has been committed in considering the case of different incumbents on two consecutive dates thereby minimising the zone of consideration and making applicable the rules of 1990 we would hereby quash the recommendation of the Departmental Promotion Committee and we would direct the respondents to draw a list containing the names of different incumbents who would come within the consideration zone and their cases be placed before the Departmental Promotion Committee for considering their suitability for promotion to the promotional posts in question. In case, the concerned authority eliminates the case of the applicant, Shri Jayanta Kumar Bhattacharjee from consideration a reasoned order must be passed by the concerned authority.

7. Thus, this application is accordingly disposed of

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leaving the parties to bear their own costs.


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MEMBER (ADMN.) 13/8/93


13/8/93.
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
August 13, 1993/Saranggi.