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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 198 of 1992

Date of Decision: 1st Dec November, 1995

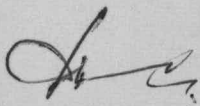
Bramhananda Nath ... Applicant(s)

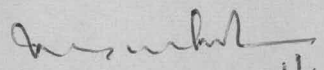
Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 70/07
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? 70/07


(D.P. HIREMATH)
VICE - CHAIRMAN


(N. SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 198 of 1992

Cuttack this the 1st day of ^{Dec} November, 1995

CORAM:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN
AND

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)
(PATNA BENCH)

Sri Bramhananda Nath,
aged about 53 years,
S/o. Late Padmanava Nath,
at present working as Deputy
Postmaster in Dhenkanal Head
Post Office, Dist: Dhenkanal

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Applicant

By the Advocate: M/s. Ganeswar Rath
P.K. Mohapatra
A.K. Patnaik
J.C. Sahoo
A.K. Mohanty

Versus

1. Union of India represented through
its Secretary, Department of Posts
Dak Bhawan, New Delhi
2. Chief Postmaster General,
Orissa Circle, Bhubaneswar
Dist: Puri
3. Postmaster General, (Sambalpur Region)
Dhenkanal Division, Dhenkanal

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Respondents

By the Advocate: Mr. S.K. Mishra,
Standing Counsel (Central)

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ORDER

MR. N. SAHU, MEMBER (ADMINISTRATIVE): In this Original Application,

the applicant challenges the promotion given to him under
a Scheme called Biennial Cadre Review which did not

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approve his promotion although he completed 26 years of service by the time this cadre review was introduced on 11.10.1991. At the time of filing the application on 8.5.1992, the applicant was working as Deputy Post-master H.S.G.-II in Dhenkanal Head Post Office, Dhenkanal. The brief facts are that the applicant joined as Postal Assistant on 23.5.1958. He was promoted to the cadre of L.S.G. on 6.5.1976 against 1/3rd quota. He was the senior-most in the gradation list of Dhenkanal Division. On 5.8.1991, he was transferred as Deputy Post-master, Dhenkanal Head Post Office, Dhenkanal vide Office Order No.B-19/1. It is, however, mentioned in the transfer order that the appointment was purely temporary and would not confer any right on the official for the permanent absorption in the grade. By Annexure-II the applicant who was transferred as Deputy Post-master Dhenkanal on 5.8.1991, had been transferred and posted as Deputy Post-master H.G.-II Dhenkanal. It was however mentioned that this order also was purely on temporary and adhoc basis and could be terminated at any time. It was further mentioned that this appointment would not confer any right on the official for his permanent absorption in the cadre. On 11.10.1991, the Government of India brought out the Biennial Cadre Review Scheme which provided certain avenues of promotion and relief. Under this scheme, the incumbents of existing posts would be able to draw pay in higher scales on completion

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of 26 years of service. This provided promotional opportunities for the staff concerned and also gave certain dignity and functional justification for the posts they were holding. The first Biennial Cadre Review for eligible officers, who completed 26 years of service was directed to be completed before 31.12.1991. The promotion in the first occasion of this cadre review was stated to be in terms of the existing norms of seniority-cum-fitness although it was stipulated that subsequent promotions would be subject to some suitable evaluation procedure to be evolved in consultation with the staff side.

2. On 6.4.1992, for appointment to H.S.G.-II, 15 names were selected and the applicant was ignored. His grievance is that all but one were junior to him. This order states that the candidates mentioned in the Annexure were promoted to the next higher scale of pay of Rs.1600-2600/- with effect from 1.10.1991 under the B.C.R. Scheme. By an order dated 26.10.1992, however, the applicant was given this benefit of Rs.1600-2600/- under the B.C.R. Scheme with effect from 1.7.1992.

In the counter affidavit, it was mentioned that for the Biennial Cadre review, with effect from 1.10.1991, the D.P.C. did not consider the applicant suitable for promotion. He was only ordered to officiate in the post of Deputy Post Master, Dhenkanal Head Post Office in the grade of H.S.G.-II on a temporary and adhoc basis being the senior-most in the gradation list

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of the Dhenkanal Division. Subsequently to save the Government exchequer, his deputation was turned into a transfer. It was stated that even this transfer was on adhoc and not as a permanent measure.

3. It was submitted at the time of hearing that when the D.P.C. met on 12.2.1992, to consider candidates for promotion under the Biennial Cadre Review, the DPC had to consider CRs of five years from 1986-87 to 1990-91. We were shown the CRs for these five years. The CRs for 1986-87 and 1987-88 contained adverse-remarks. The subsequent CRs 1988-89, 89-90 and 90-91, were not adverse, but in view of the first two CRs having adverse remarks, the applicant was not considered fit. There was subsequently another DPC on 1.7.1992. By this time, there was a full year CR for 1991-92 and this was a "very-good" report. It was stated that in view of this C.R., the applicant could be promoted. The question at issue is that when the DPC met on 12.2.1992, the applicant had completed roughly 10 and $\frac{1}{2}$ months in the financial year. There was no justification for DPC not to call for the CR for that year ignoring his performance for that year and superceding him. The instructions of the Government are that when the D.P.C. meets so late in the year, it is necessary to call for the CRs for that year. Logically also it is appropriate that

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the C.Rs of the year in question could be apprised of by calling for special CRs. The practice in all Government Departments is to call for such CRs when sufficient time in the financial year has passed out so that the applicant's latest performance appraisal as it stands when the DFC met could be brought on record. When subsequently the DFC met, it had reviewed the performance of that very year. In the circumstances by substituting the CRs for the year 1991-92 as on 12.2.1992 which the DFC considered 5/6 months later, the applicant was entitled to be promoted. We, therefore, hold that the DFC should have obtained the C.R. of the applicant on 12.2.1992 for the financial year 1991-92 and as on that criterion they have declared him to be promoted, We direct that he should be held to have been promoted from the date of the order of 6.4.1992 in which 15 other persons were promoted. We, therefore, allow the application on this point.

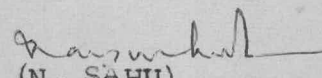
4. His claim for regularisation since 3.9.1991 is not valid. He officiated since 3.9.1991 de hors the rules. Such officiation will not count for seniority in the H.S.G. cadre. Hence this contention is unacceptable, and we hold that the applicant after satisfactory completion of 26 years of service is entitled to higher pay scale of Rs.1600-2600 like his juniors who were promoted on 6.4.1992 with effect from 1.10.1991 under the

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Biennial Cadre Review Scheme which benefit the
Department of Posts had already given him from
1.7.1992.

In the result, the application is
partly allowed without any order on costs.


(D.P. HIREMATH) (1/11/95)
VICE-CHAIRMAN


(N. SAHU) (1/12/95)
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//