

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 382 OF 1992
Cuttack, this the 19th day of January, 1999

Sri Narasingha Panda Applicant

Vrs.

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 Tribunal or not? *No*

G. NARASIMHAM
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.1.99

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Sri Narasingha Panda,
aged 57 years, son of late Gobinda Panda,
A.P.M., Berhampur (GM),
Head Post Office, At/PO-Gandhinagar,
1st Line Extension, Berhampur-760 001,
District-Ganjam Applicant

Advocates for applicant - M/s S.Kr.Mohanty
S.P.Mohanty.

Vrs.

1. Union of India, represented through its Secretary, Department of Post, Dak Bhawan, New Delhi.
2. Director of Postal Services, Berhampur (Ganjam) Region, Berhampur.
3. Senior Superintendent of Post Offices, Berhampur (Ganjam) Region, Berhampur.
4. Chief Post Master General, Orissa Circle, Bhubaneswar Respondents.

Advocate for respondents - Shri Ashok Mishra
SOMNATH SOM, VICE-CHAIRMAN Sr.Panel Counsel

O R D E R

S. Som
In this application under Section 19 of Administrative Tribunals Act, 1985 the petitioner has prayed for a direction to the respondents to consider promotion of the applicant with effect from 1.10.1991 with all consequential benefits.

11

2. Facts of this case, according to the applicant, are that he joined as a Clerk in the Postal Department on 22.2.1959 and his date of birth is 1.7.1935. He was promoted to the cadre of Lower Selection Grade (LSG). He completed 26 years of service in the clerical cadre on 22.2.1985 and was eligible to be considered for promotion to Higher Selection Grade II (HSG-II) under the B.C.R.Scheme which came into force from 1.10.1991. The eligibility for promotion under BCR Scheme is 26 years of satisfactory service. It is submitted that accordingly he came within the zone of consideration when the BCR Scheme was introduced. But his case was not considered and he was not given promotion. He made a representation to Post Master General, Berhampur and this was rejected in order dated 1.6.1992 at Annexure-1. The applicant has stated that on 1.10.1991 no proceedings were pending against him. But by a memo dated 15/17.10.1991 disciplinary proceedings for minor penalty under Rule 16 of CCS (CCA) Rules, 1965 were initiated against him. This proceeding should not be a bar for considering the case of the applicant and that is how he has come up in this application with the aforesaid prayer.

3. Respondents in their counter have stated that BCR Scheme was introduced in order dated 11.10.1991. Eligibility for consideration for promotion is 26 years of satisfactory service in the basic cadre as on 1.10.1991. As the applicant had completed 26 years of service by 1.10.1991 the case of the applicant was sponsored along with other officials to Post Master General,Berhampur, on 26.12.1991 for consideration of his promotion to HSG-II. The case of the applicant was considered in the DPC meeting held on 27.1.1992, but he was not found fit for promotion as the applicant was chargesheeted under Rule 16

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of CCS (CCA) Rules, 1965, on 17.10.1991 in connection with a fraud case for failure to exercise supervisory responsibility. Thus his past service was not satisfactory. The decision of DPC about his non-selection for promotion to HSG-II was communicated to him in letter dated 10.2.1992 and the applicant preferred an appeal on 3.3.1992 to Post Master General, Berhampur, against that order. After careful consideration, Post Master General, Berhampur, rejected his appeal in the order at Annexure-1. The minor penalty proceeding resulted in punishment of recovery of Rs.6000/- from the salary of the applicant. But on appeal, this was reduced to recovery of Rs.3000/-. The applicant voluntarily credited an amount of Rs.2500/- on 20.8.1992 and represented that the balance amount of Rs.500/- had already been recovered from him from his salary bill of July 1992 as per the original punishment order. The supervisory lapse of the applicant was pointed out by the Circle Level Enquiry Committee in its report dated 4.12.1990, the relative extract is enclosed at Annexure-R/2. As the disciplinary proceedings were under contemplation prior to 1.10.1991 and the chargesheet was issued on 17.10.1991, the respondents have opposed the prayer of the applicant that because of pending disciplinary proceedings, DPC had not recommended his case as his service could not be taken to be satisfactory. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri S.P.Mohanty, the learned counsel for the applicant and Shri Ashok Mishra, the learned Senior Panel Counsel appearing for the respondents and have also perused the records.

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5. The only point urged by the learned counsel for the petitioner is that the applicant had completed 26 years of service much before 1.10.1991 and he should have been promoted to HSG-II under BCR Scheme from 1.10.1991. The draft charges for minor penalty were issued to him only on 17.10.1991, i.e., after the due date of his promotion and therefore, these charges should not have been taken into account while considering his case for promotion. It is also submitted by the learned counsel for the petitioner that according to Director-General, P & T's letter No.35/9/84-SPB.II, dated 19.5.1984, punishments of ~~Idem~~ censure, stoppage of increment and monetary recovery are no bar for promotion. The respondents have not disputed this circular. In this circular, a reference has been made to an earlier O.M. No.22011/1/68-Estt.(A) , dated 16.2.1979 of the Ministry of Home Affairs and it has been indicated that in spite of penalties of censure, stoppage of increment and monetary recovery, a person can be promoted provided the DPC on an overall assessment of the record of service of the person concerned, recommends him for promotion. In this case, BCR Scheme came into force with effect from 1.10.1991. At that time, no proceeding was pending against him. DPC meeting was held on 27.1.1992. Unfortunately, neither the applicant nor the respondents in their pleadings have indicated if by that time the proceedings had been completed and the punishment was imposed. In case on 27.1.1992 proceedings were pending, then it must be held that by that time the guilt of the applicant had not been established and there would have been no case for not recommending his promotion.

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6. Even in case by 27.1.1992 proceedings had been completed and punishment imposed, the circular dated 19.5.1984 of Director General, P&T lays down that imposition of penalty of monetary recovery would not be a bar provided the DPC on an overall consideration of the service record of the person concerned recommend him for promotion. We had some doubts about the gist of the circular dated 19.5.1984, copy of which has been filed by the learned counsel for the petitioner. Because of this, we brought the matter under the heading "To Be Mentioned" on 4.1.1999 and directed the learned counsel for the petitioner to file the Book from which the gist of the circular has been extracted. In response to this, the learned counsel for the petitioner has filed **Swamy's Compilation of CCS (CCA) Rules (17th Edition)** in which at page 33, the gist of the circular dated 19.5.1984, as noted by us earlier, has been printed. In the **19th Edition of Swamy's Compilation of CCS (CCA) Rules**, the gist of this circular has not been printed and we are in doubt if this circular is still in existence. There is another aspect of this circular dated 19.5.1984 which is also not clear. As earlier noted, in this circular a reference has been made to Ministry of Home Affairs' O.M.No.22011/1/68-Estt.(A), dated 16.2.1979 stating inter alia that punishments of censure, recovery of pecuniary loss and stoppinig of increment do not constitute a bar to promotion of the official, provided on the basis of overall assessment of his record of service, the Departmental Promotion Committee recommends his promotion to the next higher post. In the **Swamy's Compilation of**

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CCS(CCA) Rules (17th Edition) given by the learned counsel for the petitioner, at page 32 immediately before the gist of the circular dated 19.5.1984, another O.M. of Ministry of Home Affairs, D.P. & A.R., No.22011/2/78-Estt.(A), dated 16.2.1979 has been printed. This circular lays down that if the findings of the D.P.C. are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or recovery of pecuniary loss. In case of withholding of increment or withholding of promotion, promotion can be made only after expiry of the penalty. The collection number of this circular is, however, different, i.e., "2/78" instead of collection No.1/68 referred to in circular dated 19.5.1984 of Director-General, P&T. Secondly, in **Swamy's Manual on Disciplinary Proceedings for Central Government Services, 5th Edition**, the gist of Ministry of Home Affairs' O.M.No.22011/2/78, dated 16.2.1979, has been printed at pages 20 and 21. The gist of the circular as printed at pages 20 and 21 does not speak of promotion in case where penalty of monetary recovery or withholding of increment has been awarded. In **Swamy's Compilation of CCS(CCA) Rules (19th Edition)**, i.e., the same book which has been given by the learned counsel for the petitioner but a later edition, the gist of O.M.No.22011/2/78 dated 16.2.1979 has been printed at pages 20 and 21 and here also there is no mention about withholding of promotion in case where penalty of monetary recovery and withholding of increment has been imposed. In view of this, it is not clear if the circular dated 19.5.1984 relied upon by the learned counsel for the petitioner is ~~already~~ ^{Jdm} in force and if the gist of the circular as printed in **Swamy's Compilation of CCS(CCA) Rules (17th Edition)** has been correctly printed.

On the other hand, it is to be noted that the respondents have not denied the circular. In consideration of the above, we leave it to the departmental authorities to check up if this circular dated 19.5.1984 is still in existence. In case, the circular dated 19.5.1984 is in force, the respondents are directed to constitute a review DPC and consider the case of the applicant for promotion to HSG-II with effect from 1.10.1991. This process should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order because the applicant has retired with effect from 30.6.1993. In case the DPC recommend his promotion, then he will be given promotion from 1.10.1991. But as he has not worked in HSG-II, he would not be entitled to any arrear financial benefits. His pay should be notionally fixed and on that basis his revised retiral benefits should be worked out and paid to him.

7. In the result, therefore, the Application is allowed in terms of the observation and direction given above. No costs.

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

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19.1.99
VICE-CHAIRMAN