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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 384 OF 1992
Cuttack this the 14th day of December, 1999

Laxmidhar Oram

...

Applicant (s)

-VERSUS-

Union of India & Others

...

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Yes.

No.

G. Narasimham
(G. NARASIMHAM)
VICE-CHAIRMAN
14.12.99



14.12.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.384 OF 1992
Cuttack this the 14th day of December, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Laxmidhar Oram, 43 years
S/o. Manga Oram, a permanent
resident of Bhalulata, Bisra,
Dist: Sundargarh, at present
serving as Public Relation Officer
in the Office of the R.P.F. Sub-Regional
Office, Rourkela, Mangal Bhaban
Rourkela-769001

...

By the Advocates

Applicant

M/s.A.K.Mishra
S.K.Das,
S.B.Jena

-VERSUS-

1. Union of India represented through
Secretary, Ministry of Labour,
Shrama Sakti Bhaban, New Delhi-1
2. Central Provident Fund Commissioner
9th floor, Mayur Bhaban, (Cannaught Circus)
New Delhi-1
3. Regional Provident Fund Commissioner,
Orissa, Bhabisyanidhi Bhaban, Janpath
Bhubaneswar-7
4. S.C.Lamai, Asst.Accounts Officer
Office of the Regional Provident Fund Commissioner,
Sub-Regional Office, Rourkela, Mangal Bhaban
Rourkela-769001
5. Laxmidhar Maharana, Enforcement Officer
Office of the Provident Fund Inspector
Barabati Stadium, Cuttack-753001

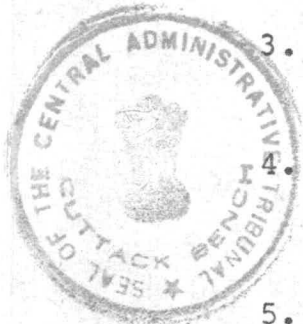
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By the Advocates

Respondents

Mr.U.B.Mohapatra,
Addl.Standing Counsel
(Central)

...

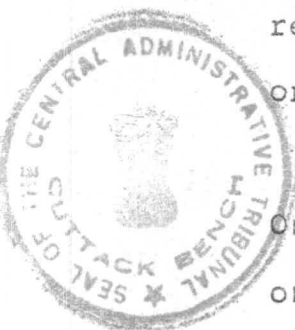


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O R D E R

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MR. G. NARASIMHAM, MEMBER (JUDICIAL): In this application filed on 11.8.1992, the applicant, who is a Public Relation Officer under Regional Provident Fund Commissioner, Orissa (Respondent No.3) in the cadre of Assistant Accounts Officer/Enforcement Officer prays for issue of direction to Respondents 1 and 3 to consider his case for promotion to this cadre earlier as per the provisions of reservations applicable to S.T. candidates and also to consider his case for promotion retrospectively with effect from 15.5.1991, when his juniors (Res. 4 and 5) were promoted to that cadre. On 12.8.1992, after admitting this application, this Tribunal considered his prayer for interim relief and directed the department not to revert him. This order was subsequently vacated in order dated 5.1.1993.

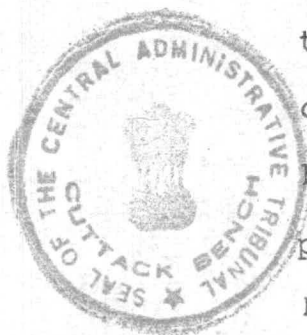


Applicant, admittedly belongs to S.T. community. On 8.11.1967 he joined as L.D.C. and was promoted to U.D.C. on 3.9.1973. Next promotion to the post of Head Clerk was made on 14.6.1982. The post of Enforcement Officer/Assistant Accounts Officer is a promotional post from the cadre of Head Clerk. An employee, who is posted in the field is known as Enforcement Officer and ~~the~~ one who is posted in the Office is called as Assistant Accounts Officer. Both the posts are equal and inter-changable. Prior to March, 1990, 50 per cent of the posts were being filled up on promotion as per seniority and remaining 50 per cent from among the existing employees through a competitive examination. In other words 50% of the posts were to be filled up by way of non-selection methods considering seniority alone. On 3.3.1990, a statutory provision has been made wherein according to 50%, these posts are to be

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Banerjee should have been carried forward to subsequent three years of recruitment and there was no recruitment to that cadre in the year 1985. Again in the very same para he indicates that the promotion so made was adhoc promotion and the observation of the Department that carry forward rule does not apply to adhoc promotion is contrary to law. In this way the posts have been filled up in the garb of adhoc promotions. Yet, towards last portion of para-5 the applicant submits that he does not want to challenge these promotions in this Original Application and confines his prayer for his promotion retrospectively with effect from 15.5.1991, the date on which Opposite Parties 4 and 5 were promoted. As is understood from his pleadings, for these promotions of O.P.

4 and 5, ~~the~~ D.P.C. was convened in January, 1991 and ~~in the~~ ~~the~~



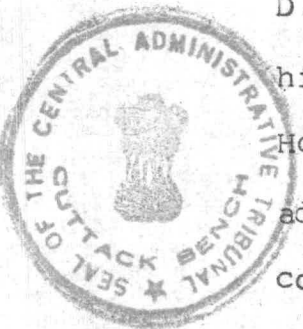
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names ~~these~~ were sent for consideration by the D.P.C., ^{him} his name did not find place. According to him, his name was not wrongly forwarded to the D.P.C., because, he was communicated with adverse remarks in the month of July, 1988 for the year 1987 and that remark spent its force by 31.12.1990, on completion of three years. Hence for D.P.C. convened in the year January, 1991 ~~his~~ name should not have been withheld. However, he was promoted on 26.7.1991 as against direct recruitment ^{ment} ~~not~~ quota. In view of the direct recruitment quota, he apprehends reversion from that post. Hence this Original Application.


2. Respondents 4 and 5 inspite of due service of notices had not filed any counter.
3. The departmental respondents (Res.1 to 3) in their counter submit that in fact prior to January, 1991, on 6.3.1990 D.P.C. was convened and by virtue of seniority of the applicant his name was placed in the panel for consideration by the DPC. However, D.P.C. did not consider him fit for promotion due to adverse remark. His case was again placed before the D.P.C. convened on 6.2.1991 when his C.R. for the year 1987 was expunged by the Central Provident Fund Commissioner. The D.P.C. recommended six officials for promotion and five officials including the applicant were considered unfit for promotion. From among the six officials, four were promoted on 5.3.1991 and the remaining two on 15.5.1991, i.e. Res. 4 and 5. In other words, D.P.C. ~~had not met~~ in January, 1991. As the cadre controlling/appointing authority issued appointment orders in favour of two persons as against direct recruitment quota, in letter dated 16.9.1992 there was direction to Res.3 to revert the junior-most wherever necessary to maintain the cadre strength. The applicant being the junior-most had



to be reverted.

4. We have heard Shri A.K.Mishra, learned counsel for the applicant and Shri U.B.Mohapatra, learned Addl.Standing Counsel appearing for the departmental respondents, so also Shri B.N.Rath, learned counsel appearing for Res.5, though no counter filed. Also perused the records.

In the relevant portion under Para-8 of the O.A. the applicant makes two prayers. The first one is for direction to the Department to consider his case for promotion as per the provisions of the reservation applicable to S.T. candidates, the other one is to promote him with effect from 15.5.1991 when his juniors Res.4 and 5 were promoted.



There is no dispute that earlier promotions to that cadre were given on adhoc basis. The carry forward rules on the basis of reservation would not be applicable to adhoc promotions. No authority has been placed that if an adhoc promotee continues for a considerable time, the carry forward rules on the basis of reservation would be applicable. Moreover, these adhoc promotions pertain to the period prior to the year 1990. In this application filed on 11.8.1992, the same cannot be challenged on the ground of limitation. Hence this prayer fails.

As the pleadings reveal, that even the case of the applicant was considered by the D.P.C. along with others including Res.4 and 5 in February, 1991, but the D.P.C. did not find the applicant and someother fit for promotion, though found Res.4 and 5 and four others fit for promotion. It is not the case of the applicant that D.P.C. acted in an arbitrary manner with malafide intention. It is not expected of us to sit over the judgment of the D.P.C. Hence it is

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difficult to accede to the prayer of the applicant that he has to be given promotion retrospectively with effect from 15.5.1991 when Res.4 and 5 were so promoted.

In the result we do not see any merit in this application which is accordingly dismissed, but no order as to costs.

Gannanahalli
(SOMNATH SOM)
VICE-CHAMAN
14.12.99

B.K.SAHOO//



14.12.99
(G.NARASIMHAM)
MEMBER (JUDICIAL)