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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 591 of 1992

Date of Decision: 25.11.1993

Gurucharan Jena

Applicant(s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? NO


MEMBER (ADMINISTRATIVE)

25 NOV 93

25/11/93
VICE-CHAIRMAN



(8)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No.591 of 1992

Date of Decision: 25.11.1993

Gurucharan Jena Applicants

Versus

Union of India & Others Respondents

For the applicant

M/s. Deepak Misra
A. Deo,
B.S. Tripathy
P. Panda,
D.K. Sahu,
Advocates

For the respondents

Mr. Ashok Mishra,
Sr. Standing Counsel
(Central)

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C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to be issued to the opposite parties to promote the petitioner to the cadre of Higher Selection Grade-II with effect from 1.10.1991, viz. the date on which juniors of the petitioner got promotion.

2. Shortly stated the case of the petitioner is that initially he was appointed in Group D post in the Postal Department on 13.1.1960. On 28.7.1965, the petitioner was given promotion to the post of Junior Clerk (Postal Assistant). On 30.11.1983, the petitioner got the cadre of Lower Selection Grade. The Biennial Cadre Review Scheme came into force with effect from



1st October, 1991. Even though the petitioner has completed 26 years of active service in the postal department, his claim for promotion to H.S.G. II under the aforesaid scheme being denied to him, this application has been filed with the aforesaid prayer.

3. All the facts stated by the petitioner in his petition regarding his initial appointment in the postal department and subsequent promotions gained by him as stated above have not been disputed in the counter. Equally it has not been disputed that the petitioner is entitled to the benefit of the Biennial Cadre Review Scheme on completion of 26 years active service, and that the petitioner, as a matter of fact completed 26 years of active service by 1st October, 1991. The only ground on which it is urged that the petition is liable to be dismissed, by the opposite parties is that a disciplinary proceeding has been initiated against the petitioner and since it is pending, benefit under the aforesaid scheme has been denied to the petitioner rightly till the finalization of the said disciplinary proceeding. Hence in a crux, it is maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Deepak Mishra, learned counsel for the petitioner and Mr. Ashok Mishra, learned Senior Standing Counsel.

5. The appointment of the petitioner to Group D post, and his subsequent promotion to the clerical cadre



on 28.7.1965 was not disputed before us. Equally, there was no dispute presented before us that the petitioner has got promotion to the cadre of L.S.G. on 30.11.1983. In view of all the above mentioned undisputed facts, there is no escape from the conclusion that the petitioner has completed 26 years of active service by 1.10.1991. The only thing which remains to be considered and which required expression of opinion of this Bench is as to whether promotion of the petitioner to the cadre of H.S.G. II could be withheld on the basis of the fact that a disciplinary proceeding is pending against him.

6. Admittedly chargesheet was issued to the petitioner on 3.2.1993. In the case of K.V.Jankiraman vrs. Union of India and others reported in AIR 1991 SC 2010 Their Lordships of the Hon'ble Supreme Court have held that the date of initiation of the disciplinary proceeding is the date of delivery of the chargesheet to the delinquent officer. Later in a judgment reported in Judgment Today 1993(2) SC 695 (Delhi Development Authority vrs. H.C. Khurana), considering this aspect of law laid down by Their Lordships in the case of K.V.Jankiraman (Supra) Their Lordships held that date of issue of chargesheet is the deemed date of initiation of disciplinary proceeding, because the delinquent officer may avoid to receive the chargesheet. Be that as it may, the settled position is that the date of issue of chargesheet is the deemed date of initiation of disciplinary proceeding. In the present case, the



admitted position is that the charge-sheet was issued to the petitioner on 3.2.1993. In such circumstances, there is also no escape from the conclusion that on 1.10.1991, there was no dirty linen pending against the petitioner to deprive him of ~~from~~^{from} promotion or receiving the benefit under biennial cadre review scheme. Therefore, in such circumstances, we would direct that the petitioner be given promotion to the cadre of H.S.G.-II with effect from the date on which his juniors had got the benefit of such promotion. Since the petitioner was ready and willing to perform the job in the promotional post of H.S.G. Gr.II and ~~was~~^{had} not absented himself out of his own volition, relying on the observations of Their Lordships in the case of K.V.Janakiraman(Supra) we would direct that the petitioner is entitled to arrear financial emoluments with effect from the date on which he gets promotion and the arrears be calculated and paid to the petitioner within 90 days from the date of receipt of a copy of this judgment. Thus the application stands allowed leaving the parties to bear their own costs.


MEMBER (ADMINISTRATIVE)

25 Nov 93


VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 25.11.1993/ B.K.Sahoo

