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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.595 OF 1992
Cuttack, this the 19th day of January, 1999

Shri Khalli Behera 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*

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

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN *9.1.99*

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.595 OF 1992
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CORAM:

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

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Shri Khalli Behera aged 57 years,
son of Sri Khetrabasi Behera,
At-Jagabandhu Bada, Redika Street,
P.O-Berhampur, at present Sub-Post Master,
Panigrahipenth, Berhampur-6 Applicant

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

Vrs.

1. Union of India, represented by
its Secretary, Department of Posts,
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-Mr.J.K.Nayak
A.C.G.S.C

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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

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2. Facts of this case, according to the applicant, are that he joined as a Clerk in the Postal Department on 24.5.1956. He was promoted to LSG cadre and was confirmed on 1.1.1986. He completed 26 years of service in 1982. Under the BCR Scheme which came into effect from 1.10.1991 he was due to have been promoted to HSG-II, but he was not promoted. He has stated that a minor penalty proceeding was initiated against him on 14.8.1991. This proceeding should not have been a bar for the applicant's promotion to HSG-II, but he was not promoted. By an order dated 24.2.1992 at Annexure-1 officers who had completed 26 years of service were promoted with effect from 17.10.1991. The applicant has retired on superannuation on 31.1.1993. In the context of the above facts, he has come up with the aforesaid prayer.

3. Respondents in their counter have stated that by 1.10.1991 the applicant had already completed 26 years of service and his case was sponsored along with others on 26.12.1991 for consideration of his promotion to HSG-II cadre. The DPC in their meeting held on 26.1.1992 considered the case of the applicant. But as he had been chargesheeted under Rule 16 of CCS (CCA) Rules, 1965 on 14.8.1991 in connection with a fraud case for failure to exercise supervisory responsibility, his case was not recommended for promotion. The respondents have stated that for promotion to HSG-II, 26 years of satisfactory service was required, but because of the pending proceedings he was not promoted.

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4. The respondents have further stated that the minor penalty proceeding was finalised and punishment of recovery of Rs. 2000/- from the salary of the applicant

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was imposed. On appeal, the Director of Postal Services set aside the punishment of recovery and ordered de novo enquiry. Accordingly, the de novo enquiry was held and the applicant was awarded penalty of recovery to the tune of Rs.1000/- from his salary on 15.7.1992. The case of the applicant was subsequently considered by DPC and he was promoted to HSG-II with effect from 1.7.1992 in order dated 25.9.1992. The respondents have further stated that the supervisory lapse of the applicant in connection with a fraud case which took place on 17.7.1990 was pointed out by the Circle Level Enquiry Committee in their report dated 4.12.1990. The extract of the report is at Annexure-R/2. As the disciplinary proceedings were pending against the applicant, the respondents have stated that his service was not considered satisfactory and that is how DPC in their meeting held on 27.1.1992 did not recommend his case for promotion. On the above grounds, the respondents have opposed the prayer of the applicant.

5. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri J.K.Nayak, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records.

6. The learned counsel for the petitioner has pointed out that according to Director General, P & T's circular dated 19.5.1984, the gist of which has been printed in Swamy's Compilation of CCS (CCA) Rules, promotion of an official can be given effect to during the currency of the punishment of monetary recovery. In this circular reference has been made to Ministry of Home Affairs' O.M.No.22011/1/68-Estt.(A) dated 16.2.1979

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stating inter alia that the punishments of censure, recovery of pecuniary loss and stopping 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.

7. 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 stopping 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 CCS(CCA) Rules (17th Edition) given by the learned counsel for the petitioner, at page 32 immediately before the gist

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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~~ ^{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

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existence. In case the circular is in force, then the following aspects would arise for consideration.

8. In this case, admittedly a minor penalty proceeding was initiated against the applicant under Rule 16 of CCS (CCA) Rules, 1965 prior to the date on which he was due to be promoted to HSG-II and therefore, the DPC had rightly not recommended his case. But ultimately, after conclusion of the proceedings, a penalty of recovery of Rs.1000/- has been imposed on him to be effected from his salary from July 1992 and after the recovery has been effected, he has been promoted from 1.7.1992 in order dated 25.9.1992. As the punishment is only for recovery and that too of a smaller amount, we hold that the petitioner has a case for consideration of his promotion to HSG-II with effect from 17.10.1991 when the persons mentioned in Annexure-1 had been promoted. We are not aware if the applicant's service was otherwise satisfactory if this proceeding and the punishment are left out. In consideration of this, we direct the respondents ^{in case the circular dated 19.5.84 is in force then} that the case of the applicant should be considered by a review DPC [^] for his promotion to HSG-II with effect from 17.10.1991 and in case the review DPC after considering his over all service record recommend his case for promotion, then he should be so promoted. The consideration of the case of the applicant by the review DPC should be done within 90 (ninety) days from the date of receipt of copy of this order and promotion should be given to the applicant from 17.10.1991, if recommended by the review DPC, within a period of another 30 (thirty) days thereafter. The applicant would be entitled to the financial benefits arising out of such retrospective promotion, if given and also consequential increase, if any, in his retiral benefits.

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9. In the result, therefore, the Original Application is allowed in terms of the observations and directions contained in paragraphs 7 and 8 of this order, but under the circumstances, without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN 19.1.99