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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH :CUTTACK.

Original Application No.664 of 1992.

Date of decision : May 27, 1993.

Kandarpa Singh ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ...

M/s.Devanand Misra  
DeepakMisra,  
R. N. Naik, A.Deo,  
B.S.Tripathy, P.Panda,  
D.K.Sahu, Advocates.

For the respondents ...

Mr.Ashok Misra,  
Senior Standing Counsel  
(Central)

CORAM:

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

A N D

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

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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J U D G M E N T

K. P. ACHARYA, V. C.      The applicant was serving as a Postal Assistant under Balasore Division. The applicant completed 26 years of service in the year 1989. The claim of the applicant in this application is that basing on the Biennial Cadre Review Scheme which came into force with effect from 1.10.1991, the applicant should have been promoted and denial of promotion to the applicant is a clear illegality committed by the postal authorities and hence this application has been filed with a prayer to give promotion to the applicant with effect from 1.10.1991. The second prayer of the applicant is to quash the order passed by the competent authority transferring the applicant from Mitrapur to Darada.

2.            In their counter, the respondents maintained that since there was a disciplinary proceeding pending against the applicant, he was not given promotion and his case was considered and opinion of the Departmental Promotion Committee has been kept in a sealed cover. Therefore, neither the transfer order should be quashed nor the applicant's prayer to give him promotion with effect from 1.10.1991 should be allowed.

3.            We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. Ashok Misra, learned Senior Standing Counsel (Central) for the respondents at some length. The admitted position before us is that promotions were given to the juniors of the applicant

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with effect from 1.10.1991 and promotion was denied to the applicant because of the pendency of the disciplinary proceedings. The moot question that needs determination is as to when the proceeding was initiated. According to the dictum laid down by Their Lordships in the case of Union of India versus K.V. Jankiraman reported in AIR 1991 SC 2010, <sup>it</sup> has been held that the date of service of the charge-sheet is the deemed date of initiation of the proceeding. The charge-sheet <sup>is</sup> said to have been <sup>delivered</sup> on 7.11.1991. Therefore, the deemed date of initiation of the proceeding is 7.11.1991. On 1.10.1991 there was ~~no~~ proceeding pending against the applicant. Therefore, there was no necessity to adopt the sealed cover procedure. That apart, it was told to us that the proceeding has culminated ~~in~~ an order of censure having been passed against the applicant. Undisputedly, 'Censure' does not amount to punishment and cannot stand as a bar for promotion. Due to the aforesaid circumstances, we would direct that the applicant be given promotion with effect from 1.10.1991 or the date on which his juniors were promoted (whichever is later). The arrears and emoluments to which the applicant would be entitled would be decided by the competent authority.

4. The prayer for quashing of the order of transfer is hereby dismissed. Mr. Deepak Misra submitted that a direction be given to the respondents to allow the applicant to join at Darada. We do not feel that there is any necessity to give any such direction. But we would only say that the Superintendent of Post Offices, Balasore

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Division may allow the applicant <sup>to join</sup> at Darada, if nobody has joined at Darada in the meanwhile.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

*[Handwritten Signature]*  
28 MAY 93.

MEMBER (ADMN.)

*[Handwritten Signature]*  
28/5/93.

VICE-CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack  
May 27, 1993/Saranggi.

