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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 68 OF 1992
Cuttack, this the 4th day of January, 1999

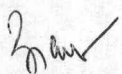
Shri Narayana Chandra Sethy ... Applicant

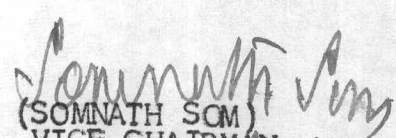
Vrs.

Union of India and others ... Respondents

(FOR INSTRUCTIONS)

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


(A.K. MISRA)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
4.1.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI A.K.MISRA, MEMBER (JUDICIAL)

...

Shri Narayana Chandra Sethy,
aged about 52 years,
son of Kusun Sethy, Village-Rampas,
P.O-Project Sub Office,
P.S-Jajpur Road, District-Cuttack

... Applicant

By the Advocates -

M/s Devanand Misra,
R.N.Naik, A.Deo,
B.S.Tripathy &
P.Panda.

Vrs.

1. Union of India, represented through its
Secretary, Department of Posts, Dak Bhawan,
New Delhi.
2. Chief Post Master General, Orissa Circle,
Bhubaneswar, District-Puri.
3. Superintendent of Post Offices,
Cuttack 'N' Division,
Cuttack

.... Respondents

By the Advocate -

Mr. Aswini Kumar Misra,
Senior Panel Counsel.

ORDER

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 promote him to the post of L.S.G. Supervisor
and regularise his services in the same cadre.

2. Facts of this case, according to the applicant, are that he joined as Postal Assistant on 9.8.1957 and was allowed to work as L.S.G. Supervisor from 16.7.1987. While functioning as Sub-Post Master, Jajpur Road, an explanation was called for from him and a warning was issued in order dated 16.10.1990 (Annexure-1). In order dated 11.10.1991 Government of India issued a circular introducing Biennial Cadre Review (BCR, for short). Under this scheme, it was provided that incumbents of existing posts would be enabled to draw pay in the higher scale on completion of twenty-six years of service not only providing for promotional opportunities to the staff concerned but also on the basis of functional justification. This circular laid down that first BCR of eligible officials should be conducted immediately and orders issued before 31.12.1991. The applicant further states that in paragraph 5 of the circular, it was laid down that while the promotion in the first occasion would be in terms of the existing norms of seniority-cum-fitness, the subsequent promotion would be subject to some suitable evaluation procedure to be evolved in consultation with the staff side. This circular is at Annexure-2. Even though the applicant had completed twenty-six years of service, his case was not considered for promotion and other persons were approved on the basis of length of service. The applicant made representations to the departmental authorities but without any result and that is how he has come up before the Tribunal with the aforesaid prayer.

3. Respondents in their counter have pointed out that the applicant was appointed as Postal Clerk on 9.8.1957.

He was approved for promotion to L.S.G. under two-third quota of 20% LSG for the year 1979. Subsequently, the applicant was posted against a supervisory post as Deputy Post Master, Jajpur Head Post Office. Respondents have pointed out that the post of Deputy Post Master is in the same scale of pay as L.S.G. with supervisory allowance. While he was working as Deputy Post Master, an enquiry was conducted into an allegation against him and he was issued with a warning in order dated 16.10.90. Later on the applicant was posted as Sub-Post Master of Jajpur Road S.O. in the same scale of pay with supervisory allowance with effect from 31.7.1990. Respondents' case is that under the BCR Scheme brought into force in circular dated 11.10.1991 (Annexure-2) in paragraph 2(iv) criterion for promotion has been fixed as eligibility of twenty-six years of satisfactory service. The case of the applicant along with others was taken up by the D.P.C. as by 1.10.1991 the applicant had completed twenty-six years of service. But the D.P.C. did not recommend his name for promotion to the cadre of H.S.G.II and observed that the applicant was warned only on 16.10.1990. The applicant had also been identified as a subsidiary offender in an S.B. fraud case and chargesheet under Rule 16 was contemplated. The respondents' case is that promotion under B.C.R. Scheme is on the basis of twenty-six years of satisfactory service and as the service of the applicant was not found satisfactory by the D.P.C., he has rightly not been promoted. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. We have heard the learned lawyer for the applicant and the learned Senior Panel Counsel, Shri Aswini Kumar Misra appearing on behalf of the respondents and have also perused the records. On the conclusion of hearing, the learned lawyer for the applicant wanted to give certain citations within a week. But in spite of passage of several months, no citations have been filed. Learned Senior Panel Counsel also wanted two weeks' time to apprise the Tribunal, with copy to the learned lawyer for the applicant, about the present position of the departmental proceeding referred to at page 4 of the counter wherein it has been stated that the applicant has been involved in an S.B. fraud case at Dala Post Office as subsidiary offender and a disciplinary proceeding was contemplated against him at the time of meeting of D.P.C. In the meantime proceeding under Rule 16 of CCS (CCA) Rules, 1965 has been initiated and the same is pending. In this case, counter had been filed in March, 1992 and more than five years have elapsed. In view of this the Tribunal wanted to know the present stage of the proceeding referred to in the counter. But as already mentioned, no information has been given by the learned Senior Panel Counsel.

5. We have considered the submissions made by the learned counsels for both sides. The applicant joined the service in 1957 and by 1.10.1991 he had already completed twenty-six years of service. He was thus eligible to be considered for the post of H.S.G.-II at the time of initial B.C.R. In paragraph 8 of the Application, however, the petitioner has prayed for his promotion to the post of L.S.G. Supervisor which, according to the counter, he had already got. Respondents in paragraph 10(ii)

of the counter have also specifically mentioned that the post of L.S.G.Supervisor, Jajpur Road Post Office has been upgraded to H.S.G-II post in order to accommodate the official promoted to H.S.G-II post under the said Scheme and as the applicant was not promoted to HSG-II cadre, he was not eligible to be posted to the said Post Office. In paragraph 8 of the counter also it has been mentioned that the D.P.C. did not recommend the applicant for promotion to the cadre of H.S.G-II. From this, it is clear that what the applicant claims is his promotion to H.S.G-II and the prayer for promoting the applicant to the post of L.S.G.Supervisor in paragraph 8 of the Application is a typographical error because he had already got the post of L.S.G.Supervisor.

6. Coming to the claim of the applicant for the post of H.S.G-II, the D.P.C has considered him and not found him suitable. The B.C.R.Scheme specifically lays down that only after twenty-six years of satisfactory service, persons will be eligible to be considered. As the applicant was issued with warning on 16.10.1990, no fault can be found with the D.P.C. for not recommending his case for promotion to H.S.G-II. But going through the order of warning at Annexure-1, it is seen that the charge against the applicant was that he gave SB-3 to Md.Abul Kalam with instruction to put the date and re-submit it afterwards. when Abdul Kalam met him at Jajpur Head Office on 28.6.1989 and resubmitted the SB-3 through the Sub-Post Master, Brahmabaraua. This action being irregular, he was let off with a warning. This warning has been issued on 16.10.1990. There is no reference in this order that this

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~~order that this~~ warning has been recorded in the A.C.R. of the applicant. As regards the proceeding against him with regard to S.B. fraud case in Dala Post Office, as he has been prima facie found as a subsidiary offender, this proceeding has been initiated prior to 31.3.1992 when the counter was filed. Meanwhile more than five years have elapsed. Learned Senior Panel Counsel has not indicated if the proceedings have ended in the meantime and if so, with what result. Under the circumstances, we feel that ends of justice would be met in this case, if a direction is issued to the respondents in the following terms. In case the proceeding against the applicant with regard to the S.B. fraud case in Dala Post Office has been concluded in the meantime, then the respondents should consider the case of promotion of the applicant for the post of H.S.G-II Supervisor within 90 (ninety) days from the date of receipt of copy of this order. While considering his case, the respondents would ~~not~~ be entitled to take into account the final result of the proceeding against the applicant in the S.B. fraud case in Dala Post Office. As regards the earlier enquiry and issuing of warning, in the absence of any mention in the order that the warning has been recorded in his A.C.R. and in view of the fact that the allegation against the applicant was merely one of committing an irregularity and not of causing any loss to the Department and that this warning has been issued more than seven years ago and because of the fact that taking into account this warning he has already been denied promotion in 1991, the respondents should not take into account this warning while considering his case for promotion to H.S.G-II.

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7. In the result, therefore, the Application is disposed of in terms of the observation and direction contained in paragraph 6 of this order. No costs.

A.K. Misra
(A.K. MISRA)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 4.1.99

AN/PS