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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 345 OF 1993  
Cuttack this the 9th day of August, 1999

(PRONOUNCED IN THE OPEN COURT)

Budhiram Sethy

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.345 OF 1993  
Cuttack this the 9th day of August, 1999

CORAM:

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

...

Budhiram Sethy,  
aged about 54 years,  
son of Late Bhima Charan Sethy,  
Sub-Post Master, Nayabazar S.O.,  
At/PO: Bhadrak, Dist: Balasore

...

Applicant

By the Advocates : M/s.S.Mohanty  
S.Mishra  
P.K.Padhi

-Versus-

1. Union of India through Secretary  
Ministry of Communication,  
Department of Posts, Dak Bhawan  
New Delhi
2. Superintendent of Post Offices,  
Bhadrak Division,  
At/Po: Bhadrk  
Dist: Balasore
3. Chief Post Master General,  
Orissa Circle, Bhubaneswar  
Dist: Khurda

...

Respondents

By the Advocates : Mr.A.K.Bose,  
Sr.Standing Counsel  
(Central)

...

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ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN::In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to respondents to give him promotion to H.S.G.II with effect from 1.10.1991 and to give him all other consequential reliefs.

2. Respondents have appeared and filed counter. It is submitted by the learned counsel for the petitioner that he has not received copy of counter and therefore, the matter may be adjourned. As this matter has come up for hearing from the Warning List which has been circulated a month back, adjournment cannot be allowed. In view of this we have heard Shri P.K.Padhi, learned counsel for the petitioner and Shri B.Das, learned Addl.Standing Counsel appearing for the respondents and also perused the records.

3. As after perusal of the record we find that the Original Application has to be allowed even going by the counter filed by the respondents themselves, it is not necessary to refer to the Original Application filed by the applicant.

4. Respondents in their counter have stated that the applicant joined service as Time Scale Clerk with effect from 28.11.1959 and while working as such he was promoted to L.S.G. cadre with effect from 22.10.1982 against 2/3rd quota of 20% L.S.G. after he qualified in the examination. The respondents have pointed out that the scheme for Time Bound Promotion after 16 years of service, commonly known as O.T.B.P. Scheme came into force with effect from 30.11.1983, but the applicant was promoted to L.S.G. cadre on 20.10.1982. In this petition

the applicant's grievance is that he was not promoted to the cadre of H.S.G. II after completion of 26 years of service. By the time the scheme for promotion under B.C.R. on completion of 26 years service came into force, as the applicant joined service on 28.11.1959, he had completed 26 years of service by 27.11.1985. The B.C.R. scheme came into force with effect from 1.10.1991. The respondents in para-3(c) of their counter have mentioned that the case of the applicant was taken up for consideration for promotion under B.C.R. scheme with effect from 1.10.1991, but he was not recommended for promotion because a disciplinary proceeding was contemplated against him. His case was therefore, kept in a sealed cover. It is further stated that the applicant represented to Res.1, viz., Secretary, Ministry of Communications for his non-recommendation and it was ordered that a review D.P.C. should look into his case. The review D.P.C. meeting was held on 30.9.1993 and on 1.10.1993. The applicant's case was considered and the review D.P.C. recommended the case of the applicant for promotion to the H.S.G. II cadre with effect from 1.10.1993.

5. It is submitted by the learned counsel for the petitioner Shri P.K.Padhi that the applicant has in the meantime retired and he understands that the applicant has also got promotion to H.S.G. cadre with effect from 1.10.1993. From the counter it is seen that the case of the applicant was considered <sup>by the D.P.C.</sup> for promotion with effect from the due date, i.e. 1.10.1991, but was not recommended in contemplation of initiation of disciplinary proceeding and therefore, his case was put in a sealed cover. The

respondents have not indicated if in fact a departmental proceeding was actually initiated against the applicant and if so, whether at the end of it the applicant was found guilty and punishment, if any imposed. In consideration of the fact that counter of the respondents is conspicuously silent about the actual date of initiation of departmental proceeding and punishment if any, imposed at the end of it, we have no other option except to draw the conclusion that even though at the time of original meeting of the D.P.C. the departmental proceeding was under contemplation against the applicant, it was not actually initiated. Had the departmental proceeding been initiated and/or pending and had the punishment been imposed on the applicant, by the time of filing of counter the respondents would have mentioned that a departmental proceeding was pending and/or punishment has been imposed. Therefore, it is clear that only because initiation of departmental proceeding was under contemplation the case of the applicant was not recommended by the D.P.C. It does appear from the counter that the respondents in the original D.P.C. considered the case of the applicant and put their recommendation with regard to applicant in a sealed cover. In view of this there was no need for holding the review D.P.C. In a departmental proceeding matter once it is decided to initiate the disciplinary proceeding or not initiate the disciplinary proceeding, and/or the applicant getting himself exonerated in the said proceeding, the next course for the Department is to open the sealed cover and work out the ~~work out the~~ recommendation of

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the original D.P.C. so far as applicant is concerned. It is found that respondents, in stead of opening the sealed cover, convened a review D.P.C. which recommended the applicant for promotion to the H.S.G. II cadre with effect from 1.10.1993.

6. In view of our above discussion, we hold that the applicant has a right to be promoted to the post of H.S.G. II with effect from 1.10.1991. From the counter of the respondents it does not appear what exactly was the recommendation of the original D.P.C. As more than eight years have passed from the date by which time the applicant became due for promotion to H.S.G. and as the applicant has in the meantime retired from service, we do not think any purpose would be served by referring <sup>the</sup> matter to the Departmental Promotion Committee once again to consider promotion of the applicant with effect from 1.10.1991. In any case, from the counter of the respondents it does appear that only reason for which the applicant was not promoted was because of a departmental proceeding against him was under contemplation. In consideration of this we dispose of this Original Application by issuing direction to the respondents that they should promote the applicant to the post of H.S.G. II cadre with effect from 1.10.1991 with consequential financial benefits. It is also ordered that arrears should be paid to the applicant within a period of 120 (One Hundred & Twenty) days from the date of receipt of this order. In the process the applicant's pension will also get increased. The respondents are directed to revise the pension of the applicant accordingly within a period of 90 (Ninety) days from the expiry of the above

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period of 120 days. Learned counsel for the applicant submits that he does not want to press for any other service benefits of the applicant. The same is noted.

7. In the result the Application is allowed, but without any order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

B.K. SAHOO

(SOMNATH SOM)  
VICE-CHAIRMAN  
9.8.99