

3
7
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 538 OF 1993
Cuttack this the 23rd day of August, 1999

(PRONOUNCED IN THE OPEN COURT)

Dr.Baikuntha Nath Tripathy

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*.

l
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.8.99

9
8
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.538 OF 1993
Cuttack this the 23rd day of August, 1999

CORAM:

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

...

Dr.Baikuntha Nath Tripathy, aged about 32 years
Son of Mrutyunjaya Tripathy,
at present working as A.D.M.O., at Talcher S.E.Rly.,
Health Unit

...

Applicant

By the Advocates : M/s.P.R.Dash
D.Nayak

-Versus-

1. Union of India represented through its
Secretary, Ministry of Railway(Rail Bhawan)
New Delhi
2. General Manager, S.E.Railway
Garden Reach,
Calcutta
3. Divisional Railway Manager
Medical, S.E.Railway,
Khurda Road, Khurda

...

Respondents

By the Advocates : M/s.B.Pal
O.N.Ghosh

...

SC/DM

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 the respondents for taking into consideration his case for promotion from the year 1990 when he became eligible for promotion from the post of Medical Officer to the post of Sr. Medical Officer according to guideline at Annexure-1. He has stated that respondents should be directed to hold a special D.P.C. meeting to consider his case.

2. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case except a few important facts which are admitted between the parties. Respondents have filed ~~file~~ ^{counter} ~~view~~ opposing the prayer of the applicant. The admitted case is that applicant joined service on 15.10.1986 as Asstt. Divisional Medical Officer. After four years he was due for consideration for promotion to the post of Sr. Medical Officer. Originally he was working in the Western Railways at Morvi and was subsequently came to S.E. Railway on inter-railway transfer and was posted at Talcher. Respondents have stated at page-2 of their counter that the case of the applicant for promotion to the rank of Sr. Divisional Medical officer was taken up by the D.P.C. in September, 1991, but at that time his CRs had not been received from the Western Railway and therefore, no view was taken with regard to his promotion. His case was again considered in the meeting of the D.P.C. in February, 1992, but he was not found fit ^{not} and was / recommended for promotion. Again he was

S. Som

considered in February, 1993, but was not recommended for promotion on the basis of performance reflected in his C.Rs. His case was again considered in October, 1993 and again he was not recommended for promotion. Western Railway in letter dated 8th June, 1991 communicated adverse entries for the year 1990-91 of the applicant which was received by him in letter dated 30.7.1991 from the Medical Superintendent, Khurda Road. This letter is at Annexure-3. Applicant filed a representation on 18.11.1991 at Annexure-4 praying for expunging the adverse entries. In letter dated 30.7.1992 of Western Railway it was communicated to the applicant in letter dated 14.8.1992 from the Medical Superintendent, Khurda Road (Annexure-5) that his representation for expunging adverse entries for the year 1990-91 has been rejected.

3. We have heard Shri P.R.Dash, learned counsel for the applicant and Shri B.Pal, learned senior counsel appearing for the respondents and also perused the records. From the above recital of facts it is clear that the case of the applicant was considered in September, 1991 by the D.P.C. for promotion, but no view was taken as his CRs had not been received from the Western Railway. His case was again considered in February, 1992, but on the basis of his CRs his case was not recommended for promotion. We find that the adverse entries in the CRs of the applicant was communicated in letter dated 30.7.1991 against which he represented on 18.11.1991 and his representation was disposed of by way of rejection only on 30.7.1992. From this it is clear that when the D.P.C. met and considered the case of the applicant for promotion and found him unsuitable for promotion to the

S. J. Form
February 1992
^ S. J. Form

11

post of Sr.Divisional Medical Officer, the D.P.C. had taken note of the adverse entries in the C.R. of the applicant for the year 1990-91 even though the applicant's representation against the adverse entries was then pending and had not been disposed of. Law is well settled that D.P.C. cannot take note of either uncommunicated adverse entries or adverse entries against which representation has been filed and has not been disposed of. In consideration of the above it is clear that the DPC which met in February, 1992 should not have taken note of the adverse entries made in the C.R. of the applicant for the year 1990-91. Applicant has not made any specific averment that the adverse entries for the year 1990-91 ~~are~~ ^{is} the only adverse entries which he had received. Respondents have stated in general term that considering the CRs of the applicant had not been recommended for promotion in the meeting of the D.P.C. in February, 1992. As it is not clear from the pleadings of the parties, if besides adverse entries for the year 1990-91, referred to by us above, there ~~was~~ ^{is} other adverse entries or not, it is not possible to take a view with regard to suitability of the applicant for promotion to the next higher rank. In any case this is a matter to be decided by the D.P.C. In consideration of this we direct the respondents to hold a review D.P.C. meeting for considering promotion of the applicant from the date he was due to be promoted after completion of four years, ^{review} i.e. in June, 1990. The D.P.C. while considering his case for promotion from June, 1990, should not take into consideration any uncommunicated adverse entries in the

S. Jam

8
C.R. of the applicant as also the adverse entries against which applicant had filed a representation and the representation was still pending as on the date he became due for promotion to the next higher rank. If on the basis of such consideration of the review D.P.C. the applicant is found fit for promotion, then such promotion shall be given to him on his completion of four years ^{or} from the date of promotion of his immediate juniors, whichever is later.

The Original Application is disposed of in terms of observation and direction made above, but without any order as to costs.

L.M.
(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.8.99