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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 596 OF 1993
Cuttack this the 30th day of September, 1999

Zikrun Khan

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*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.9.99

30.9.99.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.596 OF 1993
Cuttack this the 30th day of September, 1999

CORAM:

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

...

**Shri Zikrun Khan,
S/o. Late Yunus Khan
Retd. H.S.G. Postmaster
At: Qr.No.42/3, Type-IV-A, Unit-II, Ashok Nagar
Bhubaneswar-9**

By the Advocates :

...
M/s.B.S.Mishra
S.C.Kar
G.P.Mishra

Applicant

-Versus-

1. Union of India represented through the Secretary to Minister of Communication -cum- D.G.Posts, Dak Bhawan New Delhi-1
2. The Chief Post Master General, Orissa Circle, Bhubaneswar
3. Senior Superintendent of Post Offices, Bhubaneswar, At/PO: Bhubaneswar Orissa

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Respondents

By the Advocates :

...
Mr.S.B.Jena
Addl.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, who retired on superannuation on 30.6.1993, while serving as Sub-Post Master in H.S.G. II cadre filed this application on 13.10.1993 to direct the respondents to promote him to the post of L.S.G. Postmaster retrospectively from the year 1975 when his juniors were promoted or from the year 1976, when vacancies arose, for which vacancies, he qualified himself in a competitive examination on 13.6.1976 along with consequential benefits and ^{order} for quashing Annexure-4 dated 13.6.1993. _{work}

2. It is not in dispute that the applicant joined as Postal Assistant on 7.4.1988. It is also not in dispute that in the competitive examination held on 13.6.1976 to fill up 1/3rd ^{quota} of L.S.G. as per rules, the applicant had qualified in the examination by occupying the 14th position among the 23 qualified candidates (Annexure-R/3). As per rules, 2/3rd of the vacancies of L.S.G. cadre are filled up by way of promotion from amongst the Postal Assistants on the basis of seniority-cum-fitness and rest 1/3rd by way of competitive examination from amongst the Postal Assistants irrespective of their seniority and persons so selected in such examination are appointed in order of merit assigned to them in such examination according to vacancy position.

3. The case of the applicant is that during the year 1976, there were 42 vacancies in L.S.G. cadre. 2/3rd of that quota, i.e. 28 posts were filled up on 3.6.1977 and out the 14 posts for the 1/3rd quota, in respect of

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successful candidates in the competitive examination, only seven posts were filled up on the same date. His position being at Sl. No.14, he was entitled to be promoted to that cadre against 1/3rd quota on 3.6.1977, but no reason has been assigned by the Department for not filling up of the other seven vacancies. No Departmental Promotion Committee was convened for the years 1976 to 1980 for considering the cases of the applicant and others on promotion to the post of L.S.G. However, in response to the representations from 1976 onwards, he was promoted to L.S.G. cadre on 28.7.1980 on adhoc basis with effect from 1.1.1979 and was regularised on 29.10.1980. Since he was entitled to be promoted to L.S.G. cadre retrospectively from the year 1976, time and again he represented to the authorities and after a long delay, the aforesaid representation of the applicant was rejected on 13.6.1993 by Respondent No.2 under Annexure-4. It is the further case of the applicant that he is also entitled to be promoted to the post of L.S.G. retrospectively from the year 1975 when his juniors S/Shri B.K.Mangaraj, K.Sahoo, M.M.Mishra, and Maheswar Nayak etc. were promoted to that cadre in the years 1980-81 retrospectively, even though he was appointed as L.S.G. on 1.1.1979.

Hence this application.

4. In the counter the stand of the Department is that vacancy position in the year 1976 in L.S.G. cadre was 21. Out of this, seven were reserved for 1/3rd quota and 14 for 2/3rd quota. Accordingly seven vacancies were notified. The applicant having occupied 14th position in

the examination could not be promoted as against the 1/3rd vacancies. In fact the D.P.C. was convened on 28.5.1977 which recommended for promotion of 14 officials as against 2/3rd quota on seniority-cum-fitness basis and seven against 1/3rd quota from amongst the qualified officials under Annexure-R/3. However, the applicant was not recommended for promotion against 1/3rd quota as he belongs to general community. Six above him and one S.C. candidate were recommended for promotion. As some more vacancies were available in 1/3rd quota, it was decided to give officiating charge purely on adhoc basis to the qualified officials in the examination of 1976. Accordingly the applicant was ordered to work in L.S.G. cadre purely on adhoc basis vide order dated 26.12.1978. In the year 1979 ~~there were~~ some more vacancies occurred against 1/3rd quota and the applicant was regularly promoted to that cadre vide order dated 28.7.1980.

After his regular promotion the applicant represented for promotion retrospectively from 1976. This representation was examined and rejected and such rejection order was communicated to him on 6.3.1982, which fact he has suppressed to mention in the Original Application. The rejection order dated 13.6.1993 under Annexure-4 does not relate to his representation for retrospective promotion to the L.S.G. cadre with effect from the year 1976, but relates to the matter of stepping up of pay of the applicant.

The respondents, ^{also} denied that the juniors of the applicant were promoted earlier. In fact those juniors joined in the Department on different dates in the year

1957, whereas the applicant joined on 7.4.1958.

5. The applicant filed rejoinder reiterating that the vacancy position in the year 1976 to be 42. Though at first vacancy was calculated at 21, the mistake was detected later on and it was found that vacancy position to be 42. He however, admits that his representation was rejected on 6.3.1982 by the Chief Post Master General, but as against this rejection order, he represented to the Director General(Posts), New Delhi on 14.4.1982 which was still pending at his level without being disposed of by the time this application was filed.

6. We have heard Shri B.S.Mishra, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Standing Counsel appearing for the respondents. Also perused the records.

7. Annexure-4 dated 13.6.1993 as is apparent from the recitals is an order of rejection in the matter of stepping up pay of the applicant. It has nothing to do with his main prayer for retrospective promotion from the year 1976. Hence prayer for quashing Annexure-4, that too in the absence of representation which necessitated passing an order of rejection under Annexure-4 cannot be entertained in this application.

As regards the Original Application the main prayer of the applicant that he is entitled to be promoted to L.S.G. cadre retrospectively from the year 1975 as against which his juniors were promoted or from the year 1976, as against 1/3rd quota along with consequential benefits, we feel, without entering into merits in regard to factual position, the application can be disposed of on the ground of limitation. His

representation for retrospective promotion was admittedly rejected by the Chief Post Master General(Res.2) in the year 1983 itself. Yet he chose to file this application for the same relief eleven years thereafter on 13.10.1993 and as such it is hopelessly barred by limitation under the provisions of Section 21 of the Administrative Tribunals Act. The fact of his representation having been rejected in the year 1982 was deliberately suppressed by him while drafting the Original Application, lest the application would not be dismissed at the initial stage on the ground of limitation. On the other hand he drafted para-10 of the Original Application by misleading the Tribunal stating that his representation was rejected on 13.6.1993, which as earlier discussed is not a fact. When in the counter it was pointed out by the respondents that the representation was rejected in the year 1982, in the rejoinder the applicant took a plea that as against this rejection order he had represented on 14.4.1982 to the D.G. Posts & Telegraphs, New Delhi and the same is still pending. Even assuming he represented so on 14.4.1982, yet under the provision of Section 21 of the A.T. Act, he should not have waited for eleven years for filing this application. Hence such a representation, if any, made, cannot save the limitation.

In the result we dismiss this application as barred by limitation, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 30.9.99

30-9-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO