

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 698 of 1993

Cuttack this the 28th day of August, 1996

Gouranga Patra

...

Applicant (s)

Versus

Union of India & Others ...

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Ys*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Ys No.*

N. Sahu
(N. SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

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C O R A M :

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Gouranga Patra, age 42 years
son of late Bhagabat Prasad Patra
Village-Jagannathpur, P.O.Kuladiha
P.S.Basta, Dist:Balasore,
At present - A.S.R.M. 'N' Division
Office of Sr.Suptd. of Railway Mail
Services, 'N' Division, Cuttack

...

By the Advocate:

Applicant

M/s. G.K. Misra
K. Swain
B.N. Patra
D.Das
G.Agarwal
B.K.Raj
M.Bisoi

- Versus -

1. Union of India represented by
the Director General of Posts
Dak Bhawan, Sansad Marg
New Delhi
2. Chief Post Master General
Orissa Circle, Bhubaneswar
3. Director of Postal Services
Office of the C.P.M.G.,
Bhubaneswar

...

By the Advocate:

Respondents

Mr.Akhaya Kumar Mishra
Addl.Standing Counsel
(Central)

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE): This application has been filed for a direction to "fix the pay of the applicant in the cadre of A.S.R.M. notionally from 1.8.1988 and to pay the difference of salary between what has been paid to the applicant from 1.9.1990 and what is due till the date of his promotion under Annexure-1."

2. The facts are in a brief compass. The applicant worked as Inspector Railway Mail from 1979 to 1992. By Annexure-1 dated 7.12.1992 of C.P.M.G., Bhubaneswar (Respondent 2) the applicant was promoted against a substantive vacant post of Assistant Superintendent of Railway Mail in the scale of pay of Rs.1640 - 2900 along with three of his colleagues. The post of Platform Inspector in the grade of I.R.M. in Cuttack R.M.S. was upgraded to the grade of H.S.G.-I carrying the scale of pay Rs.2000-3200 and consequently the A.S.R.M., Cuttack R.M.S. Shri N.C.Bhoi was promoted to the rank of H.S.G.-I. This provided a vacancy for the applicant as the topper in the selection/promotion list under Annexure-1. Shri N.C.Bhoi was promoted to H.S.G.-I on notional basis on 1.8.1988 and actual basis on 1.9.1990. It is the claim of the applicant that he is similarly entitled to date back his promotion to the grade of A.S.R.M. from 1.8.1988 on notional basis and from 1.9.1990 on actual basis.

It is submitted by Shri G.K. Mishra, learned counsel for

the applicant that this is only consequential when the promotional post of A.S.R.M. became vacant. He submitted that the terms of order of promotion as per Annexures-1 and 3 are similar. Shri N.C.Bhoi who is promoted to the cadre of H.S.G.-I made room for the present applicant. If notional promotion from 1.8.1988 and actual promotion on 1.9.1990 were allowed to Shri Bhoi, there is no point in denying the same to the applicant. The applicant wants payment of arrears of salary in respect of his retrospective promotion from 1.9.1990.

3. The respondents have opposed this claim. They say that the applicant did not actually work in the higher cadre from 1.9.1990. The order of upgradation of the post of A.S.R.M. to H.S.G.-I by Annexure-2 was issued on 13.10.1992 by the Department and promotion of A.S.R.M. to the cadre of H.S.G.-I was accordingly effected. It is stated that the post was not physically vacant, but was technically so from 1.9.1990.

4. The important argument of the applicant's counsel is that extending the benefits on retrospective actual promotion to Shri Bhoi and refusing similar benefits to the applicant is arbitrary. The substantive post of A.S.R.M. with effect from 1.9.1990 cannot be kept in a state of suspension even notionally without an incumbent to officiate in the establishment. The sheet anchor of the claim of the applicant is to be

found in his representation as per Annexure-5 which is extrated hereunder:

" Since I am the senior most in the cadre of IRM in O.C. Community after Shri K.K.Ojha promoted to ASRM cadre in the year 1989 and also since the post of ASRM has fallen vacant w.e.f. 1.8.88 following the vacation of the post on promotion to HSG I cadre by Shri N.C.Bhoi, I am due to be promoted against this vacancy from the year 1989 on notional basis and from 1.9.90, basing on actual basis.

That in view of analogy, basing on which arrear of pay and increment benefits have been awarded to Shri Bhoi, though physically did not work against the post of platform Inspector, Cuttack RMS upgraded to HSG I cadre; in the same analogy, I being the senior most IRM of Orissa Circle from the year 1989, posting order in my favour may kindly be issued retrospectively from the year 1989 (After Shri K.K.Ojha) and financial benefits may be caused to be paid to me."

5. This representation was not successful. The respondents' claim is that there was no physical vacancy in A.S.R.M. cadre in Orissa Postal Circle earlier to the issue of order at Annexure-1 to the Application. They point out that in accordance with Annexure-1, the vacancy in A.S.R.M. cadre was caused only on promotion of Shri J.C. Mohanty A.S.R.M. to P.S.S.Goup B cadre. The respondents further point out that the upgradation of the post of platform Inspector as per orders at Annexure-2 was a result of implementation of the judgment dated 17.9.1991 and it is this upgradation that is effective from 1.9.1990 on actual basis. There is no order as far as the applicant is concerned. His promotion was from I.R.M. cadre to A.S.R.M. cadre against the physical vacant post. The promotion was adhoc/temporary and

subsequently confirmed. Thus the promotion of the applicant from I.R.M. cadre to A.S.R.M. cadre on resultant vacancy has to be effected only in a normal way for the period of that vacancy. As such the applicant cannot claim retrospective promotion. Non-extending of such benefit to the applicant is not arbitrary or illegal.

6. There is no question of granting monetary benefits to the applicant when there is no retrospective promotion to him. His promotion was only against an existing vacancy of ASRM. In the case of Shri Bhoi there was a direction to treat his promotion from a particular date. Even in such a case there is a controversy as to whether when the promoted officer did not physically work in that post, will he be entitled to arrears of pay? The case of the applicant therefore is clearly distinguishable from that of Shri N.C. Bhoi. Unless there is an order of retrospective promotion, the same cannot be directed to be given by a Court. It is only one post in Orissa which has been upgraded. The consequential upgradation of post lower to that cannot be read into.

7. As mentioned above there has been a dispute between the Benches of the Central Administrative Tribunal as to whether monetary benefits consequent on the order of proforma promotions should be issued or not. There have been judgments holding that for retrospective promotion arrears of pay and allowance are payable. However, there had also been certain other judgments where a contrary view was taken and accordingly a Full Bench of the Tribunal sitting at Madras considered the question in Original Application Nos. 676 and 842 of

1989 in N.P.Bhat vs. Union of India & Others. The said judgment pertains to the cases of two officials who were promoted to the post of Executive Engineer, notionally, with effect from 5.11.1976 by an order issued in 1984, after their retirement on 31.7.1982 and 31.1.1982. The question was whether they were entitled to arrears of pay and allowances from 1976 till their retirement. The applicants were two officials of a large batch of 75 Assistant Engineers who were promoted retrospectively by a common order of the Department pursuant to the judgment of the Supreme Court relating to the seniority of the officials. The Chandigarh and New Bombay Benches of the Tribunal held that they were entitled to arrears of pay. The Principal Bench and the Madras Bench took the view that they are not entitled to such arrears, but were entitled to refixation of their pay in accordance with the notional promotions. The Full Bench relied on two Supreme Court decisions and negatived the claim of arrears of salary since the applicant had never worked at any time as Executive Engineer. This is the state of law when they were actually ordered retrospective promotion. In the instant case there is no such order. Deeming a vacancy to arise because of the upgradation is against the grain of service jurisprudence. If you upgrade the post it does not mean that the entire chain down below gets upgraded retrospectively. The promotion is always against a physical vacancy and against an identified post. The upgradation order of Shri Bhoi has to be

insulated only to one post that has been as a result of Central Administrative Tribunal decision and consequent Government orders.

8. Shri Mishra's other argument is that the upgradation has been done to the post of I.R.M. and Shri Bhoi was elevated to H.S.G.-I. A.S.R.M. is an intermediate post. Shri Bhoi was working as A.S.R.M. When the upgradation was done, the differential pay of I.R.M. to H.S.G.-I could have been provided for. Since Shri Bhoi had got the benefit of only the difference between A.S.R.M. and H.S.G.-I, the applicant shall be allowed the remaining balance from I.R.M. to A.S.R.M. His contention is that there was no upgradation of the A.S.R.M. post. Even here I am not convinced that the applicant has made out a case. Any additional benefit by way of pay on promotion can arise only from the date of actual promotion. Unless there are Government orders of retrospective promotion or deemed promotion from a back date, such state of affairs cannot be assumed and no Court has power to give such benefits. Secondly there is no stipulation of notional promotion or real promotion from retrospective date as far as the applicant is concerned.

9. One recent Supreme Court decision deserves to be specially mentioned. In State of Haryana and others vs. O.P. Gupta and others (1996) 33 ATC 324

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the facts are : In a seniority dispute, the Supreme Court directed the Department to prepare a fresh seniority list strictly in accordance with rules ignoring any inconsistent administrative instructions. The seniority list was accordingly prepared afresh. Thereafter, even in absence of any special direction in this behalf, eligible persons were given notional promotion from the deemed date, that is 1.1.1983. The question before the Supreme Court was whether these officers are entitled to arrears of salary for the period during which admittedly they had not worked but they had been notionally promoted from the deemed date. The Punjab High Court directed the payment of arrears from the deemed date given in the seniority list till the date of their posting in the promotional posts. Relying on an earlier decision, 10 ATC 378 (1989), Paluru Ramkrishnaiah v. Union of India, the Supreme Court held as under :

"... a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar, G.M., N.Rlys. v. Avinash Chandra Chandra (SCC p.482, para 16)"

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10. Thus the question of drawing arrears of salary when there was no physical vacancy, no physical promotion and when the applicant did not actually work therein cannot be considered.

11. The Application is dismissed. No costs.


(N. SAHU)
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//