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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 196 OF 1994
Cuttack, this the 27th day of March, 2001

Sri Gokula Nanda Mohanty Applicant

Vrs.

Union of India and others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
27.3.2001

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CORAM: HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)
Sri Gokula Nanda Mohanty
Retired Telegraph Man,
Central Telegraph Office, Cuttack,
At-Samanta Sahi, P.O-Buxi Bazar,
District-Cuttack.....

.....Applicant

Advocate for applicant - Mr. J. N. Jethi

Vrs.

1. Union of India, represented through the Chief General manager, Telecommunications, Orissa Circle, Bhubaneswar, District-Puri.
2. Senior Superintendent, Telegraph Traffic Division, At/PO-Bhubaneswar, District-Puri.
3. Superintendent-in-charge, Central Telegraph Office, Cuttack... .. Respondents

Advocate for respondents - Mr. U. B. Mohapatra
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application, the petitioner has prayed for a direction to respondent no.1 to give him promotion under BCR Scheme with effect from 30.11.1990 with consequential benefits.

2. The admitted position is that the petitioner entered into Government service as a Waterman in Central Telegraph Office, Cuttack, on 1.4.1960 and in due course he was promoted to the post of Office Peon. He was dismissed from service on 10.12.1974. He challenged the order of dismissal before the Hon'ble High Court of Orissa in OJC No.1587 of 1982 which was transferred to the Tribunal as TA No.248 of 1986 and was allowed in order dated 28.11.1986. He was accordingly reinstated in

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service on 18.4.1987. The applicant came up before the Tribunal in OA No.250 of 1988 with the prayer that the departmental authorities should be directed to promote him to the post of Jamadar with retrospective effect from 29.1.1980. O.A.no.250 of 1988 was disposed of in order dated 27.11.1989 with the direction that the case of the applicant should be considered for promotion when it became due within a period of three months. The applicant was considered and was ordered to be promoted to the grade of Jamadar in 20% Scheme notionally with effect from 2.2.1980 in order dated 20.5.1991 enclosed at Annexure-R/3 to the counter. The applicant voluntarily retired from service from 28.2.1991. The above facts are not in controversy.

3. The applicant has stated that after his retirement he submitted an appeal before the competent authority to give him promotion under the BCR Scheme from 30.11.1990. This Scheme was introduced in circular dated 16.10.1990 at Annexure-R/1. In this order it was mentioned that orders of promotion on the basis of first review should be issued before 30.11.1990. In the context of the above, the applicant has come up with the prayer referred to by us earlier.

4. Before noting the averments made by the respondents, it has to be noted that after disposal of OA No.250 of 1988 in order dated 27.11.1989, the applicant filed MA No.247 of 1990 for appropriate order against the departmental authorities for non-compliance of the order dated 27.11.1989 regarding consequential promotion of the applicant. MA No.247 of 1990 was disposed of in order dated 27.3.1991 with the Tribunal

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noting that the respondents have already taken steps for implementing the order dated 27.11.1989 and the MA was accordingly disposed of. The applicant thereafter filed a further MA No. 501 of 1991 in disposed of OA No.250 of 1988 in which he had prayed for getting consequential financial benefits with regard to his promotion under OTBP Scheme and for any other order. MA No.501 of 1991 was disposed of in order dated 24.6.1993 directing that the applicant should file a representation before the Chief General Manager, Telecommunication, within three weeks from that date and the representation should be disposed of with a speaking order. The learned counsel for the petitioner submitted in that case that the departmental authorities have denied further promotion of the petitioner and appropriate direction should be issued to the departmental authorities to consider the case of the petitioner for further promotion under the BCR Scheme. The Tribunal held that this is a fresh cause of action and if so advised the applicant may come up in a separate Original Application. That is how the applicant has approached the Tribunal with the prayers in the present O.A.

5. The respondents in their counter have pointed out that the applicant was ordered promotion under the OTBP Scheme with effect from 2.2.1980 in order dated 20.5.1991 against a supernumerary post sanctioned by the Chief General Manager, Telecom, Orissa, in order dated 15.4.1991 pursuant to the order dated 27.3.1991 of the Tribunal in MA No.247 of 1990 referred to earlier. He was allowed notional benefit. The respondents have stated that other Head Telegraphmen who had completed 26 years of service in the basic grade were promoted to the higher

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grade on ad hoc basis under the BCR Scheme with effect from 30.11.1990 in orders dated 14.12.1991 and 11.1.1991 on the basis of recommendation of duly constituted D.P.C. The case of the applicant could not be considered for such promotion in the DPC since by that time he had not been promoted under OTBP Scheme. The order of his promotion under the OTBP Scheme was issued only on 20.5.1991. The respondents have stated that if the applicant had not taken voluntary retirement with effect from 28.2.1991, his case for promotion under BCR Scheme would have normally been considered following the departmental rules and regulations. But by the time the applicant was promoted under OTBP Scheme, he had already retired and therefore, his case for further promotion could not have been considered. The respondents have stated that promotion of the applicant under OTBP Scheme to Grade-II is a pre-condition for consideration of his promotion under BCR Scheme to Grade-III. The respondents have further stated that even if it is held that the applicant is entitled ~~entitled~~ to be considered for promotion under the BCR Scheme, he would have been entitled for actual benefit of promotion to Grade-III only after assumption of charge under BCR Scheme as the scheme is on functional basis. The applicant having retired on 28.2.1991 there was absolutely no question of his assumption of charge after 28.2.1991. On the above grounds, the respondents have opposed the prayer of the applicant.

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6. In his rejoinder the applicant has also stated that the grounds given by the respondents in opposing his prayer in the OA are not legally justified.

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7. We have heard Shri J.N.Jethi, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioner has filed a date-chart which has also been perused.

8. From the above recital of pleadings of the parties, the admitted position is that in the present petition the applicant is claiming promotion under the BCR Scheme with effect from the date the Scheme came into force, i.e., from 30.11.1990, as by that date he had completed 26 years of service. The respondents have enclosed the circular dated 16.10.1990 at Annexure-R/1 introducing the BCR Scheme and the clarificatory letter dated 11.3.1991 (Annexure-R/2) clarifying the doubts raised by field offices on different points. Thus, the sole point for consideration in this case is whether under the terms and conditions set out in the circulars at Annexures R/1 and R/2 the applicant is entitled to be promoted under the BCR Scheme with effect from 30.11.1990. We have gone through these two circulars very carefully. Paragraph 2(iv) of the scheme lays down that at the time of review the number of officials who had completed and would be completing 26 years of service in the basic grade including time spent in higher scale/OTBP will be ascertained. When the cases of other Head Telegraphmen were considered for promotion under the BCR Scheme with effect from 30.11.1990, the case of the applicant was not considered because by that time he had not been promoted under the OTBP Scheme which is a pre-condition in paragraph 2(iv). Under the BCR Scheme posts at the

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higher grade had to be created by upgradation by providing matching savings to the extent of 10% cut on basic cadre and 5% cut on supervisory cadre which will be in addition to cuts in basic cadre and supervisory cadre under OTBP Scheme. Paragraph 2(v) of the Scheme lays down that the upgraded posts will be created on functional justification. Even though the applicant got promotion under OTBP Scheme notionally from 2.2.1980 the order was issued only on 20.5.1991 and he took voluntary retirement on 28.2.1991. Therefore, his promotion under BCR Scheme with effect from 30.11.1990 could not have been functionally justifiable. Lastly, under item no.7 of the clarificatory letter dated 11.3.1991 it has been mentioned that promotions under BCR Scheme would be given only with prospective effect. Therefore, it would not have been possible to give promotion to the applicant under the BCR Scheme with retrospective effect from 30.11.1990 after passing of the order dated 20.5.1991 giving him promotion under OTBP Scheme. Moreover, from the order at Annexure-R/4 enclosed to the counter it appears that after his retirement the applicant filed a representation dated 8.7.1993 to allow him actual benefits and arrear pay and allowances in the promotional post of Jamadar for the period of notional promotion from 2.2.1980 to 28.2.1991, i.e., the date of his voluntary retirement. The Chief General Manager, Telecommunication, Orissa, in his order dated 13.8.1993 allowed him arrear pay and allowances in the promotional post of Jamadar from 30.11.1983 to 28.2.1991 under OTBP Scheme. From this order it is clear that in his representation dated 8.7.1993 the applicant did not ask for promotion under

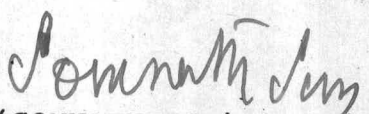
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the BCR Scheme from 30.11.1990 and asked only for actual financial benefits which were allowed to the extent mentioned in the order dated 13.8.1993 as noted by us earlier. From the above it is clear that the applicant was given promotion under OTBP Scheme from 2.2.1980 notionally and from 30.11.1983 till his voluntary retirement on 28.2.1991 effectively for the purpose of payment of arrears. For the reasons indicated by us above, we hold that the applicant is not entitled to be considered for promotion under BCR Scheme with effect from 30.11.1990.

9. In the result, therefore, the Original Application is held to be without any merit and is rejected. No costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
27.3.2001
VICE-CHAIRMAN

March 27, 2001/AN/PS