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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 211 of 1994

Cuttack this the 8th day of December, 1995

Prafulla Kumar Das ... Applicant (s)

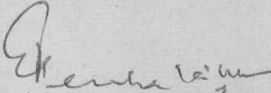
Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *no*
2. Whether it be circulated to all the Benches of the
-Central Administrative Tribunals or not ? *no.*


(D.P. HIREMATH)
VICE-CHAIRMAN


(P.V. VENKATKRISHNAN)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

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C O R A M:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE - CHAIRMAN
AND

THE HONOURABLE MR. P.V. VENKATKRISHNAN, MEMBER (ADMINISTRATIVE)
(ERNAKULAM BENCH)

...

Prafulla Kumar Das aged about
56 years, S/o. Late Gopinath Das,
At/PO: Taraboi, Via: Bajpur,
Dist: Khurda -. at present working
as Senior Chemical Assistant
Archeological Survey of India,
Kedar Gouri Road, Bhubaneswar-11
Dist: Khurda

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Applicant

By the Advocate:

M/s. B. Nayak
A.K. Dora

Versus

1. Union of India represented
through the Secretary,
Department of Culture, Ministry
of Human Resources & Development,
Sastri Bhawan, New Delhi-1
2. Director of Science (Chemistry)
Archeological Survey of India,
29, New Cantonment Road,
Dheradun, U.P. Pin - 248001
3. Director General,
Archeological Survey of India,
Janapath, New Delhi-11
4. Deputy Superintending Archeological
Chemistry, Kedar Gouri Road,
A.S.II Chemistry Branch, Old Town,
Bhubaneswar-11.
5. S.K. Singh,
Asstt. Superintending Archaeological Chemist,
ASI Chemistry Branch, Janata Colony
Agra (UP)

6. R.P.Singh,
Asstt.Superintending Archeological Chemist,
A.S.I.S.C.O. - 2009-10
Section-22-C, Chandigarh-160012 (Punjab)
7. U.R.Mangenaj
Asstt.Superintending Archeological Chemist
A.S.I., Kedara Gouri Road, Bhubaneswar-2.
8. S.S.Choudhury,
Asstt.Superintending Archeological Chemist
A.S.I., Patna Zone,
6-A, Rajendra Nagar, Patna-800016
9. N.K.Samadhiya,
Asstt.Superintending Archaeological Chemist,
A.S.I., D-49, Subhash Marg
C-Scheme, Jaipur-302001 (Rajasthan)
10. K.Chaturvedi,
Asstt.Superintending Archaeological Chemist
A.S.I., Baroda Zone,
Tembeker Wada, Vadodara
11. B.R.Mukhapadhyay,
Sr.C.A., A.S.I.
Southern Zone, Fort, St.George,
Madras-600009
12. P.C.Gupta,
Sr.C.A.A.S.I.,
Air Pollution Laboratory
Agra (UP)

...

Respondents

By the Advocate:

Mr.Akhaya Mishra,
Addl.Standing Counsel
(Central Government)

...

ORDER

MR.P.V.VENKATKRISHNAN, MEMBER (ADMN): The applicant who is a Senior Chemical Assistant in the Archaeological Survey of India is aggrieved by the fact that in the seniority-list of Senior Chemical Assistants as on 28.2.1991 (Annexure-A/5) he is shown below Respondents 5 to 12 even though he was senior to them. The applicant prays that the seniority list Annexure-A/5 be quashed and that a direction be given to the Respondents 1 to 3 to prepare the seniority

list treating him senior to Respondents 5 to 12; and to give him retrospective promotion to the post of Senior Chemical Assistant and to the post of Assistant Superintending Archaeological Chemist retrospectively from the date when the juniors, viz. Respondents 5 to 12 were promoted.

2. The applicant states that in the years 1982 and 1985, the third respondent promoted applicant to the post of Senior Chemical Assistant on the basis of the recommendation of the Departmental Promotion Committee (DPC for short). The promotion was on adhoc basis. Since the promotion order showed one S.S. Choudhury, who was junior to the applicant, above the applicant, he refused the adhoc promotion. Thereafter on 25.5.1990, by Annexure-A/3 order applicant was promoted to the post of Senior Chemical Assistant on regular basis which he accepted. While so, the seniority-list which has been impugned has been published without giving him proper position above Respondent 5. Respondents 5 to 12, who are shown senior to him in the impugned seniority-list were also further promoted to the post of Assistant Superintending Archaeological Chemist though they were junior to the applicant. The applicant filed representations A/4 and A/6, but his grievance has not been properly considered and action taken to correct the seniority position.

3. According to Respondents 1 to 4, the post of Senior Chemical Assistant is a Selection Post and the

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feeder grade for this post is Chemical Assistant. Applicant who was a Chemical Assistant was considered along with other Chemical Assistants by a DPC on 18.2.1982. The DPC prepared a panel for promotion in which applicant was placed below Respondent 5, who was junior to him as Chemical Assistant. It is the case of the respondents 1 to 4 that since the post of Senior Chemical Assistant is a selection post, the DPC would evaluate the persons being considered for promotion and place them on a merit list which would not necessarily follow the order of seniority. The contentions of the respondents 1 to 4 is that therefore, there is nothing irregular in the applicant's name being placed below that of an erstwhile junior if the DPC had considered that the junior was more meritorious than the applicant. Following this recommendation of the DPC respondents issued R/1 dated 21.5.1982 informing the applicant that if he did not get himself relieved and report for duty on promotion at the new place of posting, ^{let} accepting the promotion unconditionally, it would be assumed that the promotion was refused and his junior will be promoted. In addition he will not be considered for promotion for the next one year. Applicant did not report for duty at his new place of posting and it was deemed that he had refused the promotion. Thereafter applicant was considered by another DPC and again applicant's name found a place in the panel and he was promoted by R/2 dated 16.10.1982. In this panel also applicant's name finds place below

that of his juniors as Chemical Assistants. In this order also a similar warning was issued to the applicant that if he did not report for duty at his new place of posting on promotion, he would be deemed to have refused promotion, his juniors will be promoted and he will not be considered for promotion for next one year. On 21.2.1985 applicant was again considered by a DFC and recommended for promotion. Applicant was again shown below Respondent 8 who is junior to applicant as Chemical Assistant. Respondents 1 to 4 issued R/3 order dated 7.7.1985 with the similar warning as in the earlier promotion. Applicant again did not report for duty in his new station. Respondents 1 to 4 state in their reply that applicant in his application dated 31.7.1985 refused the promotion on domestic reasons. Respondents 1 to 4 further state that a Review DFC was held on 18.6.1986 and ad hoc promotion granted earlier to four persons was regularised by R/5 order dated 28.7.1986. By this order R/5, the Respondents 5, 6 and 7 were regularised as Senior Chemical Assistants. Thereafter a DFC was held on 6.4.1990 and on the basis of the recommendation of this DFC R/6 order dated 25.5.1990 was issued regularising Respondents 8 to 12 as Senior Chemical Assistants. In R/6 order, applicant was also recommended for promotion along with five others. This time applicant who was promoted and posted in Bhubaneswar itself accepted the promotion and joined his promotional post. According to Respondents 1 to 4, applicant has lost his seniority vis-a-vis Respondents 5 to 12 only because they had accepted promotion earlier and the applicant

having refused promotion on several occasions, thereby lost his seniority. Respondents 1 to 4 therefore contend that the impugned seniority list A/5 correctly shows the position of the applicant in the post of Senior Chemical Assistant as on 28.2.1991 as below Res. 5 to 12, who had accepted their promotions in turn and had been promoted earlier to the applicant.

4. Respondents 5 to 12 have not filed any reply statement.

5. Applicant bases his challenge to the seniority-list on two grounds. The first is that all the promotions given to Respondents 5 to 12 were on ad hoc basis and confer no right on them. By regularising them on a subsequent date, their ad hoc service has been ~~indirectly~~ recognised and this violates Article 16 of the Constitution. The second ground on which applicant challenges the seniority-list is based on the fact that the promotion ordered in Annexures R/1, R/2 and R/3 being ad hoc promotion as stated in the face of the orders, refusal of such ad hoc promotion should not visit applicant with adverse effects such as loss of seniority or debarment for promotion for one year. For this applicant relies on para 17.12 of the consolidated instructions issued by the Government of India, Department of Personnel and Training O.M. No.22011/5/86-Estt.(D) dated 10.4.1989 which is reproduced at page 99-100 of Swamy's Compilation of Seniority and Promotion in Central Government Service. The para 17.12 reads: "when a Government employee does not want to accept promotion which is offered to him he may make a written request ... if the

reasons adduced for refusal of promotion are acceptable...
during the period of validity of the panel no fresh order of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade such Government servant will lose seniority vis-a-vis his juniors promoted to the higher grade earlier... the above mentioned policy will not apply where ad hoc promotions against short-term vacancies are refused."

(EMPHASIS ADDED)

Applicant relies on the emphasised portion extracted above and contends that since R/1, R/2, R/3 were admittedly ad hoc promotions, he should not be visited with loss of seniority on refusal of promotion.

6. It is no doubt correct that the promotion orders R/1 to R/3 state that the promotions were ad hoc. However, Government instructions extracted above and which have been emphasised state that the policy of visiting refusal of promotion with loss of seniority will not apply where ad hoc promotion against short term vacancies are refused. Though these are ad hoc promotions there is nothing in the orders to show that they were ad hoc promotions against short term vacancies. Nor has applicant produced before us any material to show that they could be understood as such. These promotions though ad hoc were made following a DFC recommendation and there is no reason to suspect that those promotions were made against

short term vacancies. Besides, these promotions were regularised on various dates from 1986 to 1990. Applicant would contend that at the time when promotions were issued in 1982 there was no seniority-list and the DPC could not have correctly considered his case and the promotions would necessarily have to be only ^{ad} ~~an~~ ad hoc in the absence of a seniority-list. We are unable to accept this contention since the service particulars would be available with the DPC and though a seniority-list published as such may not have been available the consideration of various eligible persons would have been done by the DPC on the basis of the eligible persons arranged in order of seniority based on service particulars. There is no material before us to presume that the DPC has not taken into account the seniority of various eligible persons in 1982 when they drew up the panel which was the basis of the promotion order R/1. The applicant has been specifically informed in the three promotion orders R/1 to R/3 that if he did not accept promotion and report for duty in the new station his juniors would be promoted and this would necessarily mean that he would be superseded. Despite this warning applicant chose not to join his new post and preferred to wait till a promotion vacancy was made available to him in Bhubaneswar itself. In terms of para 17.12 extracted above, the refusal of promotion would entail loss of seniority vis-a-vis juniors promoted to the higher grade earlier. The applicant would not be able to get ^{the} ~~this~~ benefit of

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exception that such loss of seniority would not occur where ad hoc promotions against short-term vacancies were refused since in this case we are unable to see how this ad hoc promotion could be termed to have been made against short-term vacancies.

7. Applicant cites B.Sreenivas Reddy and others vs. Government of Andhra Pradesh and others SLJ Pt.II (1995 (1) 99 ^{at} 105 to support his other contention that ad hoc appointments subsequently regularised violates Articles 14 and 16 of the Constitution. That case deals with persons who were temporarily appointed under Rule 10 (a) (i) (1) of the Andhra Pradesh State and Subordinate Services Rules. These temporary appointments later came up for regularisation. The Supreme Court declared that the practice of imposing a ban on recruitment, then making massive ad hoc appointments de hors the rules and then resorting to regularisation of such appointments exercising the power under Article 320(3) proviso or Article 162 of the Constitution to make them members of the service is violative of Articles 14 and 16 of the Constitution. Clearly the case before us is not of such a nature. This is not a case of direct recruitment but one of promotion and applicant cannot draw support from the decision cited by him.

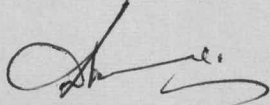
8. We would also notice that the applicant's cause of action arose in 1986 when his junior R/5 who had been promoted earlier by order R/1 was regularised. Applicant would submit that the orders of regularisation

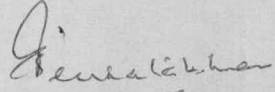
were not communicated to him and so he was not aware of such regularisation. But in 1990, order R/6 regularised Respondents 8 to 12 in the grade of Chemical Assistant~~s~~s on various dates from 2.9.1985 to 7.2.1990 and even at that stage applicant had a cause of action since this order had been communicated to him. Applicant puts forward a very weak argument that order R/6 shows his name at the top of the list of those who are regularly promoted and given postings and therefore he did not have a grievance against that order. But then his name figures at the top of only the list of postings and applicant could not have ignored the earlier portion of the same order which regularised Respondents 8 to 12 on various earlier dates from 1985 to 1990. Further the impugned seniority-list A/5 relates to 28.2.1991 and applicant's grievance relates to this particular date, even if we accept the contention of the applicant that he was not aware of the earlier regularisation of his juniors. Applicant would contend that the impugned seniority-list A/5 was not circulated till 1992. We see nothing in the pleadings to support such a contention. It is clear, however, that applicant has no satisfactory explanation for having delayed so long for approaching the Tribunal for redressal of his grievances which go back to as early as 1982. The application deserves to be dismissed on the ground of limitation alone. We have nevertheless gone into the merits of the case.

9. It is clear from the above discussion that there

is no merit in this application. Respondents 1 to 4 have contended, and in our view rightly so, that applicant had refused earlier promotions which involved his moving out of Bhubaneswar and had accepted the promotion when he could continue in Bhubaneswar after promotion and is now trying to escape from consequences of his actions. We cannot support such tactics on the part of the applicant. Accordingly the application is dismissed.

10. There will be no order as to costs.


(D.P. HIREMATH) 8/12/95
VICE-CHAIRMAN


(P.V. VENKATKRISHNAN)
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//