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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.289 OF 1994
Cuttack, this the 18th day of October, 2000

Sri Harekrishna Manthan ... 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

18.10.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 289 OF 1994
Cuttack, this the 18th day of October, 2000

CORAM:

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

.....

Sri Harekrishna Manthan, HSG II (PA),
son of late Purnanda Manthan,
At/PO/Dist.Jagatsinghpur-754 103 ...Applicant

Advocate for applicant - Mr.P.K.Padhi

Vrs.

1. Union of India, through its Secretary, Ministry of Communication, Dak Bhawan, New Delhi-110001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar.
3. Director of Postal Services (Headquarters),
O/O Chief Postmaster General, Bhubaneswar, Dist.Khurda,
Pin-751 001.
4. Superintendent of Post Offices, Cuttack South
Division, Cantonment Road, Cuttack-1, 753 001.
5. Rabindranath Mohapatra (II), s/o Narahari Mohapatra,
at present working as HSG-II P.A.,
At/PO/Dist.Jagatsinghpur-754 103
..... Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

SOMNATH SOM, VICE-CHAIRMAN
O R D E R

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has sought for promotion from 1.10.1991 with all consequential benefits.

2. The applicant's case is that he was originally appointed as Postal Assistant on 1.2.1963. With introduction of One Time Bound Promotion Scheme from 31.11.1983 he was promoted to LSG cadre with effect from

that date. Later on Biennial Cadre Review Scheme for promotion of Groups C and D employees after completion of 26 years of service came into force with effect from 1.10.1991. The applicant has stated that he is senior to one Rabindranath Mohapatra (respondent no.5). The applicant had completed more than 26 years of service on 1.10.1991. But in the order of promotion dated 25.9.1992 respondent no.5 was promoted while the applicant was ignored. He made representation for his promotion to HSG-II cadre from 1.10.1991. Ultimately, he was promoted to the rank of HSG-II from 1.1.1993 instead of from 1.10.1991. The applicant has further stated that just after his joining as Sub-Post Master, Kaduapada S.O., respondent no.5 was involved in a forged withdrawal of money from some S.B Account. The applicant has stated that respondent no.5 forged the signature of the depositor and withdrew the money. In that case the applicant was found to be negligent of duty and was awarded a punishment of stoppage of increment for three months without cumulative effect. This punishment order dated 24.7.1992 is at Annexure-6. It is stated that respondent no.5, who is the primary offender and who is facing trial before the criminal court and several other persons junior to the applicant were promoted to HSG-II cadre from 1.7.1992 whereas the applicant was promoted from 1.1.1993 which is grossly unfair. In view of this, the applicant has come up with the prayer referred to earlier.

3. The departmental respondents in their counter have opposed the prayer of the applicant. They

have stated that after coming into force of the BCR Scheme with effect from 1.10.1991 cases of persons who have completed 26 years of service as on 1.10.1991 in the basic cadre were taken up for consideration. The criterion for promotion was satisfactory service in the basic cadre. The Departmental Promotion Committee in their meeting on 2.1.1992 examined the case of the applicant for promotion with effect from 1.10.1991. At that time a disciplinary proceeding under Rule 14 of CCS (CCA)Rules was pending against him for his alleged lapses. In the proceeding chargesheet was issued to him on 10.6.1988. In another case punishment of withholding one increment for a period of one year without cumulative effect was awarded to him in order dated 22.1.1991. This punishment was given effect to from 1.11.1991. The DPC in their meeting held on 2.1.1992 didnot recommend the case of the applicant for promotion because of his unsatisfactory record of service and due to pendency of disciplinary proceeding and currency of punishment. As per Rule 157 of P&T Manual, Vol.III a person, who has been punished with stoppage of increment should not be considered for promotion during the currency of the punishment which will include the period from the date of passing the order to the date on which his next increment which is to be postponed, falls due. The next DPC meeting was held on 3.9.1992 and the applicant's case was considered. By this time the punishment order dated 24.7.1992 had been issued against him and at the time of holding the DPC meeting this punishment and the earlier punishment of stoppage of increment for one year were current. Therefore, his case was not recommended by the DPC. The next DPC met on

1.4.1993 and recommended the case of the applicant, and accordingly he was promoted with effect from 1.1.1993. As regards respondent no.5, the departmental respondents have stated that by the time the first meeting of the DPC was held on 2.1.1992, respondent no.5 had not completed 26 years of service and therefore his case was not considered. The applicant's case was considered in this meeting and he was not recommended for promotion. Respondent no.5 completed 26 years of service on 12.5.1992 and in the DPC meeting held on 3.9.1992 his case was examined and recommended for promotion with effect from 1.7.1992. In that meeting of the DPC the applicant's case was considered but he was not recommended. On the above grounds the departmental respondents have opposed the prayer of the applicant.

4. We have heard Shri P.K.Padhi, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the departmental respondents and have also perused the records.

5. The learned counsel for the petitioner has drawn our attention to the Department of Personnel's Office Memorandum dated 15.7.1971, the gist of which has been printed at pages 121 and 122 of Swamy's Compilation on Seniority and Promotion in Central Government Service (First Edition). It has been submitted that pendency of disciplinary proceedings as also currency of punishment of withholding of increment are not a bar to promotion. We have gone through this Office Memorandum and we are unable to accept the above proposition. In paragraph 3 of the Office Memorandum it has been mentioned that as in the

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case of promotion of a Government servant, who has been awarded the penalty of censure, penalty of recovery from pay of the loss caused by him to Government or withholding his increment(s) does not stand in the way of his consideration for promotion though in the latter case promotion is not given effect to during the currency of the penalty. While, therefore, the fact of imposition of such a penalty does not by itself debar the Government servant concerned from being considered for promotion, it is also taken into account by the DPC in the overall assessment of his service record for adjudging his suitability or otherwise for promotion. From the above, two points are clear that during the currency of punishment of stoppage of one increment promotion cannot be given. The second point is that the fact of awarding such penalty can be taken into consideration by the DPC while adjudging the suitability of the person for promotion. It has been submitted by the learned counsel for the petitioner that the departmental respondents themselves have stated that the penalty of stoppage of one increment for one year was given effect to with effect from 1.11.1991 and the applicant was due to be promoted from 1.10.1991. Therefore, it has been urged that this punishment should not have been taken into consideration because his suitability for promotion should have been adjudged as on 1.10.1991. We are not inclined to accept this proposition because the departmental respondents have pointed out that the punishment order was issued on 22.1.1991. The punishment naturally was given effect to presumably from the date the normal increment of the applicant was due. The departmental respondents have also

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stated that under the relevant rules the period from the date of imposition of the punishment and the date on which the punishment became current is also the period during which promotion cannot be given. Besides, the departmental respondents have stated that the DPC took into account his unsatisfactory record of service. The record of service of the applicant is not before us. We also cannot re-assess the record of service of the applicant and substitute our judgment for the finding arrived at by the DPC. We find that in this case the applicant's case was repeatedly considered in three successive meetings of the DPC in two of which he was not recommended for promotion. In the third meeting held on 1.4.1993 his case was cleared and he was given promotion retrospectively from 1.1.1993. In view of this, the contention of the applicant that even during the period of currency of punishment stopping his increment he should have been promoted is held to be without any merit. If that is done, then the fact of imposition of punishment is nullified by the fact of promotion.

6. In consideration of all the above, we hold that the applicant is not entitled to the relief claimed by him. The Original Application is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
18.10.2000
VICE-CHAIRMAN