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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 518 OF 1994
Cuttack, this the 18th day of July, 2000

Hrudayananda Pradhan 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
(SOMNATH SOM)
VICE-CHAIRMAN
18/7/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

Hrudayananda Pradhan,
Assistant Postmaster,
Sambalpur H.O-768 001

Applicant

Advocate for applicant - Mr.D.P.Dhalsamant

Vrs.

1. Union of India, represented through Chief Post Master General, Orissa Circle, Bhubaneswar-751 001.
2. The Postmaster General, Sambalpur Region, Sambalpur-768 001.
3. Senior Superintendent of Post Offices, Sambalpur Division, Sambalpur-768 001.

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application the petitioner has prayed for a direction to the respondents to give him promotion under BCR Scheme with effect from 1.10.1991. The respondents have filed counter opposing the prayer of the applicant. For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that the applicant joined the Department as Postal Clerk on 1.2.1963. In order dated 11.10.1990 at Annexure-1 a Scheme known as BCR Scheme was introduced with effect from 1.10.1991 which provided that clerical staff who have completed 26 years of satisfactory service would be considered for promotion to HSG-II level. The applicant had completed 26 years of service by 1.2.1989 but he was not promoted with effect from 1.10.1991. Hence this Application.

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2. The respondents have pointed out that the case of promotion of the applicant to the cadre of HSG-II under BCR Scheme was taken up along with others who have completed 26 years of service in the basic cadre by 1.10.1991, by the DPC in February 1992. DPC did not recommend the case of the petitioner for promotion. In the next DPC meeting held on 16.10.1992 his case was again considered and he was not recommended. The next DPC was held on 30.3.1993 and the case of the applicant was considered and kept in sealed cover. It is further stated that the last DPC meeting was held on 21.9.1994 and the DPC did not recommend the case of the applicant for promotion to HSG-II cadre and that is why the applicant has not been promoted to HSG-II cadre. The respondents have stated that the applicant has not been promoted because of punishment received by him in different disciplinary proceedings as also because he was under suspension and because of currency of the disciplinary proceedings against him and this has been correctly done. From the above it is clear that the sole point for consideration in this case is whether the DPC had rightly not recommended his case for promotion in different meetings in which his case has been considered.

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3. We have heard Shri D.P. Dhalsamant, the learned counsel for the petitioner and Shri A.K. Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioner has relied on the following cases:

- (i) A.C. Nath v. Union of India, Swamynews 1988 Aug., Sl.178, page 110;

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- (ii) Beniram Durga Prasad v. Union of India,
Swamynews March 2000, page 86, serial no.41;
- (iii) O.A.No. 569 of 1992, disposed of on 3.5.1999;
- (iv) Union of India. v. K.V.Jankiraman, AIR 1991 SC
2010.

These cases have been looked into.

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4. For considering the submissions made by the learned counsel for the petitioner, the different proceedings initiated against the applicant from time to time and the punishment imposed on him and the date of initiation of proceedings, etc., will have to be noted. The respondents have made averments with regard to this in their counter which have not been denied by the applicant by filing any rejoinder. It is stated that while the applicant was working as Sub-Post Master, VSS Nagar S.O. during 3.10.1988 to 31.7.1991 he was proceeded against on 1.5.1990 under Rule 16 of CCS (CCA) Rules for non-credit of S.B.Pass Book deposit money. The proceeding ended with imposition of punishment of "Censure" on the applicant in order dated 15.5.1990. Again during his incumbency as Sub-Post Master in VSS Nagar Sub-Post Office, he was involved for non-credit of amount to Government account deposited in five-year R.D.Account. He was again proceeded against under rule 16 of CCS (CCA) Rules in memo dated 1.8.1991 which was received by the applicant on 2.8.1991. The proceeding ended with imposition of punishment of stoppage of one increment without cumulative effect for six months when it fell due. This order was issued in memo dated 17.9.1991 and the punishment took effect from 1.11.1991 to 30.4.1992 for a period of six months. Again when the applicant was working as Assistant Post Master, Sambalpur Head Post Office he was involved in a fraud case and was placed under suspension in order dated 25.2.1992. The order

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of suspension was revoked on 21.8.1992 and he resumed duty on 1.9.1992. Thus the applicant was under suspension from 28.2.1992 to 31.8.1992. This proceeding is still continuing against the applicant. It is stated that another disciplinary proceeding for majority penalty was initiated against the applicant under Rule 14 of CCS (CCA) Rules on 31.3.1993 and this proceeding is still continuing. From the above it is seen that when the DPC met in February 1992 the punishment of stoppage of one increment for six months from 1.11.1991 to 30.4.1992 was current in respect of the applicant and therefore the action of the DPC in not recommending his promotion cannot be found fault with. The second DPC meeting was held on 16.10.1992 in which his case was considered and DPC did not recommend his name. The learned counsel for the petitioner has stated that the applicant was under suspension from 26.2.1992 to 31.8.1992. On 1.9.1992 he had joined and he was not under suspension. The major penalty proceeding under Rule 14 was issued to him in memo dated 31.3.1993. Therefore it is argued that on 16.10.1992 when the DPC met the departmental proceeding had not been initiated against him and therefore it was wrong on the part of DPC not to recommend his case. It is submitted by the learned counsel for the petitioner that in accordance with the law as laid down by the Hon'ble Supreme Court in K.V.Jankiraman's case (supra) a departmental proceeding can be said to have been initiated against a Government servant only when chargesheet is issued. But in this case chargesheet was issued only on 31.3.1993 and therefore this major penalty proceeding had not been initiated against him on 16.10.1992 when the DPC met for the second time. This contention is not acceptable because prior to this the applicant was placed under suspension pending initiation of departmental proceeding against him in

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order dated 25.2.1992 and he remained under suspension from 26.2.1992 to 31.8.1992. Even though he was reinstated from 1.9.1992 the proceedings were very much in contemplation against him as he was under suspension for the above period. The fact that the applicant was reinstated does not mean that his record should have been taken as satisfactory and he should have been recommended for promotion. The BCR Scheme enclosed by the applicant at Annexure-1 provides in paragraph 2(iv) that criterion for promotion will be eligibility of 26 years of satisfactory service. In support of his contention the learned counsel for the petitioner has relied on the decision of the Tribunal in OA No.569 of 1992. In that case a similar stand taken by the applicant was rejected and therefore it does not go to support the case of the applicant. In that decision in OA No.569 of 1992 the case of A.C.Nath (supra) relied upon by the learned counsel for the petitioner was taken note of. In A.C.Nath's case (supra), because of absence of vigilance clearance promotion was not given and the facts of that case are not similar to the case of the present applicant. In Beniram Durga Prasad's case (supra), in spite of imposition of penalty the applicant was found suitable for promotion and DPC recommended his case. But the DPC's recommendation was not given effect to by the departmental authorities on the ground that the major penalty has been imposed on him. The Tribunal held that the penalty imposed on the applicant is a minor penalty and withholding of promotion during the currency of penalty applies only in case of major penalty. It is submitted by the learned counsel for the petitioner that withholding of one increment for six months with non-cumulative effect is a minor penalty and during currency of this punishment from 1.11.1991 to

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30.4.1992 the DPC should not have declined to recommend his case in their meeting held in February 1992. We are unable to accept this contention because promotion under BCR Scheme to the rank of HSG-II would have resulted in the applicant going over to a higher scale of pay and giving him HSG-II from 1.10.1991 would have nullified the penalty of stoppage of one increment for six months. This contention is therefore held to be without any merit.

4. As we have already noted promotion under BCR Scheme is not automatic on completion of 26 years of service. Record of service has to be satisfactory. In the instant case the applicant has been put under departmental proceedings again and again, and more than one punishment has been imposed on him. Two major penalty proceedings against the applicant are still pending and in view of this the action of the DPC for not recommending his case cannot be found fault with. It is also to be noted that mere absence of departmental proceedings would not entitle a person to get promoted. His record of service has to be seen and it is for the Departmental Promotion Committee to see his record of service and take a view on this matter. It is not open for the Tribunal to take a view different from the view taken by the DPC with regard to satisfactory service of the applicant, moreso in the absence of any material before us.

5. In consideration of all the above, we hold that the applicant is not entitled to the relief claimed by him in this OA which is accordingly rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
18.7.2002
VICE-CHAIRMAN