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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.45 of 1994.

Date of decision : November 22, 1994.

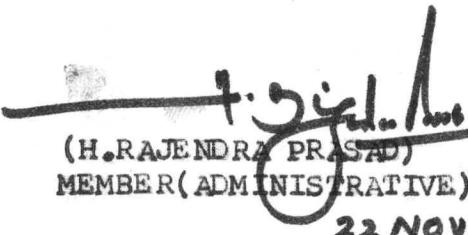
K.C.Swain ... Applicant.

Versus

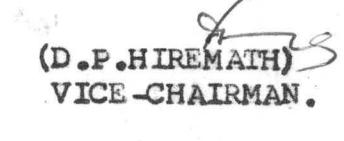
Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? ✓
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? ✓


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

22 NOV 94


(D.P. HIREMATH)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM:

THE HON'BLE MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
A N D
THE HON'BLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

Krushna Chandra Swain, aged about
56 years, at present working as Upper
Division Clerk cum-Cashier, Central
Poultry Breeding Firm, Bhubaneswar,
Dist-Khurda ...

Applicant.

By Advocates ... M/s.A.S.Naidu,
P.K.Mohanty, P.K.Mohapatra,
A.K.Rath,

Versus

1. Union of India, represented through Cabinet Secretary, New Delhi, Beekaneer House, Sahajahan Road, New Delhi.
2. Government of India in the Ministry of Agriculture, Animal Husbandry and Dairying, represented through its Secretary, Krishi Bhawan, New Delhi.
3. Director, Incharge, Central Poultry Breeding Firm, Central Poultry Complex, Nayapalli, Bhubaneswar-751912.
4. Deputy Secretary, Government of India, Ministry of Agri. (Department of Animal Husbandry and Dairying), Krishi Bhawan, New Delhi.
5. Maheswar Pradhan, at present working as Head Clerk, Central Poultry Breeding Firm, Nayapalli, Bhubaneswar, District-Khurda.

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Respondents.

By Advocate ...

Mr.Ashok Misra,
Sr. Standing Counsel(Central)

O R D E R

D.P.HIREMATH,V.C., Shortly put, the applicant's case is that after he was exonerated by the High Court of Orissa of the charge of receiving illegal gratification under section 5(2) of the Prevention of Corruption Act and Sections 409 & 477 of the Indian Penal Code and the same confirmed by the Supreme Court there was practically nothing for the respondents to bank upon to deny him notional promotion from the year 1987 to the post of a Head Clerk in which year his junior was promoted. He was placed under suspension while a criminal case was pending against him for the aforesaid charge in the year 1977 and though the Special Court found him guilty, the verdict of guilt was reversed by the High Court of Orissa in Criminal Appeal No.2 of 1982. After dismissal of the Special Leave Petition preferred by the State, the Deputy Secretary to Government of India in his order dated 29.9.1993 directed the authority considered to give him all consequential benefits treating the period of his suspension as period spent on duty for all purposes (vide Annexure-8).

2. The facts till this stage are not disputed. Therefore, it is not necessary for us to traverse other facts which went to the keeping of the applicant under suspension.

3. The respondents by their counter have urged that a Departmental Promotion Committee meeting was held on 20.8.1987 and the D.P.C. was of the view that it could not be in a position to declare him fit for

promotion. The reason was obvious inasmuch as for nearly 10 years before it met the applicant was under suspension and there was no record ⁱⁿ by one way or the other namely in favour of him or adverse. It is perhaps for that reason the D.P.C. suggested that his performance should be watched for one year after he ^{was} reinstated. In view of this observation of the D.P.C. the respondents contended that the applicant was entitled to the reliefs that he has now claimed.

4. The point that calls for our decision is very short in view of the admitted facts ^{namely} whether there was anything against the applicant that should come in the way of his promotion to take effect from the date his junior was promoted in the year 1987. The sealed cover was opened only when the criminal case against the applicant came to an end after the final verdict was rendered by the Supreme Court. In our view there was practically nothing before the D.P.C. to hold against the applicant and to come to the conclusion that he was not fit for promotion. Mere suggestion that it rendered that his work should be watched for a period of one year, has led nowhere. The D.P.C. was to consider his records for 5 years prior to the date of its meeting and when he was placed under suspension before it met, there is practically no record available against the applicant. The respondents do not say anywhere that during this watch period of one year, there was anything against or adverse against the applicant. That being so, the moment the applicant came to be exonerated of the criminal charge he was entitled for promotion and this promotion should

take effect as it should be from the date his junior was promoted. It is wholly unnecessary to again refer the matter to the D.P.C. to reconsider because it would again lead to nowhere especially when we are in a position to find that the applicant is entitled to the prayer that he is now claiming for. Accordingly, we allow the application and direct that the applicant should be promoted from the date his junior was promoted and that he would be entitled to consequential benefits after such promotion is given. No costs.

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 (H.RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)
 22 NOV 94

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 (D.P.HIREMATH)
 VICE-CHAIRMAN.

Sarangi.