

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 568 OF 1994  
Cuttack, this the 24th day of July, 2000

B.B.Sahoo ....

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  
24.7.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 568 OF 1994  
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CORAM:

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

B.B.Sahoo, s/o late Adikanda Sahoo, Assistant Foreman,  
Proof & Experimental Establishment, Chandipur, Balasore  
.....  
Applicant

Advocates for applicant - M/s B.K.Sahoo  
K.C.Sahoo

Vrs.

1. Union of India, represented by the Scientific Advisor to Ministry of Defence and Director General, Research and Development, Directorate of Personnel (Pers-1), New Delhi.11
2. Commandant, Proof & Experimental Establishment, Chandipur, Balasore.
3. Shri Kishore Chakraborty, Foreman, Proof & Experimental Establishment, Chandipur, Balasore  
.....  
Respondents

Advocates for respondents - Mr.S.B.Jena  
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a direction to the departmental respondents to promote him to the post of Foreman from March 1993.

2. For the purpose of considering the petition it is not necessary to go into the averments made by the petitioner with regard to his initial date of joining and his subsequent promotions. It is only necessary to note that in order dated 20.7.1988 the applicant was promoted from the post of Chargeman Grade-I to Assistant Foreman with effect from 15.3.1988. The applicant's date of birth is 19.5.1935 and he would have

*SJM.*

attained the age of 58 years on 31.5.1993. Accordingly in order dated 17.2.1993 a notice of superannuation with effect from 31.5.1993 was issued to him. The applicant represented on 3.3.1993 at Annexure-A/3 that DPC is going to be held for promotion to the post of Foreman on 15.3.1993 and as he is the seniormost Assistant Foreman he should be considered for promotion so that some pensionary benefit will accrue to him. DPC met on 15.3.1993 and recommended respondent no.3 for promotion to the post of Foreman. The applicant has stated that according to Government of India letter dated 23.9.1992 at Annexure-7 scientific and technical personnel are to retire at the age of 60 years subject to special assessment at the age of 58 years on the basis of record of service and subject to the condition that such assessment is not below "Very Good". In pursuance of this order the applicant's record of service was assessed and in order dated 2.4.1993 at Annexure-6 his service was extended beyond 58 years of age till he attains the age of 60 years. The applicant has stated that as he is the seniormost Assistant Foreman and as his record is not below "Very Good", DPC should not have ignored his case. In the context of the above he has come up with the prayer referred to earlier.

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3. Respondent no.3 was issued with notice but he did not appear nor did he file counter.

4. The departmental respondents in their counter have stated that anticipatory superannuation order dated 17.2.1993 at Annexure-2 was cancelled in view of the recommendation of Review Special Assessment

Committee and the services of the petitioner were extended to 60 years of age in order dated 2.4.1993 at Annexure-6. It is further stated that the DPC met on 15.3.1993 for making recommendation for promotion to the post of Foreman and the applicant's case was considered along with respondent no.3 and others and strictly following the recommendation of the DPC respondent no.3 was promoted and the applicant was reported by the DPC to be not fit for promotion.

5. The applicant has filed a rejoinder. He has given a comparative statement of service particulars of respondent no.3 and of him and the different trainings undergone by the applicant.

6. We have heard Shri B.K.Sahoo, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the departmental respondents and have perused the records.

7. The first point submitted by the learned counsel for the petitioner is that the post of Foreman is a non-selection post and should have been filled up on the basis of seniority subject to elimination of unfit. At our instance the learned Additional Standing Counsel has produced the Recruitment Rules relating to the post of Foreman as also the proceedings of the DPC and from the Recruitment Rules we find that the post of Foreman is a selection post and therefore is to be filled up on the principle of merit with due regard to seniority. This contention of the learned counsel for the petitioner is therefore rejected.

*J.Som.*

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8. It is further submitted by the learned counsel for the petitioner that in February 1993 he was issued with retirement notice for superannuation with effect from 31.5.1993 on attaining 58 years of age and again on 29.3.1993 special assessment of his record was made and in order dated 2.4.1993 his services were extended for a period of two years till 31.5.1995. It is stated that at the time the DPC met on 15.3.1993 the applicant was due to retire on 31.5.1993 and that is why the DPC might not have recommended him even though his case was considered. Moreover, it is submitted that according to Government of India circular such extension of two years can be given only to such persons whose CRs are not below "Very Good". It has been stated by the learned counsel for the petitioner that the very fact that he has been given extension for two years proves that his records are at least very good and coupled with his admitted seniority over respondent no.3, he should not have been superseded. It has been submitted by the learned Additional Standing Counsel that as the post is to be filled up on selection basis, DPC has gone by merit and not recommended the case of the applicant for promotion while recommending the case of respondent no.3. We have gone through the proceedings of DPC. From this it appears that DPC merely mentions against the name of the applicant that he is not fit for promotion whereas against the name of respondent no.3 and two other persons below him it was stated that they are fit for promotion. It is mentioned that records of service (ACRs) of the eligible candidates including the applicant and respondent no.3 were considered by the DPC. Law is well

settled that the Tribunal cannot re-assess CRs and come to a finding different from the finding arrived at by the DPC. But in this case DPC had merely mentioned that the applicant is not fit for promotion whereas respondent no.3 and two others were found fit. DPC had not mentioned in the proceedings that ACR of respondent no.3 is outstanding whereas it is clear from the fact of extension of service of the applicant that his records were at least very good. It is also to be noted that the day when DPC met on 15.3.1993 the applicant was due to retire within two and half months on 31.5.1993 which was later on changed and he was allowed to continue till 31.5.1993. In consideration of the above facts we feel that this case has to be looked into again by a Review DPC. The Review DPC should consider the CR of the applicant as also respondent no.3 as on 15.3.1993 and in case it is found that CR of respondent no.3 is graded at a higher level than the CR of the applicant, then no further action would be necessary. If, however, the CR of respondent no.3 is also graded as very good, then the applicant would be entitled for consideration for promotion to the post of Foreman and in such case promotion should be given to the applicant to the post of Foreman with effect from the date respondent no.3 was given promotion. In such an event the applicant will not be entitled to any financial benefit as he had not worked in the post of Foreman, but his pay should be notionally fixed and his retiral benefits should be worked out accordingly. This entire exercise should be completed within a period of 120 (one hundred twenty )

days from the date of receipt of copy of this order.

9. In the result, therefore, the Original Application is disposed of in terms of the observation and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)

VICE-CHAIRMAN

24.7.2000

AN/PS