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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.579 OF 1994

Cuttack, this the 7th day of January, 1999

Gayadhar Swain ..... 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  
*7.1.99*

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.579 OF 1994  
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**CORAM:**

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

Advocates for applicant - M/s Pradipta  
Mohanty &  
D.N. Mohapatra

Vrs.

- A) Union of India, represented by the Secretary to the Government of India, Ministry of Planning & Programme Implementation, Department of Statistics, National Sample Survey Organisation (Field Operations Division), Hall No. 327, C-Block, 3rd Floor, Puspha Bhawan, Madangiri Road, New Delhi-110 062.
- B) Director, Government of India, Ministry of Planning and Programme Implementation, Department of Statistics, National Sample Survey Organisation (Field Operations Division), Hall No. 327, C-Block, 3rd Floor, Puspha Bhawan, Madangiri Road, New Delhi-110 062.
- C) Joint Director, Government of India, Ministry of Planning and Programme Implementation, Department of Statistics, National Sample Survey Organisation (Field Operations Division), Hall No.327, C-Block, 3rd Floor, Puspha Bhawan, Madangiri Road, New Delhi-110 062.

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- D) Joint Director, National Sample Survey Organisation (Field Operations Division), Eastern Zone, 6th Floor, 164 Gopal Lal Tagore Road, Calcutta-35.
- E) Regional Assistant Director, National Sample Survey Organisation (Field Operations Division), Orissa (W) Region, G.M.Colege Road, At/PO/Dist.Sambalpur.
- F) Regional Assistant Director, National Sample Survey Organisation (Field Operations Division), Regional Office, Orissa (E), 3-A, Budheswari, Bhubaneswar-6, Dist.Khurda.
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- I) P.K.Hooda, Department of Administration Reforms, S.P.Bhawan, New Delhi.
- J) Naresh Kumar, NSSO(FOD), SCF 28, Huda Commercial Complex, Rohatak
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ZE) Mrs.S.Purkayasta, NSSO (FOD),  
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ZK) M.K.Raina, NSSO (FOD), 81, Rehari, Jammu-180 004

ZL) R.B.Kaul, NSSO (FOD), 81, Rehari, Jammu-180 004.

ZM) M.K.Haul, NSSO (FOD), 96-A, Guru Govind, SINGH Nagar,  
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ZO) I.Ahmed, NSSO (FOD), Dairy Farm, P.O-Junglight, P.B.  
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*V. J. M.* ..... Respondents

Advocate for Respondents A to F - Mr.Akhaya Ku.Mishra,

Addl.S.C.

.....

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the promotion order dated 12.7.1994 at Annexure-6 so far as the promotion of the incumbents who are junior to the applicant in the post of Investigator is concerned. The second prayer is for a direction to the departmental authorities, arraigned as respondents, to give him promotion to the post of Assistant Superintendent with effect from the date the persons mentioned at Annexure-6 were given promotion to the post of Assistant Superintendent along with consequential benefits.

2. The case of the applicant is that he was originally appointed as Investigator in the Field Operations Division of National Sample Survey Organisation (NSSO) under the Department of Statistics, Government of India, in order dated 11.8.1981. On the recommendation of Departmental Promotion Committee he was confirmed in the post of Investigator with effect from 1.4.1988. In June 1994 D.P.C. meeting was held for considering promotion of Investigator to Assistant Superintendent. According to the applicant, such promotion is given according to seniority subject to elimination of unfit and for the purpose of judging suitability the preceding five years' Confidential Rolls are to be taken into account. The applicant's case is that D.P.C. took into account the CRs for the preceding five years, i.e. from 1988-89 to 1992-93. For these years, the applicant did not have any adverse entries. It is further stated that the adverse entries in the CR of the

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applicant for the year 1989-90 were communicated at a very late stage. The letter dated 25.2.1991 communicating the adverse entries for the year 1989-90 is at Annexure-3. The applicant filed a representation on 25.3.1991 which is at Annexure-4, but no decision was taken on his representation. The adverse entries were taken into consideration and the petitioner was not promoted. That is how the applicant has come up in this petition with the prayers referred to earlier.

3. The departmental respondents in their counter have stated that the applicant joined as Investigator on 21.8.1981 after being selected through Staff Selection Commission. For promotion from the post of Investigator to Assistant Superintendent, D.P.C. meeting was held in June 1994. In this meeting, D.P.C. considered the case of the applicant, but he was categorised as not fit for promotion and accordingly, he was not given promotion. It has been further submitted by the departmental respondents that the adverse entries for 1989-90 were duly communicated to him through the letter at Annexure-3 of the O.A. The respondents have denied that against these adverse entries the petitioner filed any representation. It has been stated that he never filed any representation in the Regional Office and therefore, D.P.C. was right in not recommending the applicant for promotion. As regards the delay in communicating the adverse entries for the year 1989-90, the departmental respondents have stated in their counter that writing of the CR was delayed because of the applicant himself who did not submit his CR particulars and because of this, the Superintendent, NSSO (FOD), Sambalpur, was directed in

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letter dated 7.2.1991 that the applicant's CR for 1989-90 should be written without waiting for the particulars from the applicant and non-receipt of achievement particulars from the applicant should be indicated in the CR. On the above grounds, the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has reiterated his submissions in the O.A. He has also enclosed the representation stated to have been filed by him at Annexure-7. A similar representation filed by him has also been enclosed by him at Annexure-4 of the O.A. Thus, the applicant has claimed that he has filed representation for expunging the adverse entries for 1989-90, but the representation has not been considered.

5. We have heard Shri Pradipta Mohanty, the learned counsel for the applicant and Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel for the departmental respondents and have also perused the records.

6. The sole question for consideration is whether the DPC was right in not recommending the case of the applicant in their meeting held in June 1994 for promotion, or in other words, whether the D.P.C. was right in finding in that meeting that the applicant is not yet fit for promotion. Normally, the Tribunal cannot re-assess the CRs of a candidate and substitute its judgment in place of the conclusion arrived at by the D.P.C. In the instant case, the applicant's point is that the DPC should not have taken into account the adverse entries for 1989-90 when his representation praying for expunging of

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those adverse entries was pending. It has also been submitted that the adverse entries have been communicated after much delay and on that ground also, the entires should not have been considered. These submissions are discussed below.

7. As regards delay in communicating the adverse entries for the year 1989-90 we note from Annexure-3 filed by the applicant himself that these adverse entries for the year 1989-90 have been communicated to him in letter dated 25.2.1991. From Annexure-R/1 to the Counter of the departmental respondents, which is a letter dated 7.2.1991, it is seen that in this letter the Superintendent, NSSO(FOD), Sambalpur-I, has been directed to write the CR of the applicant for 1989-90 without waiting for achievement particulars from the applicant, which the applicant has not given. It has also been mentioned that the fact that the applicant has not submitted achievement particulars should be specifically mentioned in the CR to be written by the Superintendent. This letter has been issued on 7.2.1991. From this letter it is clear that the CR for that year has been written after 7.2.1991. For delay in writing the CR for that year the applicant is responsible because he has not submitted the achievement particulars or rather the self-assessment. So for this delay the authorities who have written the CR cannot be held responsible. After writing of the CR, the adverse entries have been communicated very quickly in letter dated 25.2.1991 and therefore, this contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

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8. The second contention of the learned counsel for the petitioner is that against the adverse entries communicated to him for the year 1989-90 the applicant submitted a representation on 25.3.1991, but the representation was not considered and without considering his representation for expunging the adverse entries, those adverse entries should not have been taken into consideration by the D.P.C. The departmental respondents have submitted that no representation was filed by the applicant. Sambalpur office did not receive any representation from the applicant. The sole point for consideration is whether any representation for expunging the adverse entries for 1989-90 was at all submitted by the applicant. According to the applicant, he submitted the representation on 25.3.1991 and this is at Annexure-4. From Annexure-4, we find that this representation is without any date. The representation is addressed to Joint Director, Eastern Zone, NSSO, Calcutta, through proper channel and an advance copy has also been sent to the Joint Director in the endorsement in the representation at Annexure-4. The departmental respondents in their counter have denied receipt of any representation filed by the applicant. The applicant in his rejoinder has reiterated his stand and filed Annexure-7 which is a word by word copy of the representation at Annexure-4, but a different typed copy. On this copy, there is an endorsement at the bottom in which the word "Received" in hand and a signature, which is not legible and the date "25.3." are mentioned. The applicant has stated that this representation was given to one B.Das, who was the Superintendent in Sambalpur office at that time. This

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particular representation, which is at Annexure-7, is signed by the applicant and the date has also been written presumably by the applicant which reads like 25.3.91. If this is the representation at Annexure-7 which the applicant had filed, there is no reason for him to file another copy of the representation at Annexure-4 along with his O.A. which is without any date, moreso when in his averment in the O.A. he has mentioned that he has submitted his representation on 25.3.1991. Because of this, it is difficult to rely on these two documents at Annexures 4 and 7 for the purpose of holding that he has submitted a representation for expunging the adverse entries on 25.3.1991 in the Sambalpur Office. From the endorsement at the bottom of the representation, which is on the same page in Annexure-4 and in the next page in Annexure-7, it is seen that an advance copy has been sent to the Joint Director, Eastern Zone. The applicant has not given any proof that the advance copy was sent to the Joint Director by Registered Post or under Certificate of Posting. In view of this, it is not possible to accept his contention that an advance copy of the representation was also sent to the Joint Director. It is also to be noted that even going by the applicant's contention, <sup>after</sup> ~~from~~ filing of the representation on 25.3.1991 he has not sent any reminder or further representation for expunging the adverse entries. Moreover, if he did actually file representation on 25.3.1991 for expunging the adverse entries and if no orders were passed on such representation within six months, he could have approached the Tribunal for getting the adverse entries expunged. He has also not done so. In view of this, it is not possible to hold that the applicant did submit representation dated 25.3.1991 for expunging the adverse entries.

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9. In view of our above findings, it must be held that the DPC was right in considering the adverse entries recorded in the CR of the applicant for the year 1989-90.

10. In consideration of all the above, it is held that the applicant has not been able to make out a case for any of the reliefs asked for by him. The Original Application is, therefore, held to be without any merit and is dismissed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

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