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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 52 OF 1994
Cuttack, this the 20th day of December 2000


Sri Alekh Chandra Das ... Applicant

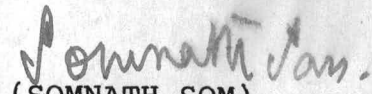
vrs.

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.


(J.S. DHALI WAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

20/12/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 52 OF 1994
Cuttack, this the 20th day of December, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.S.DHALIWAL, MEMBER(JUDICIAL)
.....

Sri Alekh Chandra Das, aged about 52 years, son of late Madhu Sudan Das, at present Programme Executive of All India Radio, on orders of transfer to All India Radio, Bhawanipatna, resident of L.I.C.Colony, Baripada, District-Mayurbhanj ... Applicant

Advocates for applicant - M/s S.Maillik
S.Ku.Dash
S.L.Kumar.

Vrs.

1. Union of India, represented by the Secretary, Information & Broadcasting Ministry, Sastri Bhawan, New Delhi.
2. Director General of All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.
3. Deputy Director, All India Radio, ER, NER, All India Radio, Akashvani Bhawan, Calcutta

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Respondents

Advocate for respondents- Mr.B.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application the petitioner has prayed for quashing the order dated 19.7.1990 communicating the adverse entries to the petitioner for the period from 12.7.1989 to 31.3.1990 and the order dated 15.9.1993 at Annexure-10 rejecting his representation for expunging the adverse entries. The second prayer is that on quashing the

adverse entries a direction be issued to the respondents to promote the applicant to the Junior Time Scale with effect from the date of promotion of his junior from 3.6.1993 and to quash the order dated 28.10.1993 at Annexure-11 rejecting his representation for promotion to Junior Time Scale.

2. The applicant's case is that he joined All India Radio (AIR) as Programme Executive on 22.10.1980 and was due for promotion to Junior Time Scale (JTS) of Indian Broadcasting Service (Programme Service) in the year 1992. In the year 1989 while the applicant was working at Keonjhar, one K.Nayak was Assistant Director of AIR, Keonjhar. Shri Nayak did not pull on well with the applicant and harassed him in many ways. It is stated that Shri Nayak used offensive language when the applicant approached him for passing certain bills relating to office expenses. He also threatened the applicant to send him to jail and spoil his service career and physically assaulted the applicant causing bleeding injury to him. Later on 28.9.1989 Shri Nayak regretted his action and the matter was compromised. As a result the applicant thought that the matter has been dropped and he refrained from bringing the matter to the notice of higher-ups, i.e., Director General, AIR. But on 11.10.1989 Office Memorandum (Annexure-1) was issued to him to explain the circumstances under which on 28.9.1989 he threatened his superior officer Assistant Station Director. The applicant has stated that this showcause notice was issued to him only on 23.12.1989 after more than two months and he submitted a detailed reply on 10.1.1990 which is at Annexure-2. Thereafter he

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filed a representation dated 14.2.1990 (Annexure-3) to Director General, AIR, stating that he is apprehensive of his life ^{and} property including the life of his grown up college going daughter. The applicant has stated that on 16.2.1990 he was assaulted by three outsiders who, he believes, ^{J.Jom.} had been instigated by Shri K.Nayak, Assistant Station Director. On 8.3.1990 he made a further representation (Annexure-4) to Director General, AIR, bringing the entire facts to his notice. On 25.4.1990 the Assistant Station Director gave him the form for self-assessment for writing of ACR of the applicant from 16.5.1989 to 31.3.1990. Because of the previous incidents the applicant was apprehensive that his ACR would be spoiled and thereafter he filed a representation on 25.4.1990 (Annexure-5) to Director General, AIR, inter alia praying that the reporting officer's assessment of his work may be done by any other competent officer than Shri K.Nayak in view of the enmity between him and Shri Nayak. The applicant has stated that he was not aware of the action taken on his representations. He submitted his self-assessment report for the relevant period directly to the Deputy Director General, who was the reviewing authority. He filed further representations to Director General, AIR, complaining against the Assistant Station Director, the reporting officer. The applicant has stated that because of the above background, the reporting officer has given completely damaging and adverse report against him which was communicated to him in the letter dated 19.7.1990. He has stated that from the letter communicating the adverse entries at Annexure-7 it is clear that all the adverse entries have been written by the reporting officer.

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The applicant filed representation on 12.9.1990 for expunging the adverse entries. This representation is at Annexure-8. While the representation was pending the applicant's case was considered by Departmental Promotion Committee and taking the adverse entries into consideration the applicant was not promoted whereas in order dated 3.6.1993 some of his juniors were promoted to JTS of Indian Broadcasting (Programme) Service on ad hoc basis for one year. The applicant has stated that later on his representation for expunging the adverse entries was rejected in letter dated 15.9.1993 at Annexure-10. In the context of the above, the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayers of the applicant. They have denied that the Assistant Station Director, Keonjhar, Shri K. Nayak was inimical towards the applicant and harassed him in many ways. It is stated that the applicant has not produced any evidence in support of his allegation that the Assistant Station Director had manhandled him. They have stated that in response to the showcause notice at Annexure-1 the applicant submitted his explanation which was considered and found unsatisfactory. They have also stated that his representations dated 14.2.1990 and 8.3.1990 said to have been submitted to Director General, AIR, have not been received. They have further stated that the applicant should have submitted his self-assessment report to the reporting officer and by not submitting the same, he has violated the departmental instructions in this regard. The respondents have stated that the rules also lay down that when self-assessment report is not submitted, the reporting

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officer should not wait for the self-assessment report but should record his remarks even without the self-assessment report and that has been done in this case. They have stated that in his representations against the adverse entries which were communicated to the applicant, have also been considered and rejected. With regard to the applicant's promotion the respondents have stated that DPC met for ad hoc promotion of Programme Executives to the grade of JTS. In this meeting the applicant's name was considered but not recommended by the DPC and accordingly he was not promoted. The respondents have stated that regular DPC will take place shortly which will also consider the case of the applicant for promotion to JTS. The respondents in their counter have denied that the adverse entries have been given because of enmity or bias of the reporting officer against him.

4. We have heard Shri S.Mallik, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Counsel for the respondents and have also perused the records. At the conclusion of hearing the learned Additional Standing Counsel was asked to produce the ACRs of the applicant from 1984-85 to 1994-95 covering the relevant year which was 1989-90. The respondents took some time to produce the ACRs and ultimately the entire ACR file of the applicant from the beginning of his service career has been produced and we have carefully gone through the same. The learned counsel for the petitioner has referred to the case of Ranjit Thakur v. Union of India, AIR 1987 SC 2386. We have also gone through this decision.

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5. The main ground urged by the learned counsel for the petitioner is that the adverse entries which had been given to the applicant for the period from 12.7.1989 to 31.3.1990 have been written by the reporting officer, Shri K.Nayak, the then Assistant Station Director, AIR, Keonjhar and Shri Nayak was biased against him because of previous enmity, exchange of words between them as also the fact that the applicant complained before the higher authorities about Shri K.Nayak assaulting him. In his representation to the Director General, AIR stated to have been sent by him and which, according to the respondents, has not been received by the Director General, AIR's office, the applicant has also mentioned that he was assaulted on public road by three outsiders for alleged rejection of a play script submitted by one of them for broadcast. The applicant has stated that those outsiders were instigated by Shri K.Nayak and some other persons in the office to manhandle the applicant. The law is well settled that when bias is alleged, the person against whom bias is alleged, has to be cited as an opposite party by name so that he/she has the opportunity to reply to the allegation of bias. The applicant for reasons known to him has not cited Shri K.Nayak as an opposite party. Moreover, from the letter communicating the adverse entries at Annexure-7 it is seen that the applicant's statement that all the adverse entries have been given by Shri K.Nayak is not correct. The reviewing officer to whom according to the applicant's statement he had directly sent his self-assessment report, has in his remarks agreed with the assessment made by the reporting officer. The reviewing

officer has also pointed out several deficiencies in the work of the applicant and he has rated him as "below average officer", incidentally the same rating which has been given by the reporting officer. On a careful reading of the entries recorded by the reporting officer, we find that certain remarks made by the reporting officer are factual and are borne out by a monthly assessment report showing whether the broadcast made were repeat broadcast or fresh broadcast. The reporting officer pointed out that in March 1990, 100% of the broadcast except 1 were repeat broadcast. In the other months also there were a large number of repeat broadcast and that is what has been specifically mentioned in the CR. For expunging the adverse entries the applicant has filed representation, copy of which has been enclosed at Annexure-8. In this representation the only ground urged by him is that the reporting officer is biased against him because of earlier incidents and therefore the adverse entries should be expunged. He has nowhere stated in this representation or in his OA that the reviewing officer was also biased even though in the letter communicating the adverse entries to him at Annexure-7 the adverse remarks given by the reporting officer and reviewing officer have been separately indicated. It is also to be noted that the reviewing officer against whom there is no allegation of bias has also given the same grading to the applicant as has been given by the reporting officer. The allegation of bias being the only ground urged for expunging the adverse entries and as there is no allegation of bias against the reviewing officer, it cannot be held that the allegation of bias has been proved moreso when the person against whom


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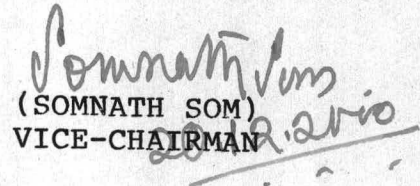
such allegation is made has not been made a party and has not been given a chance to reply. In view of this, the applicant's prayer for expunging the adverse entries is held to be without any merit and is rejected.

6. His second prayer is for a direction to the respondents to promote him to JTS grade from the date his juniors have been promoted. The respondents have pointed out that his juniors have been promoted on ad hoc basis for one year or till regular incumbents join whichever is earlier. The applicant's case was also considered by the DPC and the DPC has not recommended him. We have gone through the entire CRs of the applicant and found that even though he has been graded as "Good" in some years, in many years he has been graded as "Average". Adverse entries have also been communicated to him on several occasions in the past. The law is well settled that the Tribunal cannot re-assess the CRs and come to a finding different from what has been arrived at by the DPC. Moreover, the respondents have pointed out that meeting of regular DPC for the purpose of regular promotion to JTS grade is going to be held shortly and the petitioner's case is going to be considered by the DPC. In view of this, as the applicant has not been promoted on the ground of his not having been recommended by the DPC and his case is going to be considered by the DPC in the regular meeting of DPC, his prayer for a direction to the respondents to promote him presumably on ad hoc basis to JTS grade is also held to be without any merit and is rejected.

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7. In the result, the Original Application is rejected but, under the circumstances, without any order as to costs.


(J.S. DHALI WAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

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