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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

REVIEW APPLICATION NO.54 OF 1994
Cuttack, this the 26th day of February, 1998

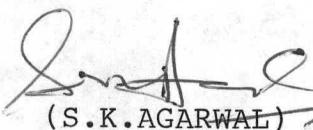
Union of India and others Petitioners

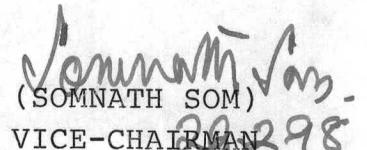
Vrs.

Sri Rajayya Bosi Opposite Party

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.


(S.K.AGARWAL) 26/2/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 20/2/98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

REVIEW APPLICATION NO.54 OF 1994
Cuttack, this the 26th day of February, 1998

CORAM:

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

.....

1. Union of India,
represented by the Secretary,
Ministry of Communications,
Government of India,
New Delhi-110 001.
2. Director General (Posts),
Dak Bhawan,
New Delhi-110 001.
3. Chief Post Master General,
Orissa Circle,
Bhubaneswar-751 001.
4. Senior Superintendent of Post Offices,
Koraput Division,
Jeypore-764 001.....

Petitioners

Advocate for Petitioners -

Shri Ashok Misra,
Senior Panel
Counsel.

Vrs.

Shri Rajayya Bosi,
aged about 63 years,
s/o late P.Bosi,
Retired Inspector of Post Offices,
Palace Street,
Parlakhemundi,
Dist.Gajapati

Advocates for Opp.Party -

Opposite Party.
M/s P.V.Ramdas
B.K.Panda
D.N.Mohapatra &
P.V.B.Rao.

Somnath Som.
26.2.98.

ORDERSOMNATH SOM, VICE-CHAIRMAN

This Review Application has arisen out of O.A.No. 577 of 1992 which was allowed in order dated 24.6.1994. The respondents in the O.A., Union of India have filed this R.A. along with a petition for condonation of delay in filing the R.A. Delay was condoned in order dated 12.5.1997 after hearing both sides. The opposite party to the R.A. had also filed counter to M.A.No.683/94 seeking condonation of delay. After delay was condoned, the R.A. was taken up for consideration. In O.A.No.577/92, the opposite party to the R.A., Rajayya Bosi had prayed for issuing a direction to the respondents to give him promotion to the post of Assistant Superintendent of Post Offices from 1984 when his juniors were given promotion, after confirming him in the post of Inspector of Post Offices. There were also prayers for direction to give retrospective promotion to him and for giving him all service benefits. The O.A. was disposed of in order dated 24.6.1994. Paragraphs 5 and 6 of the order allowing the O.A. are quoted below:

*Somnath Som
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"5. The fact that all the disciplinary proceedings which had been instituted against the applicant have been quashed by this Bench and there was no dispute presented before us and that there remains a clean slate in favour of the applicant as the dirty linen, if any, have been completely washed away. Law is well settled that once dirty linen is

washed away and quashed, the case of the Government employee should be reconsidered for confirmation/promotion. This settled position of law was rightly and fairly not disputed at the Bar.

6. In view of the aforesaid facts and circumstances especially the fact that the disciplinary proceedings have been quashed and the applicant has been exonerated from all the charges levelled against him in respect of the proceedings, no dirty linen exists against the applicant and therefore, his case should be reconsidered for confirmation in the post of Inspector of Post Offices and in case he is found suitable his case should be further considered for promotion to the next higher posts to which he is entitled to according to rules and in case he is found suitable, promotion should be given to the applicant with effect from the date from which his juniors have been promoted. In case the applicant is given promotion, he would be entitled to a back wages because law is well settled in a plethora of judicial pronouncements made by the Apex Court. In a recent decision reported in AIR 1991 SC 2010 (Union of India etc. versus K.V.Jankiraman etc.) it has been observed that when a particular officer although he is willing to work is kept away from work by the authorities for no fault his, he is entitled to back wages. Here is a case where Shri Rajayya Bosi has not remained out of the work on his own volition but his case has not been considered. Therefore, he is entitled to back wages provided that he is found to be suitable for promotion. In case, he is promoted back wages must be calculated and paid to him within 60 days from the date of promotion. The case of the applicant for confirmation and for promotion (after confirmation) should also be finalised within 60 days from the date of receipt of a copy of this judgment."

*Somnath Som.
26.2.98.*

The review petitioners have submitted that the Tribunal proceeded on the assumption that the undisputed position is that all the proceedings against the applicant have been quashed by the Tribunal and there is a clean slate in favour of the applicant. In paragraph 6 it has been specifically mentioned that the applicant has been exonerated from all the charges

levelled against him in respect of the proceedings. It is submitted by the learned Senior Panel Counsel appearing for the review petitioners that in the counter to the O.A. they have specifically mentioned, at pages 3 and 4 of the counter, the various punishments which were imposed on the opposite party in a series of departmental proceedings. It was also mentioned that punishment of withholding of increment was current against the opposite party. The review petitioners have stated that these averments that in some of the proceedings against him the opposite party has been punished and the punishments were not set aside and certain punishments were continuing were materials on record as these have been mentioned in the counter. But these facts have been ignored by the Tribunal in the order quoted above and it has been wrongly held that all the proceedings against the opposite party have ended in his favour. This, according to the review petitioners, is an error apparent on the face of record and because of this error, the Tribunal has allowed the O.A. directing confirmation, retrospective promotion and all consequential service benefits. On the above grounds, they have sought for review of the order dated 24.6.1994.

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2. Learned lawyer for the opposite party, the applicant in O.A.No.577/92, has referred to various proceedings and the punishment orders passed against the opposite party to which reference will be made in later part of the order. On a

point of law, it has been submitted by the learned lawyer for the opposite party that the power of review should not be exercised even if it is taken for argument's sake that the order dated 24.6.1994 is incorrect. The process of review cannot be resorted to by the unsuccessful party with a view to obtain re-hearing of a matter already decided. The correct procedure in such cases is to go for appeal. In support of his contention, the learned lawyer for the opposite party has referred me to the case of Sow.Chandra Kanta and another v. Sheik Habib, AIR 1975 SC 1500. In that case, the Hon'ble Supreme Court have held that once an order has been passed, a review thereof must be subject to the rules of review and cannot be lightly entertained. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or ~~grave~~ grave error has crept in earlier by judicial fallibility.

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The learned lawyer for the opposite party has submitted that even though in some of the proceedings against the applicant punishments were imposed and these punishments were not set aside, the end result is that such punishments should not have been taken as a bar to his promotion. But in the instant case, we see that the Tribunal in their order dated 24.6.1994 proceeded on the assumption that all the proceedings and punishments against the opposite party (applicant in the O.A.) have been quashed and he has been fully exonerated in those

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 proceedings. This, we have no doubt in holding, is an error apparent on the face of record in view of the counter of the respondents in the O.A. that certain punishments were current against the applicant. As the order dated 24.6.1994 passed in the O.A. has proceeded on the assumption, we hereby allow the Review Application and recall the order dated 24.6.1994.

3. Coming to the prayer in O.A.No.577/92, the applicant has stated that he joined as a Time Scale Clerk in June 1953, came out successful in All India Examination for Inspectors of Post Offices, and was appointed as Inspector of Post Offices. But he was not confirmed in that post and even though his juniors were promoted after recommendation in the meeting of Departmental Promotion Committee in 1984, he was not promoted to the post of Assistant Superintendent of Post Offices. He was allowed to officiate as Assistant Superintendent of Post Offices from 11.9.1978 to 24.12.1978 and from 1.2.1979 to 1.7.1979. He made separal representations for promotion but without any result. The applicant also mentioned in paragraph 4(6) of his petition that proceedings which were initiated against him have been finally concluded and there was no stigma in any of them. The applicant retired on 31.5.1988 but was not given promotional benefits. Because of this, he came up with the prayers in the O.A. which have been referred to earlier.

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4. The respondents have in their counter pointed out the various punishments which have been imposed on the

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applicant. They have also mentioned that because of his bad record, he was not confirmed in the cadre of Inspector of Post Offices and he was not recommended for promotion as Assistant Superintendent of Post Offices. After retirement, he filed representation for his promotion which was considered and rejected by Director-General, Posts. Respondents have stated that because of applicant's unsatisfactory record of service, he was not confirmed and the Departmental Promotion Committee did not recommend for his promotion. On the above grounds, the respondents in the O.A., the present review petitioners, have opposed the prayers in the O.A.

5. In the O.A., the applicant has filed a reply to the counter in which he has dealt with some of the proceedings. Learned lawyer for the original applicant referred, in his submissions, to these proceedings and these are discussed below.

6. In the proceeding dated 21.11.1979 one of his increments was stopped for six months. This punishment was challenged in O.A.No.337/87 and the punishment was upheld in order dated 26.4.1988. Thus from this also it is clear that the Tribunal's observation that all the proceedings against the applicant have been quashed by the Tribunal and there is nothing adverse against him is not correct.

*Somnath Jora
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7. Another proceeding was started against him on 22.8.1986. This proceeding was quashed in order dated 7.8.1987 passed in O.A.No.60/87. The third proceeding started against the

applicant on 22.4.1987 was quashed in O.A.No.386/87 in order dated 30.3.1988. The fourth item is O.A.No.119/86 in which the order dated 30.4.1987 treating certain period of unauthorised absence as dies non and the order dated 28.7.1987 of the appellate authority upholding the order of the disciplinary authority were set aside by the Tribunal in their order dated 28.3.1989. The fifth proceeding was on 5.6.1979 in which one of his increments was stopped, but this apparently was set aside by the Member (A) in his order dated 30.8.1983. In the sixth proceeding against him, punishment of censure was imposed. The learned lawyer for the petitioner has submitted that censure is no bar for confirmation and promotion. In the seventh proceeding on 3.12.1985, punishment of censure was imposed, but this was enhanced by Director, Postal Service, to withholding of promotion for two years from 8.7.1986. This period of withholding of promotion was reduced to one year, on appeal. The learned lawyer for the original applicant submitted that this period for withholding of promotion thus expired in July 1987.

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It is submitted by the learned lawyer for the applicant that as the punishment of withholding of promotion for one year spent itself in July 1987, there was no bar to give him promotion. It is also submitted by the learned lawyer that the applicant was a State level cricket player and he has contributed to the prestige of the State. He has retired more than nine years ago and allowing him promotion will result in getting certain

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financial benefits to him. Learned lawyer for the applicant wanted us to keep this aspect also in view.

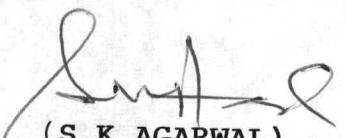
8. We have considered the submissions of the learned counsels of both sides and have also perused the record. We have also called for the records of the earlier O.As. disposed of by this Bench and have also perused them. The admitted position is that leaving aside the proceedings which were quashed and punishments which were set aside, there were a series of proceedings against the applicant which resulted in punishments which were not quashed. As a matter of fact, one such punishment of stoppage of one increment was upheld in O.A.No.337/87. Against this background, his grievance that he was not recommended by Departmental Promotion Committee for promotion to the post of Assistant Superintendent of Post Offices in 1984 has to be considered. The applicant's grievance is not that his case was not considered by the Departmental Promotion Committee. The Departmental Promotion Committee considered his case and did not recommend his name. Because of his bad records, he was not confirmed as Inspector of Post Offices. It will not be proper for us at this distant date to set aside the decision of the Departmental Promotion Committee. The applicant also has not specifically prayed for that. Moreover, the admitted position is that from July 1986 to July 1987 he was under a punishment of withholding of promotion for one year. In consideration of the

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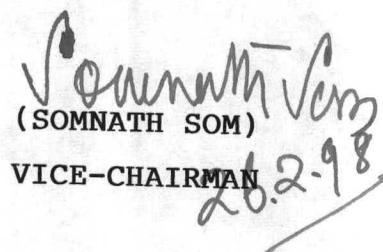
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above, we hold that the applicant has not been able to make out a case for his retrospective promotion to the post of Assistant Superintendent of Post Offices from 1984. The Original Application, therefore, fails and is dismissed but, under the circumstances, without any order as to costs.


(S.K. AGARWAL)

MEMBER (JUDICIAL)

26/2/98


(SOMNATH SOM)

VICE-CHAIRMAN

26.2.98

AN/PS