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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.803 OF 1994.

Cuttack this the 15th day of December, 1998.

Bhimananda Dehuri & others. Applicants.

-Versus-

Union of India & 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*

Sum Nath Som
SUMNATH SOM
VICE-CHAIRMAN 2.98

15.12.98
(G. NARASIMHAM)
MEMBER (JUDICIAL)

6
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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.803 OF 1994.

CUTTACK, this the 15th day of December, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

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IN THE MATTER OF:

1. Bhimananda Dehury,
Aged about 52 years,
S/o. late Natha Dehuri.
2. Chandramani Ghadhei,
Aged about 51 years,
S/o. late Kapil Ghadei.
3. Mitru Pradhan,
aged about 46 years,
S/o. Bancha Pradhan.
4. Trinath Pradhan,
Aged about 48 years,
5. Sudam Charan Naik,
Aged about 46 years,
S/o. Judhistira Naik.
6. Sadananda Majhi,
Aged about 40 years,
S/o. late Hamrai Majhi.
7. Damodar Naik,
Aged about 44 years,
S/o. Nidhi Naik.
8. Niranjan Nayak,
Aged about 40 years,
S/o. Muralidhar Nayak.
9. Lokanath Das, S/o. Sribatsha Das,
Plot No. 3, Nayapalli, Kabari Sahi,

All are working as Poultry Attendants under the
Establishment of Director, Central Poultry Breeding
Firm, Bhubaneswar, At/Po/PS. Bhubaneswar, Dist. Khurda.

Bhubaneswar-10,
Dist. Khurda.

10. Ramachandra Naik,
S/o late Dinabandhu Naik,
Vill. Pankal Sahi, Po. Biranchipur,
Via-Buguda, Dist. Ganjam.

Applicant Nos. 9&10 were working as Poultry
Attendants (now retired).

.... APPLICANTS.

BY LEGAL PRACTITIONER : M/s. A.S. Naidu, P. Mohanty,
A.K. RATH, P.K. Mohapatra,
D. Ray, Advocates.

- VERSUS -

1. Union of India represented through its
Secretary, Ministry of Agriculture,
Department of Agriculture & Cooperation,
Central Secretariat, New Delhi.
2. Secretary to Government of India,
Ministry of Finance, Department of
Expenditure, Central Secretariat,
New Delhi.
3. Director, Central Poultry Breeding
Fir, Bhubaneswar,
PO/PS/Munsif. Bhubaneswar,
Dist. Khurda.

.... RESPONDENTS.

By LEGAL PRACTITIONER : Mr. U.B. Mohapatra,
Additional Standing Counsel
(Central).

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MR. G. NARASIMHAM, MEMBER(JUDICIAL) :

10 (Ten) Applicants of this application filed on 20th of December, 1994 are Poultry Attendants under the Respondent No. 3 i.e. Director, Central Poultry Breeding Fir, Bhubaneswar. They were appointed as ^{Administrative} Poultry Assistants on various dates between 9-1-1962 to 9-12-1976 under the Respondent No. 3. Under Trapnester and Night Watchman (Group 'C' & 'D' Posts) Recruitment Rules, 1984 framed in exercise of powers under Article 309 of the Constitution, Poultry Assistants and Poultry Trapnester are promotional posts of Poultry Attendants.

33 1/3% of Posts of Poultry Assistants would be filled up on promotion and the rest by direct recruitment. Posts of Poultry Trapnester are filled up cent percent by promotion. Poultry Attendants come under Group 'D' category of employees and Poultry Assistants and Trapnester under Group- C category. Government of India in the Ministry of Finance through Office Memorandum dated 13-9-1991 (Annexure-2) evolved a scheme for Career Advancement of Group C & D employees. On the basis of this scheme, Union Government in letter dated 18-4-1994 (Annexure 4) the applicants and ~~Office~~ other Group D employees who are in the scale of pay of Rs. 750-940/-, ^{new} sanctioned next higher scale of Rs.775-1025/-. These facts are not in controversy.

9

Grievance of the applicants is that though number of posts of Poultry Trapnester and Poultry Assistants are lying vacant carrying the scale of pay of Rs. 950-1500/- and though they were eligible for promotion to those posts they have been denied the same, even as per the clauses mentioned in the scheme dated 13-9-1991 (Annexure-2), they are entitled to the scales of promotional posts. However, through Annexure-4, dated 18-4-1994, they have been sanctioned of Rs. 775-1025/- in situ in the same cadre. They have even enough of experience in doing the job of Trapnester as they were being so engaged through Office Order dated 24-6-1986 (Annexure-3) and they have reached the maximum scale long back in their pay scale of Rs. 750-940/-.

Applicants, therefore, pray for issue of direction to the Respondents either to give them promotion or give promotional scale of Poultry Trapnester or Poultry Assistants retrospectively from the dates when they were eligible for such promotion.

Before filing of this Application, Applicants, 9 and 10 (S/Shri Lokanath Das and Ramachandra Naik) retired from service on medical grounds with effect from 8-3-1993 and 13-1-1994 respectively.

2. According to the Respondents (counter dated 4-7-1995), there are 23 posts of Poultry Attendants

10

(Group D) under the Respondent No. 3. Out of them, as against four sanctioned posts of Poultry Trapnester, three have been adjusted on promotion in May, 1981 and the fourth one in November, 1988 as per the seniority. 10(ten) applicants who were stagnated for one year were given promotion, to the next higher scale of pay of Rs. 775-1025/- under the scheme dated 13-9-1991. At present, there is no sanctioned post of Poultry Trapnester or Poultry Assistants in the Firm at Bhubaneswar under the administrative control of Respondent No. 3. Respondents assured that whenever such posts will fall vacant, the same will be filled up according to the Recruitment Rules and according to the seniority on adjudging the suitability from amongst the Poultry Attendants. Thus, they denied the availability of vacant posts of Trapnester and Poultry Attendants. There is, however, no denial of the averments of the Applicants that they were being engaged in the duty of Trapnester as mentioned in Annexure-3 and the applicants reached the maximum scale in Rs. 750-940/-. According to them, the scheme under Annexure-2 is applicable to the applicants and there is no mala fide or arbitrariness in giving them in situ promotion to the scale of Rs. 750-1025/-.

3. In the rejoinder, applicants while reiterating some of the facts mentioned in the application take a positive stand that the in situ scale of Rs. 775-1025/- sanctioned in Annexure-4 is applicable to the class of employees like Peon, Mali, Safaiwala and other Gr.C&D employees who do

not have any promotional avenues. Further, they enclosed office order dated 20th of October, 1995 as to the promotion of Bhimananda Dehuri (Applicant No.1) to the post of Poultry Trapnester in the scale of Rs.950-1500/- (Group 'C'). However, there is no denial of the version of the Respondents in their counter filed on 4-7-1995 as to the non-availability of vacancies in the post of Trapnester and Poultry Assistants.

In reply to this rejoinder, Respondents filed additional counter reiterating the sanction of the scale of Rs.775-1025/- to the applicants under Annexure-4.

4. Since there is no denial to the stand of the Respondents as to the non-availability of vacant posts of Trapnester or Poultry Assistants and in view of their assurance in the counter that such posts becoming vacant as and when, promotion of Poultry Attendants on seniority and suitability basis will be considered, we do not find any merit in entertaining the prayer of the applicants for their promotion to these posts with retrospective effect.

5. It is next to be considered whether on the basis of the scheme dated 13-9-91 (Annexure-2), ten applicants would be entitled to the scale of Rs. 950-1500/- for promotion in situ. In order to appreciate this point in controversy it is worthwhile to reproduce the relevant provisions of the

12
scheme dated 13-9-1991 (Annexure-2) as hereunder:

"This scheme shall be applicable to (i) employees who are directly recruited to a Group 'C' or to Group 'D' post; (ii) employees whose pay on appointment to such a post, is fixed at the minimum of the scales; and (iii) employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post. The scheme will have the following basic features:-

- (a) Group 'C' and 'D' employees who fulfil the conditions mentioned at (i) (ii) and (iii) above will be considered for promotion in situ to the next higher scale;
- (b) Promotion in situ will be allowed after following due process of promotion with reference to seniority cum fitness.;
- (c) The employees will get promotion in situ to the next higher scale available to them in the normal line/hierarchy of promotion. Promotions made on the basis of a qualifying or competitive departmental examination or subject to possessing or acquiring higher qualifications will not be treated as promotions in the normal line/hierarchy for the purpose of these instructions. In cases where no promotional grade is available, promotional scale will be decided by the Ministry of Finance. The promotional grade in case of Staff Car Drivers in the scale of Rs. 950-20-1150-EB-25-1500/- will be Rs. 1200-30-1440-EB-30-1800;
- (d) Group D employees will retain the benefit of retirement at 60 years even after they are promoted in situ to the scale of Rs. 825-15-900-EB-20-1200. On promotion in situ to any higher group C scale, the retirement age of 58 will apply;
- (e) In case recruitment to any category of posts (Group 'C' and/or 'D') is made both by direct recruitment and by promotion, a promotee will be considered for promotion in situ from the date a direct recruit junior to him in that cadre becomes eligible for in situ promotion

even though in his case (in case of promotee) it will be the second promotion. Similarly, a direct recruit who was not fixed at the minimum of the scale at the time of appointment will also be considered for promotion in situ from the date a direct recruit junior to him and fixed at the minimum of the scale becomes eligible for promotion;

- (f) Employees given promotion in situ will continue to be borne on the seniority list of the lower cadre/post and will be considered for functional promotion against available vacancies as per provision of the Recruitment Rules;
- (g) Even though promotion under this scheme which is in situ may not involve assumption of higher duties and responsibilities, the benefit of FR 22(I) (a) (1) (Old FR 22-C) will be allowed while fixing pay on promotion as a special dispensation. However, such benefit will not be allowed again at the time of functional promotion in the same scale;
- (h) In case of Group D employees, the stagnation increment(s) being drawn will be taken into account in fixation of pay in the event of promotion in situ under the scheme as a one time dispensation.

Each administrative Ministry/Department will identify the posts which have no promotional grade in the Ministry/Department or Organisations under its control and furnish the information relating to designation, scale of pay recruitment, qualifications, duties and responsibilities attached to each such post alongwith suggestions for suitable promotional scale based on comparable promotional grades generally available for the posts of that level to the Financial Advisers after scrutiny will take up the matter with the Ministry of Finance (Establishment Division) for prescribing suitable promotional grades based on an overall considerations in each such case.

These orders will take effect from 1.4.1991.*

It would be clear that this scheme is for the career advancement of Gr. C & D employees. Applicants, admittedly belong to Gr.D category and the scheme is also

applicable to such Gr. C & D employees, who have not been promoted on regular basis even after one year of reaching the maximum of the scale of such post, then such employees will be considered for promotion in situ to the next higher scale and promotion in situ will be allowed after following due process of promotion with reference to seniority cum fitness. Such employees, getting in situ promotion, will get next higher scale available to them in the normal line/hierarchy of promotion. Further, it has been provided that Gr. D employees, on in situ promotion to Gr. C scale, the retirement age of 58 will apply instead of 60. It is further clear that employees given promotion in situ will continue to be in the seniority list of lower post and will be considered for functional promotion against available vacancies, as per the provisions under the Recruitment Rules. Though promotion under this scheme, which is in situ may not involve assumption of higher duties and responsibilities, the benefit of FR 22(I)(a)(1) will be allowed while fixing pay on promotion. But this benefit, will not be allowed against at the time of functional promotion in the same scale. Stagnation increment(s) of Gr. D employees will be taken into account for fixation of pay in the event of promotion in situ.

Thus, it is clear, from the combind reading of all the relevant clauses of the scheme that the applicants who are Poultry Attendants, who, under the Recruitment Rules, are eligible for consideration for promotion to the Group C posts of Trapnester and Poultry Assistants, will be eligible, ^{to} the scale of such group 'C' employees through in situ promotion w.e.f. 1.4.1991. We have, therefore, no hesitation to quash the portion of Annexure-4, dated 18.4.1991 sanctioning the scale of Rs. 775-1025/- to the applicants w.e.f. 1.4.1991.

6. It is an admitted fact that applicants 9 and 10 (S/Shri Lokanath Das and Ramachandra Naik) retired on medical grounds on 08-03-1993 and 13-01-1994 respectively. It is not clear from the pleadings as to their ages at the time of retirement. One of the conditions under the scheme dated 13-9-91 (Annexure-2) is that in case of in situ promotion of Group 'D' employees to the scale of Group C, the age of retirement will be 58. Hence, these two applicants 9 and 19 (Shri Lokanath Das and Shri Ramachandra Naik) would be eligible to the promotional scale/ i.e. the scale of Rs. 950-1500/- w.e.f. 1.4.1991 till their retirement or till they attained 58 years, whichever is earlier.

-10-

7. We, therefore, direct the Respondents to sanction the scale of Group 'C' employees under in situ promotion on the basis of the scheme dated 13-9-1991 (Annexure-2) to the applicants w.e.f. 1.4.1991 as per our observations above.

8. The Original Application is allowed but in the circumstances no order as to costs.

SOMNATH SOM
(SOMNATH SOM)
VICE-CHAIRMAN

15-12-98

15-12-98
(G.NARASIMHAM)
MEMBER(JUDICIAL)

KNM/CM.