

5
A
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 121 OF 1995
Cuttack this the 5th day of July/2000

P. Biswanath ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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)

S. Somnath
(SOMNATH SON)
VICE - CHAIRMAN
5.7.2000

6. 7
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 121 OF 1995
Cuttack this the 5th day of July/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Mr.P.Viswanatham,
aged about 40 years
S/o. P.Srinivasan
residing at Qr.No.MISC-11/A
Cuttack Rly. Station
PS: Malgodown,
Dist: Cuttack

...

Applicant

By the Advocates

M/s. U.K.Nanda
C.R.Behera

-VERSUS-

1. The Divisional Personnel Officer,
Khurda Division,
S.E.Railway, At/PO/PS: Jatni
Dist - Khurda

2. Mr.M.C.Mandal
Chief Health Inspector, Gr.II
At/PO/PS: Adra,
S.E.Railway, Adra Division,
Bihar,

3. Mr.N.V.V.Suba Rao,
Chief Health Inspector
S.E.Railway, Adra Division
At/PO/PS: Adra, Bihar

...

Respondents

By the Advocates

Mr. D.N. Mishra
Standing Counsel
(Res. 1)

...

2
O R D E R

(8)

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed that his promotion to the rank of Health Inspector, Gr.III should be regularised from 1.12.1981 instead of 15.2.1982 and he should be allowed all service benefits.

Applicant's case is that he was appointed as Health Inspector Gr.III on (Sic) 2.3.1982. He has stated that from 1.6.1979 till 23.2.1982 he possessed good service records and when his case for promotion to the post of Health Inspector Gr.III was taken up on 1.12.1981 he was not promoted on the ground that departmental enquiry was going on against him, in SPE Case No.R.C.1/80 which was ultimately dropped on 19.11.1983. Applicant has stated that he has been illegally superseded and he made a representation dated 31.10.1982 vide Annexure-3, but his representation was rejected in order dated 4.12.1982 vide Annexure-4. He filed a further representation on 31.12.1994 (Annexure-5) for fixing his seniority correctly vis-a-vis S/Shri M.C.Mandal and N.V.V.Subbarao (Res. 2 & 3). Applicant's case is that had he been correctly promoted on 1.12.1981 when his case was taken up for promotion, he would have been senior to both these persons. On the above grounds he has come up with the prayers referred to earlier.

2. Respondent No.1 (Department) has filed counter. Private Res. 2 and 3 though duly noticed have not chosen to enter appearance nor filed any counter.

3. It is not necessary to go into the submissions made by the departmental respondent in the counter because this will be referred to at the time of considering the submissions made by the learned Standing Counsel for the Department.

4. When the matter was called learned counsel for the petitioner Shri U.K.Nanda and his Associates were absent nor any request was made on their behalf seeking adjournment. As this matter relates to the year 1995 where pleadings have been completed long ago, it was not possible to drag on the matter indefinitely. We have, therefore, heard Shri D.N.Mishra, learned Standing Counsel appearing for departmental respondent and also perused the records.

5. It has been submitted by the learned Standing Counsel that Union of India has not been made a party through the General Manager of the Railways and there is no post of Divisional Personnel Officer, Khurda Road, who has been made the sole departmental respondent. It has also been submitted that the Application is barred by limitation because representation dated 31.10.1982 filed by the applicant has been rejected in order dated 4.12.1982 vide Annexure-4 and the petitioner has approached the Tribunal after lapse of 13 years.

6. Coming to the merits of the Original Application we find from the counter filed by the departmental respondent that in 1982 there were two vacancies in the rank of Health Inspector Gr.III and as per seniority position one Shri R.C.Mishra belonging to general category and the applicant who belongs to Scheduled Caste were called to the eligibility test on 13.1.1982. Both of them came out successful. Shri R.C.Mishra was given promotion and was regularised on the promotional post w.e.f. 23.2.1982, but the applicant was not given promotion because a disciplinary proceeding was pending against him. The disciplinary proceeding was ultimately dropped and the applicant was promoted to the post of Health Inspector Gr.III w.e.f. 26.4.1984. Thereafter the applicant filed representation stating that he should be given

SJM

promotion from the date when Shri R.C.Mishra was promoted. Accordingly the applicant was given ante dated promotion w.e.f. 23.2.1982 in order dated 28.12.1984 at Annexure-R/2. As the applicant has been given promotion from the date Shri R.C.Mishra who was considered along with him and was found suitable like the applicant, we do not see any reason for ante dating promotion of the applicant from 23.2.1982 to 1.12.1981. Applicant has merely stated that the case of the applicant for promotion was taken up on 1.12.1981. That does not mean that he should be promoted from that date. He has been promoted from the date the other person who was found suitable in the same selection has been given promotion. In view of this, this contention is therefore held to be without any merit and the same is rejected.

As regards Private Respondents (S/Shri M.C.Mandal and N.V.V.Suba Rao) are concerned the departmental respondent(s) have pointed out that applicant has been given his due position in the seniority list in the rank of Health Inspector Gr.III. The applicant was promoted as Health Inspector Gr.III from 23.2.1982 whereas S/Shri Mandal and Suba Rao were promoted as Health Inspector, Gr.III from 1.1.1982 and 16.1.1982 respectively, in Adra Division. It is further stated by Res.1 that from 4.11.1981 filling up of the post of Health Inspectors Gr.III and II was decentralised and given to the Divisional Railway authorities, but the post of Health Inspector, Gr.I was controlled by the Headquarters' Office. In view of this a combined seniority list of Health Inspectors of different Divisions were circulated and in that seniority list S/Shri Mandal & Suba Rao have been rightly shown as senior to the applicant, because they have become Health Inspectors Gr.III prior to the applicant. In consideration of

SJM.

10
11
this we also find that the actions of the departmental respondent in this regard cannot be faulted, with.

In view of discussions held above we hold that the applicant hasnot been able to make out a case for any of the reliefs prayed for. The application is, therefore, held to be without any merit and the same is rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
5.7.2000

B.K.SAHOO//