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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 191 OF 1995
CUTTACK THIS THE 2nd DAY OF June 2001

Suresh Chandra Panda Applicant(s)

-Versus-

Union of India & Others Respondents.

For Instructions

1. Whether it be referred to the Reporters or not? 47
2. Whether it be circulated to all the Benches of Central Administrative Tribunal or not? 47

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

21.6.01
(G.NARASIMHAM)
MEMBER(J)

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(b)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 191 OF 1995
CUTTACK THIS THE 21st DAY OF June 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

1. Suresh Chandra Panda,
Junior Accounts Officer,
Office of the Deputy Director
of Accounts(Postal)
Cuttack.

.... Applicant
Mr. D.P. Dhalsamant

By the Advocates

- V e r s u s -

1. Union of India,
represented through
Director General,
Department of Posts,
Dak Bhavan,
New Delhi - 110 001.
2. Chief Post Master General,
Orissa Circle,
Bhubaneswar - 751 001.
3. Deputy Director of Accounts(Postal)
Cuttack - 753 005.

.... Respondents

By the Advocates

Mr. B. Dash
A.S.C.

.....

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O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): In this Original Application filed on 31.3.95, applicant a Junior Accounts Officer of the Postal Department, earlier approached this Bench in O.A.84 of 90 and obtained the declaration by judgement dtd.5.4.91 Annexure-1 that he has passed the JAO part II Examination of the Postal Department. Pursuant to this declaration under Annexure-2 dtd.22.8.1991 his name was placed at serial no.1 in the list of successful candidates of Junior Accounts Officer of Part II (Postal), of Orissa Circle, Examination of which was held in November 1988 by order dated.30.6.92 under Annexure-3. He was appointed as Junior Accounts Officer on ad hoc basis with a condition that it will not count for seniority in that grade for the purpose of promotion. Thereafter, the applicant again moved this Bench in O.A.261/93 for regularization of his appointment with effect from the date from which his juniors were given promotion with all consequential service benefits. During the pendency of this O.A. by order dtd.7.7.93(Annexure-4) the applicant was appointed to officiate as Junior Accounts Officer on regular basis. In that order it was further made clear that he would remain in probation for two years.

In order dtd.31.10.1994 (Annexure-5) 4 Officers who according to the applicant are junior to him as Junior Accounts Officer, have been promoted to the cadre of Assistant Accounts Officer(Gr.B Gazetted). The applicant then submitted representation on 11.11.1994 under Annexure-6 for his promotion to that cadre. By letter dtd.21.2.95 (Annexure-7) he was intimated that as he had not completed the probation period

required under D.G. Memorandum dtd.19.7.98 (Annexure-8) on the crucial date on 30.9.93 he was not eligible to be considered for the promotion to the post of Assistant Accounts Officer.

2. The grievance of the applicant is that ^{as} he has been placed at serial no.1 in the successful list of candidates in the JAO part II (Postal) Examination of 1988, D.G.Memorandum dtd.9.7.89 (Annexure-8) requiring completion of probation period would not be applicable to him. This Examination was held during November 1988. By wrong order of the Department he was not exempted from appearing in paper IV new and this was set right in order dtd.5.4.91 in O.A.84/90 declaring that he was entitled to such exemption and he was declared to have passed the JAO part II Examination. He being the seniormost JAO ^{he} would be entitled to promotion to the cadre of Assistant Accounts Officer from the date of his juniors were promoted. Hence this application.

3. The Department in counter maintained that by the time this Bench disposed of O.A.84/90 on 5.4.91, all other successful candidates of 1988 batch junior to the applicant were already promoted to the JAO cadre. As there was no fresh general community vacancy to accommodate him, he was allowed regular promotion on 7.7.93 reverting the juniormost general community JAO. On such promotion ^{he} there was allowed notional benefits of seniority and pay fixation and so on with reference to his immediate junior. As per the recruitment Rules pertaining to JAO cadre he was placed on probation for a period of 2 years from 7.7.93 under Department posts. Under (Assistant Accounts Officers) Recruitment Rules 1991 (Annexure R/2) which are deemed

to have been inforced from 1.4.87, Assistant Accounts Officer posts are filled up by promotion from JAOs having 3 years of regular service in that cadre. According to the Department the applicant having not completed 3 years of service in the cadre when his juniors were promoted, his case was ^{not} taken ~~for~~ ^{up for} consideration.

4. Though rejoinder has not been filed, a copy of the judgement dtd.7.7.99 of this Bench passed in Original Application 261/93 was filled by the applicant.

5. We have heard Shri D.P.Dhalsamant, learned counsel for the applicant and Shri B.Dash, learned Additional Standing Counsel for the Respondents.

6. Facts are not in dispute. But for the wrong order of the Administration is not exempting the applicant in paper-IV(new) in the part-II Departmental Examination of the Junior Accounts Officer held in November 1988, applicant under normal circumstances would not have been promoted to the post of JAO either earlier than his juniors or alongwith his juniors and would have maintained the seniority in the cadre of JAO. This wrong decision of the Department was rectified through a direction of this Bench in O.A.84/90. Thereafter, by order dtd.29.8.91 applicant who was placed at serial no.1 in the list of successful candidates under the Orissa Circle. Then he was given ad hoc promotion by order dated.30.6.92 with a condition that this ad hoc period would not give him seniority for the purpose of promotion to the next higher grade. He moved this Bench in O.A.261 of 93 ~~challenging that order.~~ During the pendency of this O.A.261/93

subsequent developments giving rise to filling up the Original Application had taken place.

Since applicant was declared have cleared the Part-II Examination in November, 1988 pursuant to the order of the Tribunal in O.A. 84/90, he will get seniority in the rank of JAO from the date his juniors were promoted to that cadre. In fact, this is also the stand taken by the Department in O.A. 261/93. In other words, he is the seniormost among the JAOS who were promoted to that cadre pursuant to the Departmental Examination taking place in November 1988. In the concluding portion of judgement O.A. 261/93 disposed of on 7.7.99. We observed that since seniority of the applicant was allowed from the date his juniors were promoted or appointed, the prayer of the applicant for regularization of his appointment as JAO from the date his juniors were promoted had already been allowed in the order of D.G. posts of for the purpose of counting seniority from the date his juniors were promoted as JAO and therefore no separate order is required to be passed on this aspect.

It is therefore now clear that the applicant is deemed to have been regularly appointed as JAO from the date his juniors were regularly promoted as JAOS.

7. Question for consideration is whether the applicant cannot be considered for the promotion to the post of Assistant Accounts Officer because he had not completed the actual probation period in the cadre of JAO by the time his juniors were promoted to the cadre of Assistant Accounts Officers. Obviously in view of the aforesaid discussion the applicant is deemed to be a regular junior Accounts Officer from the date his juniors were promoted as JAO. In other words, he is in regular service as Junior

Accounts Officer since the date his immediate junior has been appointed as Junior Accounts Officer on regular basis. This being the position the obstacle of actual probation period raised by the Department carries no meaning.

8. As earlier stated the 1991 promotion Rules laid down that Junior Accounts Officer must have 3 years of regular service in that grade to be eligible to be considered for promotion to the cadre of Assistant Accounts Officer. What is "regular service" has been the subject matter of interpretation of the Apex Court in Union of India Vrs. K.B. Rajoria reported in AIR 2000 pg.1819. It has been held that "regular service" does not mean actual service and that 'regular' should not mean irregular in the sense that it was contrary to any principle of law and that "on regular basis" would mean appointment to a post on regular basis in contract distinction to appointment on ad hoc or stop-gap or purely temporary basis. In this Apex Court case involving the appointment to the post Director General (Works) CPWD the relevant recruitment Rules provide by promotion from amongst Additional Director Generals (Works) with 2 years of regular service in that cadre. One Krishna Murti was granted notional promotion to the post of Additional Director General on 10.6.98 w.e.f 22.2.95. His name was considered by the DPC which met in June 99. This was indirectly challenged by the Respondent K.B. Rajoria stating that Krishna Murti did not actually function as Additional Director General for two years by the time the DPC met in June 99. The Apex Court ultimately held that by the time the DPC met in June 99, Krishna Murti had already completed 2 years of regular service in the grade of Additional Director General because notional promotion was given to Krishna

Murti to right the wrong that had been done to him by his supersession on 22.2.95. Hence we are the view that by the time of promotion, of 4 juniors of the applicant were considered to the cadre of [Asst.] Accounts Officer, the applicant had already fulfilled the eligibility criterion of two years of regular service in the grade of JAO and as such was entitled to be considered for promotion alongwith his juniors.

10. Averments in the counter reveal that promotions of the juniors by order 31.10.94 under Annexure-5 were made after DPC considered their cases. Hence we direct a Review DPC be constituted and case of the applicant be considered for promotion to the post of Assistant Accounts Officer with effect from the date his juniors were promoted. This exercise shall be completed within ninety days from today. Original Application is allowed. No Costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(G. NARASIMHAM)
MEMBER (J)