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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 45 OF 1995
Cuttack this the 21st day of August/2000

Mahendra Kumar Mahana

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45.
2. Whether it be circulated to all the Benches of the No. Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.8.2000

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)
21.8.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.45 OF 1995
Cuttack this the 21st day of August/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

...

Mahendra Kumar Mahana,
aged about 59 years,
S/o. Late Raghunath Mahana,
At - Bakharabad,
PO - CUTTACK-2

...

Applicant

By the Advocates

M/s.Ganeswar Rath
S.N. Mishra

-VERSUS-

1. Union of India represented by
Director General - cum - Secretary
to Govt. of India,
Ministry of Agriculture and
Co-operation and Indian Council of
Agricultural Research
At - Krishi Bhawan
New Delhi - 110001

2. Director,
Central Rice Research Institute,
At - Bidyadharpur
PO - CUTTACK-6, Cuttack

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Respondents

By the Advocates

Mr.Ashok Mishra

...

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(7)

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Mahendra Kumar Mahana, a retired employee under Director, C.R.R.I. (Res. No.2) while serving as U.D.C. was permitted to appear in the written examination and viva voce test for promotion to the post of Senior Auditor. He was declared successful and was promoted and appointed as Senior Auditor with effect from 4.8.1972. Consequent upon the transfer of the post of Senior Auditor to the Accounts Line he had relinquished this post. He was again by order dated 13.9.1990 was promoted to the post of Senior Auditor, which post by then was redesignated as Superintendent (Auditor & Accounts). He was again reverted from that post. For this he approached this Tribunal in O.A.481/91 challenging the order of reversion. By order dated 15.9.1993, this Tribunal allowed the Original Application by quashing the orders of reversion and held that it would be deemed that the applicant was continuing in the post of Senior Auditor from the date of his promotion, i.e., 4.8.1972 vide Annexure-1. Pursuant to this direction the applicant was posted as Superintendent (Auditor & Accounts) in the scale of Rs.1640-2900/- in order dated 17.11.1993 (Annexure-3). These facts are not in controversy.

2. The case of the applicant is that in view of judgment of this Tribunal he was entitled to all service benefits including arrears salary in the post of Superintendent. He, therefore, submitted representations under Annexures-3, 5 and 5.1, but without any effect. However, in the meanwhile he was permanently posted as Superintendent by order dated 18.12.1993 (Annexure-4). For eligibility to the next promotional post, i.e. Asst. Accounts Officer three years of service in the Grade of Superintendent

is required. According to applicant, since he is deemed to be continuing as Superintendent (earlier known as Senior Auditor) w.e.f. 4.8.1972, he was eligible to be appointed as Assistant Accounts Officer from the date this post was created by the resolution of the Council on 8.3.1979 and thereafter he was to have been promoted to the post of Asst. Accounts & Finance Officer with retrospective effect. However, he was promoted to the post of Asst. Accounts & Finance Officer in the scale of Rs.2000-3500/- on 20.7.1994 without any retrospective benefit. His representations under Annexure-10 in this connection also did not yield any result. Hence this application for service benefits including the arrears in view of his promotion to the post of Superintendent, retrospectively from 4.8.1972; for his promotion to the post of Asst. Accounts & Finance Officer w.e.f. 8.2.1983 and thereafter to the post of Finance & Accounts Officer along with consequential service and financial benefits.

3. The Department in their counter take the stand that judgment of this Tribunal in O.A.481/91 does not contain any direction that the applicant would be entitled to consequential service benefits w.e.f. 4.8.1972. As per recruitment rules, a person would be eligible for consideration for promotion to the post of Asst. Accounts & Finance Officer only when he has three years of practical experience in the post of Auditor/Superintendent and opted for Accounts Service. The applicant having no three years of practical experience in the post of Auditor/Superintendent and having not opted for accounts service was not eligible for promotion to the post with retrospective effect as claimed by him. In fact, after change from the post of Senior Auditor on two occasions, he practically worked as Sr. Stenographer getting

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higher pay that Sr.Auditor. Hence his claim for arrear pay as Superintendent (earlier known as Sr.Auditor) carries no meaning.

No rejoinder has been filed by the applicant.

4. We have heard Shri Ganeswar Rath, learned counsel for the applicant and Shri Ashok Mishra, learned Special Counsel appearing for the Respondents. Also perused the records.

5. The claim of the applicant is two fold; one is for retrospective promotional benefits in the post of Asst.Accounts & Finance Officer and the other one is for getting arrear pay as Superintendent w.e.f. 4.8.1972 onwards. The eligibility criterion for promotion to the post of Asst.Accounts & Finance Officer, as stated by the respondents in the counter and not denied by the applicant through any rejoinder is that one must have practical experience for three years in the post of Auditor and he must have opted for accounts service. Notional promotion would not confer practical experience. Even the Apex Court in Orissa Small Industries Corpn. v. Narasingh Ch. Mohanty reported in AIR 1999 SC 517 held that notional promotion to the Feeder post does not count for experience required for further promotional post. Hence the claim of the applicant for promotion to the post of Asst. Accounts & Finance Officer with retrospective effect cannot be entertained.

In regard to arrear pay in the post of Superintendent (earlier Sr.Auditor) it is the case of the Department that there is no direction in the judgment of this Tribunal in O.A.481/91 that the applicant would be entitled to arrears pay, even on those days he had not worked in that post. It is difficult to accept this contention of the Department, because, change of the applicant from that post on two occasions is not account of his fault, but

on the direction of the administration. These orders of the Department had ~~not~~ been challenged by him before this Tribunal and this Tribunal upheld his claim and declared that he is deemed to be continuing as Superintendent w.e.f. 4.8.1972. In this view of the matter, going by the observation of the Apex Court in the case of Janakiraman(AIR 1991 SC 2010) the Department cannot resist the claim of the applicant with this plea. However, the Department was justified in now allowing the arrears pay in the post of Superintendent, because the applicant, during the relevant period, when he was not serving as Superintendent, was in fact functioning as Senior Stenographer and drawn higher pay than Superintendent. This averment of the Department has not been refuted by the applicant through any rejoinder. In this view of the matter, we do not any justification for the applicant for claiming arrear pay in the post of Superintendent.

6. For the reasons discussed above, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

Somnath Somi
(SOMNATH SOMI)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//