

7

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 563/1995

Cuttack this the 1st day of October, 2002

Narahari Rout, aged about 51 years
S/o Golak Chandra Rout, At-Battua,
PO-Bari, Thengarh, PS-Bada Chaua,
at present working as Lineman
Telegraph, Berhampur, Ganjam Applicant

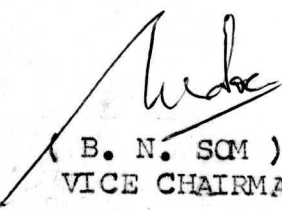
- VERSUS -


U.O.I.

..... Respondent(s)

FOR INSTRUCTIONS

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


(B. N. SCM)
VICE CHAIRMAN


01.11.2002
(M. R. MOHANTY)
MEMBER (JUDICIAL)

...

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

8

Original Application No. 563/1995

Cuttack this the day of October, 2002

GORAM :

THE HON'BLE SHRI B.N.SCM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

....

Narahari Rout, aged about 51 years
S/o Golak Chandra Rout, At-Battua,
PO-Bari, Thengarh, P.S. Bada Chaua,
at present working as Lineman
Telegraph, Berhampur, Ganjam. Applicant

For the Applicant : M/s Dr. M.R. Panda, Advocate
 Mr. M.K. Nayak, Advocate
 Mrs. M.K. Das, Advocate

VERSUS -

1. Union of India, represented through
its Secretary, P & T Department,
Government of India, Dak Tar Bhawan,
New Delhi-1.
2. The Chief General Manager,
Telecommunication,
Orissa Circle, Bhubaneswar.
At/PO/PS- Bhubaneswar, Dist. Khurda.
3. Telecom District Engineer Berhampur,
Dist. Ganjam-760001

.....Respondents

For the Respondents : Mr. U.B. Mohapatra,
 Addl. Standing Counsel
 for the Union of India

.....

O R D E R

MR. M.R. MOHANTY, MEMBER (JUDICIAL): The Applicant, having
joined as a Lineman in Posts and Telegraphy Department of

7

Government of India on 28.12.1966 (as is evident from the Annexure-02) completed 16 years of his services on 28.12.1982. Before he was given the service/ salary benefits (for having completed 16 years of his services), the Applicant faced a suspension order dt.11.11.1983. He was , however, reinstated in service on 04.01.1984 (as is evident from the Annexure-04) within a period 02 months of his suspension. Within 02 months thereafter, his juniors were granted promotion on 29.02.1984. Some of the grievances (of the Applicant) were the subject matter of consideration by this Tribunal in T.A.No.91 of 1987; which was decided on 31.10.1988 by requiring the disciplinary authority of the Applicant to decide as to how the period of suspension of the Applicant should be treated. On 05.08.1989, the Respondents/ authorities of the Applicant passed order to treat the period of his suspension as leave due and admissible to the Applicant. In the disciplinary proceeding, in which he was charge-sheeted on 06.03.1984, the Applicant was censured on 17.08.1992. The Applicant was granted higher financial (O.T.B.P.) benefits on 19.05.1993 with effect from 01.09.1992; although his claim was to get the benefits with effect from 1982^{Nov 1983}. The Applicant has completed 26 years of his services on 28.12.1992; for which he made a representation under Annexure-07 to get the service benefits/financial (B.C.R.) benefits on completion of 26 years of his services. Under Annexure-09 dt.26.07.1993 and Annexure-10 dt.15.03.1995, the Applicant submitted representations seeking higher financial benefits with retrospective effect on completion of 16 years of his services and 26 years of his services from the respective retrospective

dates. No heed having been paid to the grievances of the Applicant, he filed the present Original Application (under Section-19 of the Administrative Tribunal Act, 1985) on 23.05.1995 for redressal of his grievances.

2. On 30.11.1995, the following orders were passed by this Tribunal requiring the Department/Respondents to examine the grievances of the Applicant:-

" In this application, the Applicant prayed for a direction to the Respondents to confer him promotion from the date his juniors were promoted. It is stated that he completed 26 years of service by 27.12.1992 and he should have been promoted to the B.C.R. cadre in IMT Gr.III in the scale of Rs.1200-30-1440-EB-30-1800/ with effect from 01.01.1993 on par with the promotion of Shri K.C.Bhoi and others who are his batch-mates and juniors. Due to non-receipt of 2nd B.C.R.promotion, the Applicant made a representation to the E.D.T. on 12.09.1994. He was informed that his case was under consideration. It is categorically asserted that he completed 26 years of qualifying service and automatically he should have got the BCR promotion. To this effect a representation has been submitted to the Chief General Manager, Telecommunications, Bhubaneswar on 15.02.1995. It is submitted by the learned Counsel for the Petitioner that this representation has not so far been disposed of.

These are departmental promotional matters. There is a efficacious alternative remedy, viz. a proper representation to be disposed of.

It would meet the ends of justice if a direction is given to the Chief General Manager, Telecommunications, Bhubaneswar (Respondents No.2) to dispose of the representation. Accordingly, I direct the Chief General Manager, Telecommunications, Bhubaneswar (Res.2) to dispose of the representation dated 15.03.1995 of the Applicant within a period of four weeks from the date of receipt of a copy of this order after giving him reasonable opportunity of being heard."

3. A counter has been filed in this case on 25.06.1997 to the following effect :-

" On the representation of the Applicant, the case of the Applicant was again reviewed as per the direction of the Hon'ble Tribunal dated 30.11.1995 in O.A.No.563/95. The Review D.P.C. which met on 28.02.1996 having considered the case of the Applicant allowed promotion under O.T.B.P.Scheme

7

11

with effect from 01.09.1992 for the reasons indicated in the said D.P.C. A copy of the said Review D.P.C. is annexed as R/1. The Promotion to B.C.R. Scheme has also been given to the petitioner with effect from 23.07.1995, the date on which he assumed charges according to the minutes of D.P.C. held on 25.04.1996 for the reasons indicated therein. A copy of the said Review D.P.C. is annexed as R/2 ".

4. It appears that a Review D.P.C. was held on 28.02.1996 in order to examine the matter of granting benefits to the Applicant, on completion of 16 years of his services and another Review D.P.C. was also held on 25.04.1996 in order to examine grant of service benefits to the Applicant on completion of 26 years of his services. Relevant portion of the first Review D.P.C. proceedings that was held on 28.02.1996 (Annexure R/1) are extracted below:

Points for consideration as represented by <u>Shri N.Rout, IM</u>	Decision arrived at by the <u>Review D.P.C.</u>
1. Pay & allowance be regularised :	The T.D.M. Office, Berhampur has to regularise the pay and effect payment immediately, if not done yet.
2. OTBP Promotion be considered with effect from 30.11.1983 in lieu of 1.9.1992 by the Review D.P.C.	The Review D.P.C. found that a Disciplinary case was pending against the official and punishment was awarded thereupon on 17.08.1992. Therefore, till such time, regular D.P.C. has validly not considered his case for promotion under OTBP Scheme . Therefore, the D.P.C. has rightly effected the promotion of the official under OTBP Scheme effecting from 01.09.1992. Thus, the Review D.P.C. conquers with the decision of the regular DPC.
3. Promotion under BCR be conferred w.e.f. 1.3.93 at par with the other co-workers on completion of 26 years of qualifying service.	The B.C.R. Promotion with effect from 1.3.1993 was decided by the CGMT office, BBSR vide their letter No. ST/112-15/194-95, dated 29.6.95 wherein it was mentioned that the date of promotion will take effect from the date of actual assumption of charges/ on or before 1.7.1995. Accordingly, the BCR promotion of the official has already been implemented from the date of actual

7

assumption of the charges of the official i.e., on 23.07.1995.

5. The relevant portion of the notings of the second Review D.P.C. that was held on 25.04.1996 (Annexure R/2) is extracted :

Points to be considered

Promotion under BCR be considered with effect from 1.3.93 at par with other co-workers on completion of 26 years of qualifying service.

Decision of the Review D.P.C.

As per the judgement of the Hon'ble CAT, Cuttack dt. 30th December, '95 for disposing the representation dt. 15.3.95 of Shri Narahari Rout, LI (0) it has been decided by the CMT, Orissa, Bhubaneswar to consider his promotion under BCR Scheme by a Review D.P.C. The Review DPC found that the punishment was awarded to the official on 17.8.92. Hence the regular DPC did not consider his promotion during 1992, 1993 and 1994. The DPC considered his promotion on 29.6.95 and recommended to promote him w.e.f. 1.7.95. The promotion was implemented from the date of actual assumption of the charge i.e., 23.7.95 by the official. The Review DPC, thus confirmed the decision of the DPC held on 29.6.95.

The Review DPC confirms the decision of the normal DPC held on 29.06.95, promoting the official under BCR Scheme with effect from 1.7.95.

6. The materials placed on record, in the counter, goes to show that the Respondents gave consideration to the grievances of the Applicant in order to extend the higher financial benefits (on completion of those 16 years of services and 26 years of services) and, yet those Review D.P.Cs., did not ante-date the benefits already extended to the Applicant for no valid reasons. The said suspension was revoked on 4.1.1984. The Applicant was chargesheeted on 06.03.1984. It appears that the DPC, which was constituted for the first time immediately after introduction of the OTBP Scheme for financial upgradation of officials having completed sixteen years of service, did not consider the Applicant's case; otherwise his case would have been kept in the sealed cover. Nor was his case, it appears, considered ever in any of the
- 7

13

subsequent D.P.C. meetings held for financial upgradation of the officials under OTBP Scheme. The disciplinary proceedings against the Applicant was completed only on 17.08.1992 awarding the punishment of "censure" on him. The Review D.P.C., which met on 28.02.1996, allowed him upgradation to OTBP Scheme with effect from 01.09.1992 on the plea that the disciplinary case against him was completed only on 17.08.1992. Another Review D.P.C., which met on 25.04.1996, recommended his upgradation under BCR Scheme on or before 01.07.1995, or the date of actual assumption of charge whichever was later. The date of actual assumption of charge by the Applicant being 23.07.1995, the financial upgradation under the BCR Scheme was effective from that date.

7. We have carefully gone through the facts and circumstances of the case and are constrained to point out that both the Review D.P.Cs., had miserably failed to appreciate the claim of the Applicant for financial upgradation from the due dates. In the first instance, the Review DPC failed to go into the reason for non-consideration of the Applicant's case by the first D.P.C. for upgradation of officials OTBP Scheme held immediately after **introduction** of the scheme, and, secondly, why his case was not, if at that time the disciplinary case was pending against him, kept in the sealed cover. Further, had the recommendation of the D.P.C. in respect of the Applicant for financial upgradation under the OTBP Scheme been kept in the sealed cover, he would have been given the benefit of upgradation from a date earlier than 01.09.1992. For the sake of fairness of justice in administration, we direct that the Chief General Manager, Telecommunications, Orissa Circle (Respondent No.2) shall once again go into the circumstances of non-consideration of the Applicant not only by the first D.P.C. conveyed under the OTBP Scheme but also go into the reason as to why

7

it took eight years to complete the disciplinary proceedings against the Applicant, which started with his suspension and ended with the penalty of "censure".

8. We also find that the minutes of the Review D.P.C., dated 25.04.1996, did not grant the Applicant the benefit of the B.C.R. scheme with effect from 01.03.1993 i.e., the date from which the Scheme was introduced, by which date he had completed 26 years of service, but recommended that the B.C.R. upgradation will be available to him only from the date of actual assumption of charge. B.C.R. promotion scheme is not post-based and it is merely upgradation of the pay scale of an official, not involving any change in duties and responsibilities. In the circumstances, we are unable to appreciate the reason for not allowing the benefit of B.C.R. scheme to the Applicant with effect from 01.03.1993. The Respondents have placed, on record, no materials to substantiate/ support the stand/view taken by the Review D.P.C., which met on 25.04.1996.

9. In the aforesaid premises, the Original Application is allowed with the direction to the Respondents to grant benefit of B.C.R. scheme to the Applicant with effect from 01.03.1993 if he was clean from Vigilance angle and re-determine the date of grant of benefit to the Applicant under the OTBP Scheme, after instituting a thorough enquiry as to why his case was not considered by the first D.P.C. held under the OTBP Scheme and whether the Applicant could have been given the benefit of upgradation under the OTBP Scheme from a date earlier than 01.09.1992 to uphold the principles of justice and fairplay in administration. This direction shall be complied with by the Respondents within four months from the date of receipt of copy of this order.

In the circumstances, there shall be no order as to costs.

(B. N. Som)
Vice Chairman

M. R. Mohanty
(M.R. Mohanty)
Member (Judicial)

01.11.2002