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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 292 OF 1996
Cuttack, this the 24th day of December, 2001

Bibhuti Ranjan Mishra

....Applicant

Vrs.

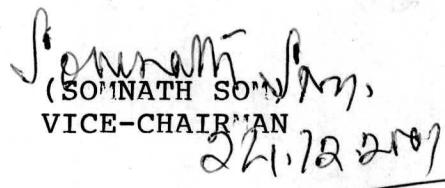
Union of India and others

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.


(N. PRUSTY)
MEMBER (JUDICIAL)


(SOMNATH SONI,
VICE-CHAIRMAN
24.12.2001)



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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI N. PRUSTY, MEMBER(JUDICIAL)

.....

Bibhuti Ranjan Mishra, aged about 36 years, son of Biswanath Mishra, presently working as Artist-cum-Technical Officer (Incharge), Office of the Manager, Postal Printing Press, Bhubaneswar-10, District-Khurda...

.....

.....Applicant

Advocate for the applicant - Mr.A.Kanungo

Vrs.



1. Union of India, represented through Secretary, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar-1.
3. Manager, Postal Printing Press, Bhubaneswar, Industrial Estate, Bhubaneswar, District-Khurda.
4. Sri Bidyabhusan Patnaik, S/o Lingaraj Patnaik, At-Postal Staff Colony, Qr.No.D/1, P.O-Gada, Gopinath Prasad, Rasulyarh, Bhubaneswar, District-Khurda.
5. Sri Chinmay Rath, son of Harihara Rath, At-8 Acharya Bihar, Bhubaneswar-13, District-Khurda....
.....

.....Respondents

Advocates for respondents - Sri A.K.Bose
Sr.CGSC & M/s S.B.Nanda
S.K.Mishra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the two orders dated 8.4.1996 at Annexure-1 absorbing private respondent nos. 4 and 5 in the Postal

Printing Press and giving them substantive appointment retrospectively. The second prayer is for a direction to the departmental authorities to consider the applicant for promotion to the post of Technical Officer as the applicant is the only eligible and qualified incumbent for promotion.

2. The case of the applicant is that he was initially appointed in the Postal Printing Press as Artist-Retoucher in the scale of Rs.1600-2600/- on 18.3.1988. Private respondent nos. 4 and 5 came on deputation to the Postal Printing Press from the office of Director, Text Book Production and Marketing, Government of Orissa, after the Postal Printing Press was set up in the year 1986. Respondent nos. 4 and 5 were working in a lower post in the State Government carrying the pay scale of Rs.935-1530/- and came to the Postal Printing Press in a higher post of Offset Machineman Grade-I in the scale of Rs.1400-2300/-. The applicant has referred to the earlier OA Nos. 574/92 and 615/93, and the order dated 8.11.1995 of the Tribunal disposing of the earlier two O.As. He has stated that in pursuance of the order of the Tribunal dated 8.11.1995 the two orders dated 8.4.1996 at Annexure-1 have been issued absorbing respondent nos. 4 and 5 with effect from 23.6.1986 and 2.2.1987 respectively as Machineman Grade-I. In the same order respondent nos. 4 and 5 have been given substantive appointment as Machineman Grade-I from 24.6.1990 and 3.2.1989 respectively. The applicant has state that the order of absorption cannot be retrospective and the dates of giving them substantive appointment are imaginary. It is furtherstated that private respondent nos. 4 and 5 were

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never given officiating appointment to the promotional post of Technical Officer and order was made at Annexure-3 requiring them to manage the work of Technical Officer in addition to their own work. It is further stated that later on by an order dated 10.10.1986 additional charge given to respondent no.5 was withdrawn. The applicant has stated that after this, he and respondent no.4 are continuing as Technical Officer in charge and the applicant is the only qualified person to be considered for promotion to the post of Technical Officer. He has stated that the orders of absorption from retrospective effect are illegal and contrary to the order and spirit of the direction of the Tribunal contained in the order dated 8.11.1995. It is stated that the applicant has joined as Artist-Retoucher on 18.3.1988 and has been confirmed on 18.3.1990 whereas respondent nos. 4 and 5 came on deputation as Offset Machineman Grade-I on 23.6.1986 and 2.2.1987 and they got substantive appointment in that post from 24.6.1990 and 3.2.1989. The applicant has stated that as private respondent nos. 4 and 5 were on deputation, their absorption has only to be prospective and they cannot be absorbed with retrospective effect much less given substantive appointment with retrospective effect. In the context of the above, he has come up in this petition with the prayers referred to earlier.

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3. Private respondent nos. 4 and 5 in their counter have referred to the earlier litigations, more particularly to OA No.574 of 1992 filed by the Union and have mentioned that at Annexure-1 of OA No.574 of 1992 the Union had given a list of its members and in that list the name of the applicant appears against serial no. 3 in the list. It is stated that in view of this, the question

of absorption² of respondent nos. 4 and 5 cannot be raised by the applicant on the principle of resjudicata. It is further stated that the present application has been filed only to frustrate the order dated 8.11.1995 of the Tribunal.

4. Departmental respondents have stated in their counter about the earlier litigations and the order of the Tribunal. They have stated that the Postal Printing Press is an Offset Press and all Machinemen are ~~Offset~~ Machinemen only. They have stated that promotion to the post of Technical Officer has not been given and the DPC is yet to consider the cases of eligible persons. It is further stated that according to the Recruitment Rules for the post of Technical Officer, 66 & 2/3% is to be filled up by promotion, failing which by direct recruitment, and the rest 33& 1/3% by direct recruitment. The feeder cadre posts are Offset Machineman (Special Grade), Film Setter/Operator and Artist-Retoucher with five years regular service in the grade, failing which Offset Machineman Grade-I or Cameraman with eight years regular service in the grade. The departmental respondents have stated that when the post of Technical Officer is filled up, the case of the applicant along with the cases of respondent nos. 4 and 5 will be considered and the application is therefore premature. It is further stated that the orders at Annexure-1 have been passed strictly in compliance with the order dated 8.11.1995 of the Tribunal.

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5. The applicant has filed two rejoinders to the counter filed by the departmental respondents and private respondent nos. 4 and 5. It is not necessary to refer to all the averments made by the applicant in his rejoinders as these will be taken note of while



considering the submissions made by the learned counsel for the parties.

6. We have heard the learned counsel for the parties and perused the record. The learned counsel for the petitioner and the learned counsel for private respondent nos. 4 and 5 have filed written notes of submissions which have also been taken note of. The learned counsel for the petitioner has relied on the following decisions:



- (i) A.A.Calton v. Director of Education, 1983
SCC (L&S) 356;
- (ii) Ramlal Khurana v. State of Punjab, 1989
SCC (L&S) 644;
- (iii) P.Mahendran v. State of Karnataka, 1990
SCC (L&S) 163; and
- (iv) S.Jamaldeen v. High Court of Madras, 1997
SCC (L&S) 918.

We have perused these decisions.

7. The first prayer of the applicant is for quashing the two orders dated 8.4.1996 at Annexure-1 absorbing respondent nos. 4 and 5 in the Postal Printing Press. The grounds on which the applicant prays for quashing these two orders are discussed below. The first point made by the learned counsel for the petitioner is that in these orders respondent nos. 4 and 5 have been absorbed in Postal Printing Press with retrospective effect from 23.6.1986 and 2.2.1987. It is stated that the Tribunal in their order dated 8.11.1995 had directed absorption of respondent nos. 4 and 5 in accordance with rules and there is no provision in the rules for

retrospective absorption. The Tribunal in their order dated 8.11.1995 in OA Nos. 574/92 and 615/93 directed absorption of these two respondents in the Postal printing Press. It was also directed that services rendered by them in their parent unit prior to commencement of their deputation should be given due weightage as per normal rules. It was also ordered that promotions as have already been conferred on them temporarily shall be converted into regular/permanent promotion. There is no legal provision which bars absorption of a deputationist in the borrowing organisation with retrospective effect. As the Tribunal in their order had directed to take into consideration even the services rendered by these two private respondents in their parent unit, we find no illegality in absorbing them in the Postal Printing Press from the dates of their joining. Secondly, as the Tribunal directed that promotions temporarily given to them in the Postal Printing Press should be converted into regular/permanent promotion, they have also been given substantive appointment as Machineman Grade-I with retrospective effect from June 1990 and February 1989. In view of this, we hold that absorption of private respondent nos. 4 and 5 with retrospective effect and giving them substantive appointment, as has been done in the orders at Annexure-1, are in accordance with the order of the Tribunal, dated 8.11.1995. The learned counsel for the petitioner has referred to P. Mahendran's case (supra), in which the Hon'ble Supreme Court have held that every statute or statutory rule is prospective unless it is expressly or by necessary implication given retrospective

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effect. In this case, we are not concerned with the statute but the earlier order of the Tribunal to which reference has already been made by us. In view of this, P.Mahendran's case (supra) is of no support to the above contention of the learned counsel for the petitioner. The decision of the Hon'ble Supreme Court in A.A.Calton's case (supra) also deals with retrospective operation of statute or statutory rule, and it is not necessary to refer to the decision in the present case.

8. The next contention of the learned counsel for the petitioner is that under the rules a person cannot have lien against two posts. When respondent nos. 4 and 5 came on deputation to the Postal Printing Press, initially they had lien in their parent unit from which they came on deputation and they continued to have the lien. By retrospective absorption of these two respondents in the Postal Printing Press with effect from 1986 and 1987 in the order dated 8.4.1996, these two respondents would be in a position to have lien against two posts in the parent organisation against which they have lien and also in the posts against which they have been absorbed in the Postal Printing Press. In support of his contention, the learned counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court in Ramlal Khurana's case (supra). For the purpose of considering this point, it is not necessary to refer to the facts of this decision as private respondent nos. 4 and 5 have been absorbed in the Postal Printing Press with effect from 1986 and 1987. Their lien in the posts in their parent organisation automatically gets terminated from the dates of their absorption in the Postal Printing

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Press and it cannot be said that they had at any time lien against two posts. This contention is, therefore, held to be without any merit. In view of this, we do not find that the orders at Annexure-1 are liable to be quashed on the grounds urged by the applicant. This prayer is accordingly rejected.

9. The second prayer of the applicant is for a direction to the departmental authorities to consider the applicant for promotion to the post of Technical Officer. The departmental authorities have stated that at the time of filling up of the post of Technical Officer on regular basis, the case of the applicant would be considered. For the present purpose, it is not necessary to determine whether the applicant is the only eligible or qualified candidate for promotion to the post. This prayer of the applicant has been rightly termed by the departmental respondents as premature. It goes without saying that in case the petitioner is not dealt with according to the rules at the time of filling up of the post of Technical Officer on regular basis, he will have a separate cause of action and the same cannot be adjudicated by us at this stage. Moreover, it is for the departmental authorities to decide when to fill up the post of Technical Officer and no direction can be issued to them to fill up the post.

10. In view of our above discussion, we hold that the O.A is without any merit and the same is rejected.

No costs.

(N.PRUSTY)

MEMBER (JUDICIAL)

AN/PS



Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

21.12.2010