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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 506 OF 1996

Cuttack, this the 20th day of January, 1998


Pratap Chandre Singh Applicant

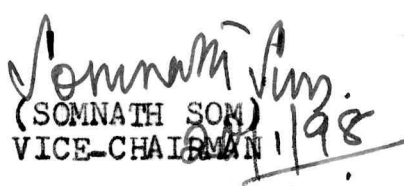
Vrs.

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 .


(S.K. AGARWAL) 20/1/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 20/1/98

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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Cuttack, this the 20th day of January, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)

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Pratap Chandre Singh, aged about 42 years,
son of late Baidyanath Singh at present
working as Telegraph Office Assistant
Grade-I, in the Central Telegraph Office,
Bhubaneswar

...

Applicant

By the Advocates

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M/s Dr.D.B.Mishra,
N.C.Mishra, S.S.Das &
A.P.Misra.

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1. Union of India, represented through
its Secretary, Ministry of Communications,
Department of Telecommunication,
Sanchar Bhawan, New Delhi-110 00 1.
2. Director General, Department of Telecommunication,
Sanchar Bhawan, New Delhi-110 001.
3. The Chief General Manager, Telecommunications,
Orissa Circle, Bhubaneswar-751 001.
4. The Sub-Divisional Engineer (T),
Central Telegraph Office, Bhubaneswar-751 001.
5. Director, Telecom (Headquarters), Office of
C.G.M.T., Orissa Circle, Bhubaneswar-751 001

... Respondents

By the Advocate

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Mr.Ashok Mohanty,
Sr.C.G.S.C.

...

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of

Administrative Tribunals Act, 1985, the petitioner has prayed
for a direction to the respondents to promote him to the post of
T.O.A.(TG) Grade II in the pay scale of Rs.1400-2300/- with effect

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from 18.9.1995 on completion of sixteen years of continuous service along with arrears of pay and allowances and consequential benefits.

2. Facts of this case, according to the applicant, are that he joined the Department of Telecommunication in Class IV Grade on 5.5.1975 and was promoted to Class III Grade with effect from 18.9.1975 and has been working as Telegraph Office Assistant in the scale of pay of Rs.975-1660/- in the Central Telegraph Office, Bhubaneswar. He belongs to Scheduled Tribe community and had completed sixteen years of service by 18.9.1995. According to the applicant, he has an unblemished record of service except that, in order dated 9.12.1994 (Annexure-1) Sub-Divisional Engineer(T), Central Telegraph Office, Bhubaneswar, required him to explain as to why there was excess amount of Rs.8/- in the cash in MR-2 Register and why he had not maintained the MR-2 Register on 7.12.1994. He was asked to submit his explanation within two days. The applicant's case is that there was heavy workload at that time and his son was also seriously ill. He submitted his explanation on 13.1.1995 (Annexure-2). But in the C.R. of the applicant for the year 1994-95, endorsement was made that he is non-responsive to official correspondence. This adverse entry was also communicated to him in letter dated 26.5.1995 (Annexure-3). In order dated 2.2.1996 the Departmental Promotion Committee gave promotion to ten persons to the scale of Rs.1400-2300/- under the One Time Bound Promotion Scheme ('O.T.B.P. Scheme' for short), but the applicant's case was overlooked presumably because of the adverse entry in the C.R. The applicant filed representation at Annexure-6, but the same was rejected vide Annexure-7. The

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applicant's case is that the adverse entry^{is} with regard to non-submission of the explanation and the entry was made after submission of his reply on 13.1.1995 and therefore, the adverse entry should not have been made. Moreover, one Shri P.C.Misra, Sub-Divisional Engineer called for his explanation and the adverse entry was recorded by another officer, Shri B.N.Behera, who was in charge of the office of Sub-Divisional Engineer. The case of the applicant is that promotion under O.T.B.P.Scheme is based on satisfactory length of continuous service of 16 years and in this case, he has been denied promotion on unjust ground and that is why he has come up with the aforesaid prayer.

3. Respondents in their counter have stated that the case of the applicant for promotion under O.T.B.P.Scheme was considered in the D.P.C. meeting held on 25.1.1996, but he was not found fit for promotion. Respondents have submitted a copy of the minutes of the D.P.C. at Annexure-R/1. It has been further submitted that an explanation was called for from the applicant vide Annexure-1 and a reminder was also sent to him on 24.12.1994 by Shri P.C.Misra, Sub-Divisional Engineer(Telegraph) to submit his explanation. Ultimately, when no explanation was received, on 11.1.1995 an order was issued to the applicant which is at Annexure-R/4. In this order it has been stated that in spite of several reminders, the applicant did not submit his explanation and this called for severe action in view of non-response to official correspondence. However, a lenient view was taken as corrective measure and the applicant was thereby warned with an entry in the Memo of Services. Respondents have

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stated that as the adverse entry was recorded in the C.R. on the basis of entry in the Memorandum of Services, the Departmental Promotion Committee has rightly found him unfit for promotion and because of this, the respondents have opposed the prayer of the applicant.

4. The applicant has filed a rejoinder in which he has stated that the order dated 11.1.1995 warning the applicant and recording the warning in the Memorandum of Services has been issued by one Shri B.N. Behere who was in current charge of the duties of Sub-Divisional Engineer in place of Shri P.C. Misra and therefore, issuing the warning and recording it in the Memorandum of Services are unauthorised.

5. We have heard the learned lawyer for the applicant and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents and have also perused the record.

6. At the time of hearing, we had asked the learned counsels to show us the relevant Rules and Instructions regarding maintenance of Memorandum of Services. From page 42 of Swamy's Compilation on Seniority and Promotion in Central Government Service (Third Edition) it appears under paragraph 38 that Memorandum of Services has been provided for in para 174(7) of P & T Manual, Vol.III. This provides that with a view to enabling the Reporting Officers to make correct overall assessment of the work and conduct of their subordinates, the reporting officers are required to maintain memorandum of services

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in respect of each officer employed under them. All instances of good and bad work coming to the notice of the reporting officer should be promptly noted in the memorandum of services. The Rules provide that this Memorandum should not be reduced to a black book by reporting instances of only adverse nature. Instances of good work should also be liberally recorded and the Memorandum of Services should invariably ^{be} consulted at the time of writing annual reports. From the above rules, it does appear that recording of lapses and good work in the Memorandum of Services is authorised under the departmental instructions. From the facts of the case, it is seen that the explanation of the applicant was called for on two grounds for excess cash of Rs.8/- and for not maintaining M.R.2 Register for one day, i.e. 7.12.1994. As the applicant did not submit his explanation in time, even after receipt of a reminder, a warning was issued to him and recorded in Memorandum of Services regarding non-response to official communication. But the applicant in his letter dated 13.1.1995 did submit an explanation and presumably his explanation was found satisfactory because no further action with regard to the two lapses of excess cash of Rs.8/- and non-maintenance of M.R.2 Register for 7.12.1994 was taken. It is also seen that ^{alleged} the second lapse is about non-maintenance of Register on 7.12.1994 and his explanation has been called for in letter dtd.8/9.12.1994. From this, it is clear that the second lapse relates to non-writing of the Register for one day, i.e. 7.12.1994, for which explanation was called from him ^{on} 8/9.12.1994. When the applicant has

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satisfactorily explained his alleged lapses by his explanation, which he submitted belatedly, the only lapse which has been noted is that he submitted his explanation late. In the original letter calling for his explanation, he was given only two days time. Unfortunately, he did not ask for any extension of time for submission of his explanation and after a reminder on 24.12.1994, a warning was issued to him in letter dated 11.1.1995 issuing him a warning for non-response to official communication and by recording it in his C.R. On the face of it, the lapse with regard to delay in submitting his explanation which ultimately was found satisfactory appears to us to be too trivial a matter for which a warning has been issued and which ^{might have} ~~has~~ affected his future prospects substantially.


7. The next part of the matter is that Shri B.N. Behere, who has issued the warning and recorded it in the Memorandum of Service was in charge of the office of Sub-Divisional Engineer from 11.1.1995 to 21.1.1995 only for eleven days/inclusive of weekly holidays. The original explanation was called for by Shri P.C. Mishra and it would have been better if the matter would have been left to the regular incumbent who is presumably aware of overall work of the applicant to take a view on his explanation as well as his alleged additional lapse of not submitting his explanation in time.

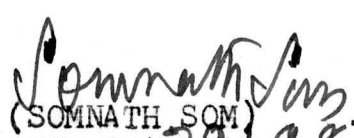
8. The case of the applicant was considered by the Departmental Promotion Committee and they have not found him fit. It is the well settled position of law that in the matter of promotion, the Tribunal cannot substitute its judgment in place of the judgment arrived at by the Departmental Promotion Committee which consists of several members and they have the record of service of the applicant before them. It is also not known if

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besides this adverse entry, there were other adverse entries in the C.R. of the applicant. In view of this, we order that the case of the applicant should be considered by a Review D.P.C. for considering his suitability for promotion afresh from 18.9.1995. While considering his case, the Departmental Promotion Committee should not take into account this warning issued to the applicant. In case the Departmental Promotion Committee finds him suitable for promotion, without taking into consideration this adverse entry, then the applicant should be promoted under the O.T.B.P. Scheme with effect from 18.9.1995 and in that event, he would be entitled to consequential financial benefits.

9. In the result, therefore, the application is allowed in terms of the order in paragraph 8 above. No order as to costs.


(S.K. AGARWAL) 30/11/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 30/11/98
VICE-CHAIRMAN