

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

9

ORIGINAL APPLICATION NO. 516 OF 1996

Cuttack, this the 12th day of October, 2001

Mrutyunjay Hui and another Applicants

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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
VICE-CHAIRMAN
12.10.2001

10

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 516 Of 1996
Cuttack, this the 12th October, 2001

CORAM:

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

-
1. Mrytyunjay Hui, son of late Janaki Ballav Hui, resident of Qr.No.Type-II/171, P.& T. Colony, Unit-4, Bhubaneswar, at present working as Section Supervisor, O/O Chief General Manager, Telecommunication, Orissa Circle, Bhubaneswar-751 001.
 2. Sarat Kumar Mohapatra, s/o Adwait Chandra Mohapatra, resident of Qr.No.type-II/165, P&T Colony, Unit-4, Bhubaneswar, at present working as Section Supervisor, O/O the Chief General Manager, Telecommunication, Orissa Telecom Circle, Bhubaneswar-751 001.

.....

Applicants

Advocates for applicants - M/s D.B.Mishra
N.C.Mishra
P.K.Mohapatra

Vrs.

1. Union of India, represented through its Secretary to Government of India, Department of Telecommunication-Cum-Chairman, Telecom Commission, Sanchar Bhavan, Sansad Marg, New Delhi-110 001.
2. Director General, Department of Telecom, Sanchar Bhavan, Sansad Marg, New Delhi-110 001.
3. Chief General Manager, Telecommunication, Orissa Telecom Circle, Bhubaneswar-751 001.

.....

Respondents

S.B.M.
Advocate for respondents- Mr.S.B.jena
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the two applicants have prayed for a direction to the respondents to consider the promotion of the applicants to the post of Senior Section Sueprvisor, TOA Grade-III at par with their junior Shri P.Parida with

effect from 1.1.1993.

2. The case of the applicants is that they have been working in the cadre of Section Supervisor in the office of Chief General Manager, Telecom, in the scale of Rs.1400-2300/- on regular basis from 23.10.1991 and 2.12.1991 after being promoted to that scale from the grade of UDC under two-thirds quota envisaged prior to introduction of OTBP and BCR Schemes. Subsequent to introduction of BCR scheme, one P.Parida, UDC, was promoted to TOA Grade-II, i.e., in the scale of Rs.1400-2300/- on 9.9.1992 and after three months, he was again promoted to Senior Section Supervisor, i.e., TOA Grade-III in the scale of Rs.1600-2660/- under the BCR Scheme. As the applicants were in the scale of Rs.1400-2300/- and their junior was promoted to the scale of Rs.1600-2660/-, they represented but without any favourable result. The applicants have stated that the order of the Tribunal dated 4.5.1995 in OA No. 180 of 1992 is fully applicable to their case and this judgment has been implemented by the Department of Posts which is under the same Ministry of Communication under which the Department of Telecommunication is functioning. Apparently the applicants approached the Tribunal earlier in OA No. 707 of 1995 and this OA was disposed of at the stage of admission on 7.12.1995 with a direction to the departmental authorities to dispose of the representation of the applicants taking into account the judgment passed in OA No.180 of 1992. The applicants' grievance is that their representations have been rejected mechanically without considering the legal aspect of the matter in letter dated 16.4.1996 at Annexure-2.

12

3. The respondents have filed counter opposing the prayer of the applicant, and the applicants have filed rejoinder reiterating their prayer. For the purpose of considering the prayer of the applicants, it is not necessary to refer to all the averments made by the respondents in their counter and the applicants in their rejoinder as these will be taken note of while considering the submissions made by the learned counsel for both sides.

4. We have heard Dr.D.B.Mishra, the learned counsel for the applicants and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused the record.

5. From the above recital of case of the applicants it is clear that the sole point for determination in this case is whether promotion under the BCR Scheme will be on the basis of total 26 years of satisfactory service in the basic grade or if a senior will be entitled to be promoted under the BCR Scheme even though he has not completed 26 years of satisfactory service in the basic grade only on the ground that his junior has been so promoted. This point has come up before the Hon'ble Supreme Court. But in spite of our direction to the learned Additional Standing Counsel for the respondents and giving him several adjournments, it was not possible for him to cite the decision. On the contrary he has submitted apparently on instructions from clients, i.e., the respondents that the matter is still pending before the Hon'ble Supreme Court. In view of this, we have considered the matter on the basis of pleadings of the parties.

J.B.M

6. The admitted position is that promotion under the BCR scheme can be given to persons who have completed 26 years of satisfactory service in the basic

basic grade. Apparently, Shri P.Parida was senior to the applicants because he had longer length of service in the basic grade. The applicants got promotion to LSG cadre in the scale of Rs.1400-2300/- by qualifying in the examination and in the LSG cadre they became senior to Shri P.Parida. But promotion under the BCR Scheme is to be given on the basis of length of service in the basic grade and not on the basis of seniority in the grade of LSG. The applicants have stated that in the Department of Posts it has been laid down that if a junior gets promotion under the BCR Scheme on his completion of 26 years of satisfactory service, his seniors would also get promotion from that date even though they might not have completed 26 years of service. The applicants' case is that since this order has been issued in the Department of Posts, they should also get the similar benefit in the Department of Telecommunication. We are unable to accept this proposition. The respondents have clearly mentioned that the Department of Telecommunication in their letter dated 20.3.1996 have reiterated that length of service will be the criterion for promotion under the BCR Scheme and for such promotion seniority cannot be accepted as a relevant criterion. Moreover, the Department of Posts in their Office Memorandum dated 17.5.2000, which is printed at pages 59 and 60 of Swamy's news July 2000, have withdrawn their earlier instruction about giving promotion to the senior under BCR Scheme even though he has not completed 26 years of service if his junior gets promotion under the BCR Scheme after completing 26 years of service. It has been provided in this circular that seniority in the particular cadre does not entitle a public servant for

14

14

promotion to a higher post unless he fulfils the eligibility condition prescribed in the relevant rules. In view of this, the applicants cannot derive any support from the practice earlier followed in the Department of Posts. The respondents have also pointed out that once the applicants complete 26 years of service they will also be entitled to be considered for promotion under the BCR Scheme and on such promotion they will continue to maintain their seniority over Sri P.Parida which they had in the LSG cadre. As promotion under the BCR Scheme has to be given strictly in terms of the scheme, and as the scheme provides for promotion only on completion of 26 years of satisfactory service in the basic grade and the scheme does not lay down that a senior will get promotion even though he has not completed 26 years of service in the basic grade if his junior in the other grade gets such promotion, we hold that the applicants are not entitled to the relief claimed by them in the Original Application which is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

S. Somnath Som
(SOMNATH SOM)
12.10.2002
VICE-CHAIRMAN

AN/PS