

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.530 OF 1996

Cuttack, this the 13th day of December, 1996

Shri Ghanashyam Sethi ... Applicant

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Applicant

Vrs.

Union of India & others ... Respondents

• 100 •

Respondents

(FOR INSTRUCTIONS)

1) Whether it be referred to the Reporters or not? No

2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Pravasinih,
(N.SAHU) 13/12/96
MEMBER (ADMINISTRATIVE) : _____

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.530 OF 1996
Cuttack, this the 13th day of December '96

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

...

Shri Ghanashyam Sethi,
Retired Postmaster,
aged about 59 years,
son of late Harihar Sethi,
At-Mundala, P.O-Mundal,
District-Jagatsinghpur

....

Applicant

-versus-

1. Union of India, represented through its
Director General of Posts, Daktar Bhawan,
New Delhi.

2. Chief Postmaster General, Orissa Circle,
Bhubaneswar, District-Khurda

3. Assistant Director (Staff),
Office of the CPMG,
Orissa Circle, Bhubaneswar

Respondents

Advocate for applicant - Mr.J.Sengupta

Advocate for respondents - Mr.Ashok Mohanty,
Sr.Central Govt.
Standing Counsel.

O R D E R

SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

In this application the applicant prayed for a direction to the Respondents to pay him arrears of salary from 15.11.1989, the date he has been promoted to H.S.G.II cadre and from 19.11.1993, the date he has been promoted to H.S.G.I cadre. As per paragraph 6 of the counter the applicant was promoted to HSG-II cadre with effect from 15.11.1989 with all consequential benefits from the date

of such promotion. He has been paid the arrear dues from 15.11.1989, on 21.9.1995 vide Annexure-R-1, pursuant to the judgment dated 14.12.1994 of this Tribunal in O.A.No.43/91.

2. Upon such modification of the date of promotion from LSG to HSG-II cadre with effect from 15.11.1989 instead of 1.10.1991, the seniority of the applicant was re-fixed in in LSG/HSG-II Gradation List/between Sri Duryodhan Meher and Sri D.D.Pradhan. His representation for retrospective promotion to HSG-I cadre with effect from 15.11.1993 at par with his junior Sri Bansidhar Biswal resulted in the DPC on 8.2.1996 which recommended his promotion to HSG-I cadre on notional basis from the date his junior got the promotion. Accordingly, the applicant was promoted to HSG-I cadre on notional basis with effect from 19.11.1993 at par with his junior Sri Bansidhar Biswal by the orders of the Chief Post Master General dated 4.3.1996. His representation for financial benefits from 19.11.1993 was turned down and he was given the said benefits in HSG-I cadre only from 31.10.1995 when he assumed the charge in the cadre of HSG-I as Postmaster, Kendrapara H.O. The Respondents' counsel, Sri Ashok Mohanty cited FR 17(1) to deny him financial benefits from 19.11.1993.

3. Learned counsel for the applicant, Sri J.Sengupta stated that FR 17 is not applicable to the applicant's case. FR 17 states that an official shall begin to draw the pay and allowances attached to a post with effect from the date on which he assumes the duty of that post.

4. The fact remains that due to non-consideration of the applicant's case for promotion to the cadres of HSG-II and HSG-I, his juniors had been allowed to march over him in the promotional hierarchy. This was not on account of his fault. Even in OA No.43 of 1991 this Tribunal came to a finding that there were absolutely no reasons as to why the applicant was not considered for promotion when his junior was promoted on 15.11.1989. It was after he was given due promotion from 15.11.1989 the consequential promotion to HSG-I cadre had to be ordered from 19.11.1993 consequent upon re-fixation of his seniority in HSG-II cadre.

5. Learned counsel for the applicant, Sri J.Sengupta cited my order dated 11.5.1996 in O.A.No.513 of 1994 (Sri Muralidhar Moharana v. Union of India & others) wherein this matter was discussed threadbare. FR 17(1) would be inapplicable to a case where the employee was willing to work, but for some administrative error, he was not given his due promotion. In Muralidhar Moharana's case, I have cited two decisions of the Principal Bench. The relevant portion of paragraph 7 of the order in that case is extracted hereunder:

"....A similar point has arisen in
Prem Singh vs. Commissioner of Police -
Central Administrative Tribunal, New Delhi Bench -
O.A.No.1726 of 1991. In that case, the applicant
was promoted in pursuance of the judgment dated
14.11.1990 in O.A.No.434 of 1987 from 1981. By a
fiction, he was deemed to have been qualified
in written test. Accordingly, he was granted
proforma promotion as S.I. from 27.4.1982 to
16.2.1986 and as Inspector from 5.6.1989 to
21.3.1991 without financial benefits. His
representations having been turned down, he
approached the Principal Bench of the Central

Administrative Tribunal. Following its own decision in Roshan Lal vs. Union of India (AIR 1987 (1) CAT 21) the Delhi Bench held that if an employee is wrongly not promoted and later on found entitled to that promotion, it cannot be contended that the pay of the higher post will not be admissible on the ground that he had not worked against the higher post."

6. In view of the above, I hold that FR 17 is not applicable to a case of this type where because of the errors committed by the Respondents, the applicant was not given his due promotion in due time. This error was recognised by the Respondents themselves by giving him notional promotion from a retrospective date. The present O.A. is no way different in principle from OA No.43 of 1991 decided by a Division Bench of this Court on 14.12.1994.

7. The application is allowed and the Respondents are directed to compute the benefits by way of differential pay from 19.11.1993 to 31.10.1995 and pay the same to the applicant within a period of 6 (six) weeks from the date of receipt of a copy of this order. No costs.

harasimhawala,
(N.SAHU) 13, XII, 96,
MEMBER (ADMINISTRATIVE)

Nayak, P.S.