

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 319 OF 1998
Cuttack, this the 20th day of August, 2001

Sri Muralidhar Sahu

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.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20.8.2001

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....
Sri Muralidhar Sahu, aged about 56 years, son of late Somnath Sahu, Kedar Lane, Bhubaneswar-751 002....Applicant

Advocates for applicant - M/s P.V.Ramdas
P.V.B.Rao

Vrs.

1. Union of India, represented by the Secretary, Ministry of Water Resources, Government of India, New Delhi-110 001.
2. Director (Administration), Central Ground Water Board, Ministry of Water Resources, N.H-IV, Faridabad-121 001.
3. Regional Director, Central Ground Water Board, South Eastern Region, Kharvelanayar, Bhubaneswar-751 001.

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Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to consider the case of the applicant for in situ promotion with effect from the date on which he is entitled for the same.

J.Som 2. The case of the applicant is that he was appointed as Driver under Dandakaranya Authority on 1.12.1962 and on being declared surplus by Dandakaranya Authority he was re-deployed in the office of Director, Central Ground Water Board, Bhubaneswar, with effect from 3.12.1985. On such redeployment he was in the pay scale of Rs.260-350/- which was subsequently revised to Rs.950-1500/- with effect from 1.1.1986. In the circular

dated 13.9.1991, the gist of which has been printed in Swamy's Compilation on Seniority & Promotion and has been enclosed by the applicant at Annexure-1, Government of India introduced a scheme for in situ promotions for Group-C and Group-D employees. In this scheme, it was decided that each Group-C or Group-D employee should get at least one promotion in his service career. To be entitled for promotion under the scheme, the conditions were that the employee should be directly recruited to a Group-C post and on such initial recruitment, his pay was fixed at the minimum of the scale. The third condition is that the employee would not have got promotion on regular basis even after reaching the maximum of the scale of such post. It was mentioned in the Scheme itself that in case of Drivers the promotional scale would be Rs.1200-1800/-. The applicant has stated that he had reached the maximum of the scale of Rs.950-1500/- on 1.1.1990 and had drawn three stagnation increments with effect from 1.1.1992, 1.1.1994 and 1.1.1996. But he was not given the promotion under the scheme to the scale of Rs.1200-1800/- for which he filed representation at Annexure-2. In letter dated 20.12.1996 (Annexure-3) his head of office was informed that in situ promotion of the applicant can be considered when all his seniors have been promoted. The applicant has stated that he made a further appeal to the higher authority in his letter dated 30.1.1997 and his head of office was informed in letter dated 18.3.1997 at Annexure-5 that the applicant's case has been referred to the Ministry and the decision of the Ministry is awaited. The applicant has stated that in a similar case OA No.495 of 1994, this Bench of the Tribunal in their order dated 23.4.1998 (Annexure-6)

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have allowed the claim of similarly situated persons under the scheme. In the context of the above, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayers of the applicant. They have stated that the applicant joined the Central Ground Water Board on 30.11.1985 in place of 3.12.1985 mentioned by the applicant. On his joining the Central Ground Water Board his seniority was fixed below all direct recruits/surplus personnel or promotees, as the case may be, taking the date of his joining in Central Ground Water Board as the relevant date. They have further stated that according to the instructions of Government, he is entitled to be considered for promotion under the scheme to the scale of Rs.1200-1800/- only after all his seniors have been promoted. On the above grounds, they have opposed the prayers of the applicant.

4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the record and the decision of the Tribunal in OA No.495 of 1994 and different instructions. The written note of submission filed by the learned counsel for the petitioner has also been taken note of.

5. Respondents have not denied the eligibility of the applicant for being considered for promotion under the scheme for in situ promotion on the ground of first two conditions of his being a direct recruitment in a Group-C post and the fact that his pay was fixed at the minimum of such scale. In view of this, the only point for consideration is whether the applicant is

entitled to be considered for promotion under the in situ promotion scheme when his seniors in the grade of Driver in Central Ground Water Board have not been promoted under the scheme. Before considering this, it is necessary to note that the averment of the applicant that he had reached the maximum of the scale of Rs.950-1500/- from 1.1.1990, has not been denied by the respondents. Thus, had the applicant fulfilled all conditions, he would have been entitled to be promoted to the scale of Rs.1200-1800/- with effect from 1.4.1991. Paragraph 4 of the circular introducing the scheme provides that this order will take effect from 1.4.1991. In opposing the prayer of the applicant the respondents have relied on O.Ms. dated 20.4.1993 and 27.9.1993, the gist of which has been printed in Swamy's Compilation on Seniority and Promotion and has been enclosed by the applicant at Annexure-1. The relevant portion of these circulars is quoted below:

"(9) If a person who was directly recruited to a post in a particular scale of pay and whose pay was fixed at the minimum of that scale, is subsequently appointed to another post in the same organisation or same/another post in another organisation in the same scale of pay by transfer or otherwise (including deployment after being declared surplus), he may be considered for promotion in situ one year after reaching the maximum of the scale of pay, provided all his seniors have been promoted."

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On the basis of the above, the respondents have opposed the prayer of the applicant. We note that these circulars came into force in April and September 1993 and the applicant was entitled to be considered for in situ promotion under the scheme with effect from 1.4.1991. By these circulars, his right for being considered for in situ promotion under the Scheme cannot be taken away. The scheme for in situ

promotion does not have any condition that before being considered for promotion under the scheme, all the seniors of a person, who had joined another organisation on redeployment, should have been promoted. On the contrary, we find that the Comptroller & Auditor-General in his circular dated 7.5.1992 has clarified that in such cases the employee will be entitled to be considered for promotion even when his seniors have not been promoted. The relevant portion of the circular is quoted below:

"(3) An eligible official may be considered for in situ promotion even before his senior who does not fulfil the criteria laid down in Ministry of Finance, O.M. dated 13.9.1991."

In view of the classification issued by the Comptroller & Auditor General of India, it is clear that the applicant is entitled to be considered for in situ promotion under the scheme with effect from 1.4.1991 even before his seniors, who did not fulfil the criteria laid down in the Ministry of Finance's circular dated 13.9.1991. In consideration of all the above, we hold that the applicant is entitled to the relief claimed by him and we direct the respondents to consider the case of the applicant for in situ promotion under the scheme with effect from 1.4.1991 within a period of 90 days from the date of receipt of copy of this order and pay him his arrears, in the event of his promotion, within another period of 90 days. We make it clear that while granting such arrears of financial benefits, if any, the payment made to him by way of stagnation increments in the lower scale will have to be adjusted.

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6. In the result, therefore, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
20.8.2001
VICE-CHAIRMAN

CAT/Cutt.Bench/ 20th August, 2001/AN/PS