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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 139 OF 1999  
Cuttack this the 19th day of April, 2000

K.Srinivas Rao ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No.*

*G.NARASIMHAM*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
19.4.2000

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 139 OF 1999  
Cuttack this the 19 th day of April, 2000

CORAM:

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

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K.Srinivas Rao,  
aged about 32 years,  
S/o. Sri K. Balu Rao  
E.D.Mail Man,  
Head Record Office  
RMS - BG Division  
Berhampur (Ganjam)  
Pin - 760 005

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Applicant

By the Advocates

M/s. P.V.Ramdas  
P.V.B.Rao

-VERSUS-

1. Union of India represented by the Chief Post Master General, Orissa Circle, Bhubaneswar-751001
2. Director, Postal Services Berhampur Region, Berhampur (Ganjam) Pin - 760 001
3. Superintendent, RMS - BG Division, Berhampur (Ganjam) Pin - 760 005
4. Sayed Basha SRÖ, RMS - BG Division Rayagada At/Po/Dist: Rayagada Pin - 765 001
5. Bijoy Kumar Nayak SOR, RMS - BG Division At/Po: Jeypore Dist : Koraput, PIN:764001
6. Abhimanyu Sahu HRO, RMS - BG Division Berhampur (Ganjam) PIN - 760005

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Respondents

By the Advocates

Mr.A.K. Bose  
Sr.Standing Counsel  
(Central)

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for setting aside the order dated 5.3.1999 at Annexure-2 promoting Respondents 4 to 6, who were E.D. Employees to Group D posts in the Department. The second prayer is for direction to departmental authorities(Res. 2 & 3) to convene a review D.P.C. to consider the case of the applicant keeping in view the instructions of D.G. Posts.

2. The departmental respondents have filed counter opposing the prayer of the applicant and the petitioner has filed a rejoinder to counter. Private respondents(Res. 4 to 6) have not filed any counter even though they have been issued with notices.

3. For the purpose of considering this Application it is not necessary to go into too many facts of this case. Even before doing that it is necessary to note that at the relevant point of time when Annexure-2 promoting the private respondents to Group D posts were issued in the year 1999, there was one vacancy of Group D post under O.B.C. category and two vacancies under general category. Private respondents 4 & 5 have been promoted <sup>against</sup> ~~in~~ the general categories whereas the applicant belongs to O.B.C. category. Therefore, private respondents 4 and 5 having occupied the promotional posts to which the applicant could not have been promoted even if all his averments are taken to be correct. In view of this prayer of the applicant ~~in~~ for quashing promotion of Res. 4 and 5 is held to be without any merit and the same is therefore, rejected. It is also to be noted that private respondent No.6 belongs to O.B.C. category and he was promoted against the

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single O.B.C. vacancy in the Group D post to which the petitioner ~~the~~ petitioner says that he has been wrongfully denied promotion.

3. The case of the applicant is that he is the senior-most amongst the E.D. officials in R.M.S. - BG Division at Berhampur. But the D.P.C. while considering his case has wrongly ignored his seniority and secondly the D.P.C. has wrongly ignored the period of service during which he was under put off duty, even though under orders of the Departmental authorities for these periods no allowances were paid to him, but this was treated as not involving break in service. It has been submitted by the petitioner that the departmental instructions for promotion of E.D. employees to Group D posts have been violated while ~~considering~~ his case. On the above grounds the applicant has come up in this Application with the prayers referred to earlier.

4. Departmental respondents in their counter have stated that the applicant while working as E.D. Mailman was involved in a criminal case. He ~~was~~ arrested on 29.3.1991 and was in police custody for which he was put under off duty w.e.f. 23.3.1991 and the departmental proceedings were initiated against him. In the departmental proceedings punishment of withholding of promotion for two years was imposed on him and it was also ordered that he should not be eligible for any allowance during the period <sup>as</sup> he did not perform his duties. The applicant remained under put off duty from 23.3.1991 to 11.7.1994, i.e. for a period of three years three months and 20 days. Later on he was allowed to resume duties on 11.7.1994. The departmental respondents have stated that against the above punishment the petitioner did not prefer

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any appeal to the higher authority. It is further stated by the respondents that the Departmental Promotion Committee considered the cases of the petitioner along with others, but it did not recommend the case of the petitioner and recommended the name of the next senior-most O.B.C. person for filling up the O.B.C. vacancy in the Group D category. It is stated that this person(Res.6 in this O.A.) was having the unblemish service of 8 years, 1 month and 7 days, whereas the applicant did not have the unblemish service for a period of 3 years, 3 months and 20 days and therefore, the same were not taken into account. According to Department this has been done correctly. On the above grounds the departmental respondents have opposed the prayer of the applicant.

5. Applicant in his rejoinder has stated that respondents (Department) in not taking into account the period of three years, three months and 20 days days, during which he was under put off duty is not in accordance with rules. He has also stated that it was not necessary for him to file any appeal because he was immediately reinstated in service, but not paid any allowance during the put off duty period. It that has also been stated ~~in~~ in the criminal case he was acquitted. The case was started against him because of rivallery in the village. The petitioner has made further averments in his rejoinder as to how the D.P.C. did not follow the instructions. With these averments he has reiterated his prayer in the rejoinder.

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6. We have heard Shri P.V.Ramdas, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the departmental respondents(Res. 1 to 3) and also perused the records.

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7. It is submitted by the learned Sr. Standing Counsel that the punishment order withholding of promotion was issued in July, 1994 and at that time the applicant was not due to be considered for promotion. As his case for promotion came only in 1999, these period of two years withholding promotion must be reckoned from the time when his case was considered for promotion or from the time when a person junior to him was promoted. We are not inclined to accept the above proposition because if the above proposition is accepted then the punishment of withholding promotion will be an indefinite punishment to be brought into force by the departmental authorities at any future date when the actual case of promotion of some other persons is taken up. Ordinarily an executive order takes effect from the date it is issued unless it is specifically so provided, otherwise. In this case it has not been mentioned by the departmental respondents that in the order of punishment it was specifically provided that promotion of the applicant would be ignored for two years when the promotion becomes due. In view of this, this contention of the learned Sr. Standing Counsel is held to be without any merit and the same is rejected.

8. It is submitted by the learned counsel for the petitioner that for promotion of an E.D. employee to the Group D post seniority is the criterion and the applicant being the senior most person his case should not have been ignored. On a reference to the relevant instructions of D.G. Posts in circular dated 28.8.1990 (printed at Pages 32 and 33 of Swamy's Compilation) of Service Rules for E.D. Staff (7th Edition) it is clear that length of service is the only one of the criteria and satisfactory service has

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also to be taken into consideration. In this case admittedly punishment was imposed on the applicant and even though the said punishment did not affect the immediate chance of promotion of the applicant and by the time the case of the applicant came up for promotion the period of two years as mentioned in the order of punishment had already expired, the facts that such a punishment was imposed on the applicant and he did not file any appeal against the said punishment orders are the matters which are to be ignored and therefore, it cannot be said that the petitioner's service was unsatisfactory.

9. It is submitted by the learned counsel for the petitioner that the Departmental Promotion Committee considered the case of the applicant, but wrongly excluded the period of three years, three months and 20 days from the service of the applicant. We have gone through the proceedings of the D.P.C. which has been enclosed as Annexure-VIII of the counter of the departmental respondents. Before referring to that it is necessary to note that Head Record Officer, RMS BG Division, Berhampur issued an order dated 17.8.1998 from which it appears that the applicant had appealed before the Post Master General, Berhampur Division with regard to the period during which he was put under off duty and in this order dated 17.8.1998 it was ordered that put off duty period would be treated as non-duty for the purpose of allowance and would constitute break in service. On the basis of this order it is argued by the learned counsel for the petitioner that the D.P.C. was not right in ignoring this period of 03 years, 3 months and 20 days of service. We have gone through the proceedings of the D.P.C. which had considered this aspect elaborately and had quoted in extenso the relevant instructions of D.G.Posts. Ultimately it has

been noted that as per rules, put off duty period is to be treated as no duty period. The fact that this period of 3 -years, 3 months and 20 days would not constitute break in service would not automatically mean that this ~~pw~~ period will be counted towards his service period. This is because, in accordance with D.G.Posts instructions dated 27.1.1981, in case of break in service only the post break in service period will count towards seniority. In the instant case, in order dated 17.8.1998 it was indicated that the period of put off duty would not constitute break in service. This would ~~not~~ mean that the earlier period of service rendered by the applicant before he was put off duty will also count towards his seniority. But this would not mean that during the period he was put off duty and during which period he did not perform any duty and did not get any allowance would be treated and counted as duty. Thus the D.P.C. had rightly excluded this period of service. In any case as we have already noted that by mere length of service one has no right for promotion, but he should have satisfactory service.

Lastly it has to be noted that it is for the D.P.C. to <sup>adjudicate</sup> ~~adjudicate~~ the suitability of the candidates for promotion and it is not for the Tribunal to examine suitability of the candidates and reappraise and substitute the decision already arrived ~~at~~ by the D.P.C. It is submitted by the learned counsel for the petitioner that he is admittedly senior most E.D. employee in RMS BG Division and because of this punishment which had long spent its force, his case is not being considered for promotion and currently some more vacancies in the rank of Group D posts are to be filled up by way of promotion from amongst the E.D. staff borne in

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R.M.S. BG Division. We note that the applicant is actually the senior most E.D. employee of the BG Division. We also note that the punishment order issued on 11.7.1994 has spent itself long ago. In view of this the case of the applicant should be considered by the departmental authorities for promotion against any future vacancy, strictly in accordance with rules.

In view of our discussions held above, we find no merit in this Application which is accordingly rejected, but without any order as to costs.

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

B.K.SAHOO//