

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.293 OF 1999

Cuttack, this the 29th day of August, 2001

Sri Jaydish Ch.Tripathy Applicant

Vrs.

Chief Post Master General and another...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

29.8.2010

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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 Jaydish Ch.Tripathy, son of late Ganeswar Tripathy,
Vill-Pandra, P.S-Tirtol, Jayatsinghpur, at present
H.R.O., RMS N Division, Cuttack....Applicant

Advocates for applicant - M/s G.K.Misra
A.Das

Vrs.

1. Chief Post Master General, Orissa Circle, Bhubaneswar.
2. Senior Superintendent of Railway Mail Services, Buxibazar, Cuttack Respondents

Advocate for respondents - Mr.J.K.Nayak
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the two orders dated 22.6.1999 at Annexure-7 and Annexure-8 on the grounds urged in the O.A. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. For the purpose of considering this petition, it is not necessary to refer to all the averments made by the parties in their pleadings. We have heard the learned counsel for the petitioner. The learned counsel for the petitioner has relied on the following decisions:

- (i) Malcom Lawrence Cecil D'souza v. Union of India and others, 1976 SCC (L&S) 115;

- (ii) K.R.Mudgal and others v. R.P.Singh and others, 1986-II-LLJ-214; and
(iii) T.V.Soolapani Warrier v. State of Kerala and others, 1986(1) AISLJ 52.

The learned counsel for the petitioner has filed xerox copies of these decisions and we have perused the same.

2. The admitted position is that the applicant joined as a Sorter in Railway Mail Service on 27.4.1963 and the post was later on redesignated as Sorting Assistant. He appeared at the examination for promotion to LSG under one-third quota in 1976-77 and was declared qualified in the examination in order dated 4.8.1978. D.P.Mahali and V.Dungdung, who were also borne in the establishment of R.M.S. were promoted to LSG cadre in the seniority quota against two-third vacancies in the order dated 7.4.1988. Sri Mahali and Sri Dungdung joined the LSG cadre on 13.5.1978 and 29.4.1978 respectively. The respondents have stated that under the rules then in force the persons promoted under two-third seniority quota were to be ranked senior to the officials promoted under one-third quota in the same year. But in the seniority list issued in 1989 the applicant was wrongly shown senior to S/Shri Mahali and Dungdung. The applicant, Sri Mahali and Sri Dungdung were promoted to HSG-II cadre from 1.10.1991. Because the applicant was wrongly shown as senior to S/Shri Mahali and Dungdung in the LSG cadre, in the HSG-II cadre he was senior to S/Shri Mahali and Dungdung.

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S/JM.*
Thereafter in order dated 24.4.1978 (Annexure-2) the applicant was promoted to the level of HSG-I and was posted as Head Sorting Assistant in Cuttack R.M.S. Sri Mahali and Sri Dungdung were not promoted to the level



of HSG-I because they were wrongly shown junior to the applicant and there were no adequate number of vacancies. The case of incorrect fixation of seniority was taken up by the Service union. The matter was examined and a Review DPC was convened on 11.6.1999 and the case of promotion of Sri Mahali, Sri Dungdung, the applicant and one Sri K.K.Misra who was also promoted in the order at Annexure-2 was reviewed. The applicant filed a representation (Annexure-6) protesting against reconsideration of seniority, and the DPC considered this also. After considering the entire matter DPC recommended that as these four officials were promoted to HSG-II cadre on the same date, i.e., 1.10.1991, their seniority in the HSG-II cadre will be as follows:

- (1) Shri V.Dungdung
- (2) Shri D.P.Mahali
- (3) Shri J.C.Tripathy (the applicant)
- (4) Shri K.K.Mishra

As there were no adequate number of posts to accommodate all the four in HSG-I cadre, on the recommendation of the DPC, the applicant and Shri K.K.Mishra were reverted from HSG-I cadre and S/Shri Dungdung and Mahali were promoted to HSG-I cadre. In the impugned order at Annexure-7 Shri D.P.Mahali was promoted to HSG-I cadre and posted in place of one Shri Joynath Jena who was transferred to the post held by the applicant in HSG-I cadre. In the order at Annexure-8 issued on the same day, the applicant was reverted from HSG-I to HSG-II and similarly Shri K.K.Mishra was also reverted to HSG-II. The respondents have stated that Sri Dungdung refused his promotion to HSG-I cadre and the applicant being the next seniormost official in HSG-II has already been

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Promoted to HSG-I on ad hoc basis in the order dated 19.7.1999. The respondents have pointed out that the applicant has proceeded on medical leave with effect from 22.6.1999, i.e., the date of the impugned order. The respondents have stated that on expiry of his leave the applicant would be allowed to join his promotional post in the cadre of HSG-I.

3. The learned counsel for the petitioner has submitted that seniority of the applicant vis-a-vis Sri Mahali and Sri Dungdung should not have been disturbed after long lapse of time. It is submitted that law is well settled that person challenging his position in the gradation list must approach Courts with reasonable dispatch. In this connection, the learned counsel for the petitioner has referred to the decisions noted by us earlier. For the present purpose it is not necessary to go into the facts of all those cases. It is only necessary to refer to the earliest amongst the cases cited. In the case of M.L.c.D'Souza (supra) the Hon'ble Supreme Court have held that it is essential that anyone who feels aggrieved with an administrative decision affecting one's seniority should act with due diligence and promptitude and not sleep over the matter. This decision has also been referred to in K.R.Mudgal's case (supra). But in the instant case the applicant in paragraph 8 of his OA has not challenged the order correcting his seniority and showing him as junior to S/Shri Mahali and Dungdung in HSG-II cadre. His grievance is only with regard to his order of reversion and transfer from the post of HSG-I held by him. In view of this, the decisions cited by the learned counsel for

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the petitioner do not in any way go to support the specific prayer made by the applicant in the O.A. It is also seen that the applicant has not made S/Shri Mahali and Dungdung as respondents in this case and in view of this, it is clear that his prayer in this OA is not against re-fixation of his seniority showing him below S/Shri Mahali and Dungdung in the cadres of LSG kand HSG-II. The applicant was reverted because the DPC after considering the entire matter including the representation of the applicant, recommended promotion of S/Shri Mahali and Dungdung and reversion of the applicant and Sri K.K.Mishra as there were only two posts in HSG-I cadre and accordingly the impugned order at Annexure-8 was passed. But as Shri Dungdung declined to accept the promotion to HSG-I cadre, departmental authorities have also given promotion to the applicant to HSG-I cadre on ad hoc basis. The applicant has not been able to join and avail of his promotion putting him back to HSG-I cadre because he was on medical leave. In view of the above, we find no illegality in the action of the departmental authorities.

4. In the result, therefore, the O.A. is held to be without any merit and is rejected but without any order as to costs.

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

AN/PS

Somnath Som
(SOMNATH SOM)
29.8.2001
VICE-CHAIRMAN