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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.112 OF 2000
Cuttack this the 19th day of November/2003

R. Murmu

...

Applicant(s)

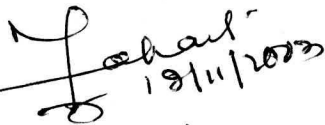
-VERSUS-


Union of India & Ors. ...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 1
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(S. MANICKA VASAGAM)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.112 OF 2000
Cuttack this the 19th day of November/2003

CORAM:

THE HON'BLE MR. S.MANICKA VASAGAM, MEMBER (ADMN.)
AND
THE HON'BLE MR. M.R.MOHANTY, MEMBER (JUDICIAL)

...

Sri Ramjit Murmu, aged 58 years,
S/o. Late Sanna Murmu, At: Bijay
Ramchandrapur, Post : Bhanjpur,
District : Mayurbhanj

... Applicant

By the Advocates

M/s.P.K.Padhi
U.R.Bastia

-VERSUS-

1. Union of India represented by it's Secretary,
Ministry of Communication, Sanchar Bhawan,
New Delhi-110001
2. Deputy Director General (N.C.G.),
Dur Sanchar Bhawan, New Delhi-110001
3. Telephone District Engineer, a
At/PO-Baripada, Dist: Mayurbhanj
4. Krushna Mohan Ghadei, Chief Telephone Supervisor,
(Gr.IV), At: O/O. T.D.M., At/PO/Dist-Cuttack-751001
5. Ramhari Sabat, Chief Telephone Supervisor, Office
of Telephone District Manager, At/PO-Berhampur,
Dist-Ganjam (Orissa)
6. Banchanidhi Mishra, Chief Telephone Supervisor,
Office of Telephone District Manager, At/PO/Dist-
Sambalpur
7. Gaurang Chandra Das, Chief Telephone Supervisor,
Office of Telephone District Manager, At/PO/Dist-
Cuttack-753001
8. Balaram Puan, Chief Telephone Supervisor, Office
of the Telephone District Manager, At/PO/Dist-
Cuttack-753001
9. Basanta Kumar Mishra, Chief Telephone Supervisor,
Office of Telephone District Manager, At/PO/Dist-
Sambalpur

- By the Advocates

Respondents

Mr. S. Béhera, A.S.C.

NAME: _____

The applicant, while working at Cuttack Division was promoted to different grade, i.e., L.S.G., Gr-II and was granted B.C.R. promotion effective from 30.11.1990. Thereafter, the applicant was also allowed to work as

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Chief Telephone Supervisor (Gr.IV) from 6.4.1995 till 8.6.1998. However, it is the grievance of the applicant that ignoring his case for promotion to Gr.IV, the private Respondents were given promotion on 31.3.1998. The applicant made a representation setting out his grievance, which was rejected on 24.11.1998. A subsequent representation was also rejected by Respondent No.1 on 21.7.1999. Therefore, he has come before the Tribunal seeking the following reliefs:

" It is therefore humbly prayed that the Hon'ble Tribunal may be pleased to give a direction to official Respondents to consider the case of the applicant for promotion to the cadre of Chief Telephone Supervisor(TOA(P) Grade-IV) and promote the applicant from the date his juniors, i.e., Respondent No. 4 to 13 have been promoted, with all consequential service benefits".

3. The Respondents-Department have filed a detailed reply. The fact that the applicant had initially worked in Sambalpur Division and was given request transfer under Rule-38 to Cuttack Division and other promotion to him under B.C.R. are not disputed. It is the case of the Respondents-Department that while accepting inter-division transfer from Sambalpur to Cuttack, the applicant had forgone his seniority and he came under the bottom seniority to Cuttack Division and therefore, he is not entitled to count his seniority or the service rendered in Sambalpur Division and under these circumstances, his case was not considered for promotion to Grade-IV. In support of their stand, the Respondents have produced a decision of this Bench of the Tribunal in O.A.180/92 dated 4.5.1995. The learned counsel for the applicant

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submitted that according to seniority list published by the Respondents (Annexure-1), the applicant's basic seniority is higher vis-a-vis all the private Respondents. The learned counsel for the applicant took us through Annexure-1 to bring home the point that some of the private respondents, who were given Grade IV had joined the Department much later, i.e., in the year 1965, whereas the applicant joined the Department in the year 1963. Therefore, it was argued that the applicant's case for promotion to Grade-IV cannot be turned down. Further, in support of his submissions, the learned counsel for the applicant relied upon a decision of the Hon'ble Supreme Court in the case of Scientific Adviser to Rakshya Mantri and others vs. B.M. Joseph reported in (1998) SC (L&S) 1362. In the said case the Hon'ble Supreme Court had held that eligibility for promotion cannot be confused with seniority as they are two different and distinct factors. Further the Hon'ble Supreme Court relied upon an earlier decision in the case of Union of India vs. C.N. Pannappan reported in (1996) 1 SCC 524. The relevant portion is extracted below :

" This Court in Union of India vs. C.N. Pannapan has held that where an employee is transferred from one unit to another on compassionate grounds and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where he has been transferred, being regular service, has to be counted towards experience and eligibility for promotion".

4. It was also pointed out that the D.O.T. vide

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its letter dated 30.12.1995, in supersession of all other previous instructions on the subject had stated that the promotion to Grade-IV is given from amongst officials in Grade-III on the basis of their seniority in the basic grade. Therefore, it was strenuously argued that in view of the fact that the applicant is senior to some of the private respondents in the basic grade, his case cannot be turned down.

5. The learned counsel for the Respondents reiterated the averments made in the counter-reply.

6. After hearing the rival pleadings, the short point that arises for our consideration is whether the applicant has made out a case in his favour. It is not in dispute that the applicant's basic seniority is much higher than that of some of the private respondents, who have been give promotion to Grade-IV. In addition, as pointed out by the learned counsel for the applicant, the Apex Court has categorically held that eligibility ~~for~~ promotion cannot be confused with seniority as these are two different and distinct factors. In view of the fact that the applicant is senior to some of the private respondents, who stood already promoted to Grade-IV, it stands to reason that the applicant's case has to be considered taking into account his basic seniority in accordance with D.O.T. instructions and as per the judgment of the Hon'ble Supreme Court(supra).

7. In view of the discussions held above, we hold that the applicant has made out a case in his favour


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and therefore, the Original Application deserves to be allowed. Ordered accordingly.

8. We are informed that the applicant has already retired from service on attaining the age of superannuation. Therefore, what remains to be done is that Respondents should consider his case for promotion to Grade-IV from the date his immediate juniors were promoted and **give** him all consequential benefits and also readjust the retiral benefits accordingly.

9. This exercise shall be completed within a period of three months from the date of receipt of copies of this order.

10. The O.A. is allowed to the extent indicated above. No costs.


19/11/2003
(M.R. MOHANTY)
MEMBER (JUDICIAL)


19.11.
(S. MANICKA VASAGAM)
MEMBER (ADMINISTRATIVE)

Bjy/