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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 464 of 2003
Cuttack, this the 1st day of April, 2005

Sri Pradeep Kumar Patnaik
Applicant

.....


Vrs.

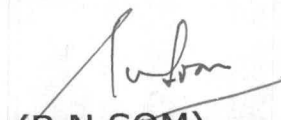
Union of India and others
Respondents

.....

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ? 7/2
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 7/2


(G.SHANTHAPPA)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.SHANTHAPPA, JUDICIAL MEMBER

.....
Sri Pradeep Kumar Patnaik, aged about 45 years, son of late
Sri Chandra Sekhar Patnaik, working as Youth Officer,
National Service Scheme, Regional Centre, Bhubaneswar, At-
754/I, Jayadev Vihar, Bhubaneswar 751 013, Dist. Khurda
Applicant
.....

Advocates for applicant - Dr.M.R.Panda &
Mr.M.R.Nayak

Versus

1. Union of India, represented through its Secretary,
Ministry of Youth Affairs and Sports, New Delhi, At/PO
New Delhi.
2. The Director-cum-Programme Advisor, National Service
Scheme, Ministry of Youth Affairs and Sports,
Department of Youth Affairs and Sports, At-Shastri
Bhawan, New Delhi 110 001.
3. The Assistant Programme Advisor, National Service
Scheme, Regional Centre, Bhubaneswar, At 754/I,
Jayadev Vihar, Bhubaneswar 751 013, Dist. Khurda.

..... Respondents


Advocate for the applicant - Mr.U.B.Mohapatra,
Sr.CGSC
.....

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ORDER**SHRI B.N.SOM, VICE-CHAIRMAN**

Sri Pradeep Kumar Patnaik has filed this Original Application, being aggrieved by Annexure A/5, the order of his reversion from the post of Youth Officer to that of Youth Assistant Grade I with effect from 26.10.2001 (afternoon) and declaring his deemed date of promotion to the post of Youth Assistant Grade I, as 25.09.1989 instead of 21.10.1987. He has also assailed Annexures A/6 and A/7, the consequential orders passed by the Respondents in this regard on 3.12.2001 and 17.1.2002 respectively. He has also prayed for a direction to be issued to Respondent Nos. 1 and 2 to promote him to the post of Youth Officer from the date when the persons similarly situated and the persons junior to him were promoted, i.e., 18.8.1994, and to allow all service benefits accruing thereto.

2. The case of the applicant, shorn of details, is that he was promoted to the post of Youth Assistant Grade I with effect from 25.9.1989. He had represented to the Respondent-Department for granting him promotion to the said post with effect from 21.10.1987, i.e., the date when he had completed five years of service as Youth Assistant Grade II. He had also carried the matter to the Hyderabad Bench of this Tribunal in O.A.No.1041 of 1993. When the matter was pending before the



Tribunal, the Respondent-Department passed an order on 14.6.1994 (Annexure A/1) declaring his promotion to the post of Youth Assistant Grade I in the pay scale of Rs.1600-2660/- (pre-revised) with effect from 21.10.1987 and allowing him the arrears of pay and allowances. Thereafter the applicant withdrew the said Original Application No.1041 of 1993 on the ground that it had become infructuous. Soon thereafter the Respondent-Department promoted him to the grade of Youth Officer in the pay scale of Rs.2000-3500/- (pre-revised) by their order dated 30.1.1995 (Annexure A/2). This promotion of the applicant was effective from 19.1.1995 and notified in the Gazette of India also. After his promotion to the grade of Youth Officer, the applicant by his representation dated 30.7.2003 (Annexure A/3) approached the Respondent-Department to re-fix his seniority consequent upon granting him promotion to the post of Youth Assistant Grade I retrospectively with effect from 21.10.1987. Instead of granting him the relief as prayed for by him, the Respondent-Department issued the order dated 13.11.2001 (Annexure A/5) reverting him from the post of Youth Officer to that of Youth Assistant Grade I and correcting his date of promotion to the post of Youth Assistant Grade I, as stated earlier. He was not given any show-cause notice nor was

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he intimated the reasons for issuing the order at Annexure A/5. His grievance is that he was hanged before he was heard.

3. The Respondents have stoutly resisted the Original Application on the grounds that the same is not maintainable on account of misjoinder of causes of action and that the applicant has prayed for multiple reliefs. On the merits of the Application, they have submitted that after granting promotions to the applicant to the post of Youth Assistant Grade I retrospectively and to ^{1/c} grade of Youth Officer, they had received similar demands from various quarters for retrospective promotion and had referred the matter to the Department of Personnel & Training, which is the nodal Ministry for framing service rules and laying down conditions of service in respect of Government of India employees. The Respondents have disclosed that it is that Ministry who advised as follows:

"Retrospective promotion is not permissible under the general guidelines. Therefore, their cases will have to be reconsidered by treating their promotion as regular from prospective dates, if necessary, by holding review DPCs where they have been promoted to still higher grade on that basis."

On receipt of the said advice, the Respondents had taken action to rectify the mistake and convened a Review D.P.C. on 14.9.1998 to set right the matter, i.e., grant of retrospective

promotion to six officials including the applicant inadvertently while promoting them from Youth assistant Grade II to Youth Assistant Grade I. They have, therefore, submitted that it is in this background that the Review DPC held in September 1998 recommended correction in the date of regular promotion in respect of six officials including the applicant and as per the said correction the applicant was no longer eligible to retain his promotion as Youth Officer. They have further argued that the Government has every right to rectify action not consistent with the prescribed rules and guidelines.

4. The applicant by filing a Rejoinder has retorted that he being a civil servant enjoys the rights granted under Article 14 and Article 16(1) of the Constitution which cannot be violated by the Respondents without following the principles of natural justice. He has, therefore, stated that he could not have been reverted the way it has been done as the same affects him with several civil consequences thus violating the principles of natural justice. It has been further argued that executive instruction in the absence of statutory rule must be followed uniformly with universal application and that the authority cannot apply principle/executive instruction to one person and deny others. He has also argued that correction of errors and review of promotion being entirely different concepts, the


administrative authority does not have power of review. It cannot become the judge of ^{his} own case. He has also stated that the counter filed by the Respondents is silent as to how the authority had competency under law to carry out a review of its decision. It has further been submitted by the applicant that in order to establish the 'fairness' and 'propriety' an obligation is cast on the Respondents to show that the persons concerned/affected had been given opportunity of hearing and principles of natural justice had been complied with. Such an opportunity having not been given the Respondents are debarred under law to issue the order as they have done under Annexure A/5.

5. We have heard Dr.M.R.Panda, learned counsel appearing for the applicant and Mr.U.B.Mohapatra, the learned Senior Standing Counsel for the Respondents and have also perused the records.

6. The controversy raised in this O.A. had already been agitated by another affected person, namely, M.Rajamony Nadar, before the co-ordinating Madras Bench of this Tribunal in OA No. 1315 of 2001, decided on 9.7.2002, whose deemed date of promotion as Youth Assistant Grade I with effect from 1.6.1983 was corrected to 13.12.1988. In that case also the

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Respondents had averred before the Tribunal that although the applicant was eligible to be considered for promotion as Youth Assistant Grade I on expiry of five years as Youth Assistant Grade II, it was realized by them that the grant of promotion with retrospective effect was not correct as that had led to raising of demands by other staff seeking promotion with retrospective effect on completion of minimum years of service as prescribed in the Rules. Hence all the cases were reopened and the retrospective promotions granted were cancelled. After hearing both the sides, the Tribunal allowed the O.A. on the following grounds:

- “(a) Admittedly no notice was issued to the Applicant before the impugned order was passed.
 - (b) The contention of the Respondents that since the DPC meeting was held on 5.3.1987, he cannot be promoted with retrospective effect as Youth assistant Gr.I with effect from 1.6.1983, on completion of five years service as Youth Assistant Gr.II cannot be sustained and if the DPC properly considered the case that he is eligible for promotion from an anterior date i.e. from 1.6.1983.
 - (c) Merely because there are similar demands from other staff the Applicant cannot be deprived of the promotion already given from 1.6.1983.
4. Further more the Applicant was enjoying the benefit of promotion for last 15 years and taking away that benefit without hearing him is illegal. This also would affect the final seniority list published on 1.5.1995, in which the Applicant's name was shown at sl. No.1.”
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7. As the issue in this O.A. is identical to the one decided by the Madras Bench of this Tribunal, we are bound by the decision of our co-ordinating Bench and accordingly this O.A. must succeed. Before closing, we would, however, like to add some observations in the matter.

8. The plea taken by the Respondents is that they had to annul the order of promotion of the applicant as Youth Assistant Grade I from 21.10.1987 on the advice of the Department of Personnel & Training who held that retrospective promotion is not permissible under the general guidelines. Firstly, the guidelines have not been brought to our notice to examine the matter. Secondly, it has not been disclosed whether the promotion made to the post of Youth Assistant Grade I with effect from 21.10.1987 was done without ascertaining whether there were posts available to ante-date the promotion of the applicant. The plea of rectification of mistake would have become relevant had the Respondents taken pains to disclose whether ante-dating of promotion took place in cases of six officials without obtaining the information that there existed posts in the grade to promote anyone. It is only if the action of ante-dating of seniority was taken when there were no regular posts available for promotion, the ante-dating of promotion could have been declared ab initio irregular and therefore, could

not have been sustained. On the other hand, if there were posts available on the relevant date, i.e., 21.10.1987 and that is why it was possible to ante-date the promotion of the applicant to the post of Youth Assistant Grade I, the order passed by the Respondents on 13.11.2001 (Annexure A/5) has to be held as bad in law for the reasons already adduced in the order dated 9.7.2002 while disposing of OA No. 1315 of 2001.

9. In the conspectus of the above discussions, the order at Annexure A/5 must be quashed and we order accordingly. The Respondents are directed to take further necessary action to restore all service benefits to the applicant as he was enjoying prior to 13.11.2001.

10. The Original Application is allowed to the extent indicated above. No costs.


(G. SHANTHAPPA)
JUDICIAL MEMBER


(B.N.SOM)
VICE-CHAIRMAN