

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

**ORIGINAL APPLICATION NO.498 OF 2003
CUTTACK THIS THE 08th DAY OF December 2005**

BIREN KUMAR PRADHAN ... APPLICANT

-VERSUS-

UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

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


(B.N. SOM)
VICE-CHAIRMAN


John
08/12/05
(M.R. MOHANTY)
MEMBER(JUDICIAL)

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CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

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BIREN KUMAR PRADHAN, aged about 39 years,
S/o.Robin Pradhan,QR.No.33308(Type-III),
IVth Phase, Ordnance Factory,Badmal,
At/Po-Badamal, Dist. Bolangir.

...Applicant

By the Advocates : M/s. D.P.Dhal,B.B.Mishra,
K.Dash,S.K.Tripathy,
ADVOCATES.

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Defence, New Delhi.
2. Director Central Ordnance Factory, 10-A,Aucland,S.K.Bose Road, Kolkata, West Bengal.
3. General Manager, Ordnance Factory Estate,Badamal,Bolangir.
4. R.N.Jena,
5. Narayan Nnada,
6. Surendra Nag.
7. Iswar Patel.

(Respondent Nos.4 to 7 are Supervisor-NT/OTS Ordnance Factory,Badmal,Dist.Bolangir).

...Respondents

By the Advocates : Mr.B.Das, Addl. Standing Counsel.

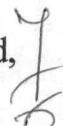
O R D E R

MR.M.R.MOHANTY, MEMBER (JUDICIAL):-

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for the following relief(s):-

- (i) That the Applicant be given notional promotion with effect from 23-11-1999; the date from which respondent Nos. 4 to 7 have been promoted to the higher post of SUP/NT/OTS;
- (ii) That the applicant be given service seniority above respondent Nos. 4 to 7 in the cadre of SUP/NT/OTS;
- (iii) That the applicant be given other statutory benefits/service benefits on consideration of the date of the promotion of the applicant on 23-11-1999 instead of 01-01-2002".

2. It is the case of the Applicant that, though he was eligible and entitled to be promoted to the post of SUP/NT/OTS, the Respondents, by ignoring his case promoted three of his juniors (to the said posts) vide order dated 23-12-1999. It is the further case of the Applicant that he had earlier approached this Tribunal (in OA No. 354 of 1999) and this Tribunal (in its order dated 19th October, 2000) had directed the Respondents to consider his case for promotion and that, instead of giving him promotion from the date his juniors were promoted,



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the Respondents allowed him promotion only on 01-01-2002 under Annexure-7.

3. Respondents, by placing counter on record, have stated that the Applicant undertook the Sr. Fire Supervisor Course conducted (from 31-03-1997 to 23-05-1997) by Defence Institute of the Fire Research Delhi and passed the said course, that the Seniority of the Applicant for promotion to SUP/NT/OTS was considered from 01-09-1995 i.e. from the date he was appointed as FED Gr.II in terms of the SRO dated 04-05-1989 and, as a consequence, he was promoted to the post of Supervisor/NT/OTS on the basis of the said seniority subject to fitness by the D.P.C. Thus, he was promoted to the post of Supervisor w.e.f. 01-01-2002 in the scale of pay of Rs.4,000-100-6,000/- which was also as per the direction of the Tribunal. It has been further stated by the Respondents that when Respondent Nos.4,5 and 6 were considered for promotion to SUP/NT/OTS, the Applicant could not come in the zone of consideration for promotion but, when he came within the zone of consideration, his case was duly considered by the DPC and he was given promotion w.e.f 01-01-2002. It is the specific case of the Respondents that Respondent Nos. 4,5 and 6 are senior to the Applicant in the feeder grade. In the said premises, the Respondents have opposed the prayer of the Applicant.



4. Applicant, by filing a rejoinder, has reiterated his stand taken in the Original Application and stated that, as per the orders of this Tribunal passed in earlier Original Application, the Applicant ought to have been given promotion from the date others were allowed.

5. Heard learned counsel appearing for the parties and perused the materials placed on record. Learned counsel appearing for the Applicant has strenuously argued that when the Applicant was illegally left out of consideration for promotion and when it was held by this Tribunal that the Applicant is entitled to be considered, the matter ought to have been taken back retrospectively when others were considered and that, by not doing so, the Respondent-Department have not only denied the rightful claim of the Applicant but also shown disrespect to the orders of this Tribunal. It has been submitted by him that when posts are lying vacant and the eligible candidates are there, there was no reason not to fill up the same by allowing the Applicant and other eligible candidates to hold the post. By stating so, he has also attributed mala fide against the authorities behind the entire episode that took place in the matter.

6. On the other hand, learned counsel appearing for the Respondents have stated that no Government employee can claim, as a matter of right, to be promoted. He has also pointed out that which post is to be filled up and when is entirely a discretionary matter to be decided by the employer and no employee can ever dictate the employer to fillup

any post. However, filling up of any post is not being a condition of service, this Original Application is not at all maintainable before this Tribunal.

7. Having heard the parties and gone through the materials placed on record, we have given our anxious thought to the issues at hand. It is seen that the Applicant had earlier approached this Tribunal in O.A .No. 354 of 1999; when he was not considered for promotion and this Tribunal, in its order dated 19th of October, 2000 , had disposed of the said matter with certain directions; apparently basing on which the case of the Applicant received due consideration and he was promoted to the higher post. We are bound by the said order and, therefore, in order to clinch the entire issue, it is necessary to quote the relevant portion of the said order which reads as under:-

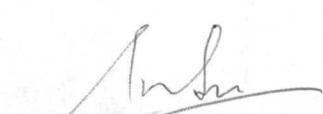
“3. Respondents in their counter have stated the Government of India ‘s letter dated 23-02-1995 clearly lays down that recruitment to the post of Supervisor (non-technical) will be need based. Respondents have further stated that at present nine posts of Supervisor (non-technical) have not been filled up and, therefore, the applicant cannot claim to be promoted to the post of Supervisor(non-technical). In the pleadings as well as during hearing of the Original Application there has been lot of discussion as to whether the applicant, who is Fire Engine Driver, Gr.II is entitled to be considered for promotion to the post of Supervisor (Non-technical). Even though the respondents in their counter had originally taken a stand that Fire Engine Driver, Gr.II is not entitled to promotion to Supervisor (Non-technical) there being an intermediary

promotion of Fire Engine Driver, Gr.I. In course of hearing it has been submitted by Shri Jena, the learned Addl. Standing Counsel for the Respondents that on a further checkup of the records and instructions the Respondents are of the view that Fire Engine Driver Gr.II is also entitled to be considered for promotion to the post of Supervisor (non-technical) subject to his obtaining the necessary technical qualification as mentioned in the S.R.O. It is submitted by Shri Acharya, the learned counsel for the petitioner and this has also been mentioned in the pleadings that the applicant has acquired the necessary training and qualification for promotion to the post of Supervisor (Non-technical). **Law is well settled that an employee has only a right to be considered for promotion, but he cannot claim promotion as a matter of right. It is open for the departmental authorities not to fill up a post and that matter is not justiciable before the Tribunal.** In view of this the prayer of the applicant for issue of direction to Respondents to give him promotion to the post of Supervisor (Non-technical) straightaway is held to be without any merit and the same is, therefore, rejected. However, it is to be noted that according to submissions of the Respondents themselves at the Bar the applicant is eligible and entitled to be considered for promotion to the post of Supervisor (Non-technical) from his present post, i.e. Fire Engine Driver, Gr.II. In view of this while disposing of this Original Application, we direct the Respondents that while filling up of the post of Supervisor (Non-technical) the case of the applicant should be considered strictly in terms of the rules and instructions as well as in the light of the submissions made on behalf of the Respondents at the Bar in course of hearing of this Original Application.” (emphasis supplied).

8. In view of the categorical findings of this Tribunal, there is nothing further to be done by this Tribunal in the present Original Applicant. This Tribunal only directed in its order that the Respondents,

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while filling up of the post of Non-technical Supervisor, the case of the Applicant should be considered strictly in terms of the Rules. By the time the judgment was delivered private Respondents had already been promoted on 23.12.1999. The Applicant did not bring such fact to the notice of this Tribunal at that relevant time. The Applicant preferred to keep this Tribunal in dark about such matter. Apparently, he was not vigilant. Now, therefore, he can not claim any such benefit retrospectively, he having not acted promptly during pendency of the earlier Original Application.

9. In the above said premises, this Original Application is dismissed. There shall be no order as to costs.



(B.N.SOM)
VICE-CHAIRMAN



Jahanty
08/12/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)