

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.68 OF 2004
Cuttack this the 08th day of Dec./ 2005

Udayanath MohantyApplicant(s)

-VERSUS-

Union of India & Ors.Respondents

FOR INSTRUCTIONS

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


B.N. SOM)
VICE-CHAIRMAN


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

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.68/2004
Cuttack this the 08th day of Dec' 2005

CORAM:

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

Sri Udayanath Mohanty, 59 years, S/o. late Madhu Mohanty, APM, Koraput
H.O., At/PO/Dist-Koraput

...Applicant

By the Advocates : M/s.M.P.J.Ray
P.K.Dash

-VERSUS-

1. Union of India represented by its Chief Post Master General (Orissa Circle), At/PO: Bhubaneswar, Dist: Khurda-751001
2. Post Master General, Berhampur Regional, At/PO-Berhampur, Dist: Ganjam (O) 760 001
3. Director of Postal Services (Berhampur Region), At/PO-Berhampur, Dist : Ganjam (O) 760 001
4. Sr.Superintendent of Post Offices, Koraput Division, At/PO-Heypore, Dist : Koraput – 764 001

...Respondents

By the Advocates : Mr.R.N.Mishra, A.S.C.

ORDER

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

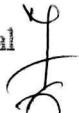
In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for the following relief:

“...to give a direction to Respondents to consider the case of the applicant for promotion to the cadre of HSG I w.e.f. June, 2003 (i.e., 8th months after the letter of declination) and promote the applicant to the cadre of H.S.G. I with all consequential benefits including back wages.”



2. It is the case of the Applicant that initially he joined the Postal Department as Postal Assistant with effect from 13.11.1963; subsequently received the TBOP benefits with effect from 30.11.1983 and finally, on introduction of BCR scheme, he got the of B.C.R. benefits with effect from 1.10.1991. While continuing as such, on the basis of his seniority, the Applicant was again given of H.S.G. I benefits vide Memo No.ST/8-14/02 dated 1.10.2002 and was posted as HSG I Postmaster of Bhawanipatna Head Post Office vide order dated 25.9.2002 passed by the C.P.M.G./Orissa. It was because of his family problem, the Applicant declined (vide his letter dated 8.10.2002) to get promotion and, at the same time, requested the authorities to give him a posting (on promotion) against any of the vacancies in the Koraput Division. In response to the said representation, when the applicant could receive no reply, he made a representation dated 28.10.2002, before the authorities intimating that he declined his promotion for a period of eight months only. It is stated that his said representation was accepted by the authorities (vide lr. No.B1-H.S.G.-I. 01-02 dated 2.12.2002 issued by the Sr.Superintendent of Post Offices, Koraput Division, Jeypore (K)) and, while the matter stood thus, the Applicant(vide Annexure A/4 dated 21.4.2003) made another representation to the authorities with prayer for his posting in and around Koraput against some anticipated vacancies those were likely to be *falling* ~~fallen~~ vacant from 2003 onwards. This representation having not been responded, this Original Application has been filed with the prayers referred to above.

3. The Respondents have filed their counter opposing the prayer of the applicant. Although the Respondents have not disputed the factual



12
- 3 -

aspects of the matter, they have urged two important aspects in support of their contentions, which are as under :

- i) By the introduction of Fast Track Promotion Scheme, the procedure of giving promotion from BCR to H.S.G I dispensed with on exhaustion of the panel approved by the DPC dated 20.3.2002; and
- ii) Shri Somanath Sahoo of Berhampur division was an approved LSG official prior to introduction of TBOP Scheme in 1983 and got notional promotion to HSG II cadre from 1.2.2001 by virtue of his long period of service in LSG cadre. The applicant is a BCR official of Koraput Division was given notional promotion to LSG cadre on divisional basis from 1.4.1999 according to his seniority in the divisional gradation list of the concerned. Since the applicant declined promotion to HSG I grade vide Annexure-A/3 his promotion to HSG I grade for next one year does not arise".

4. We have heard the learned counsel for the parties and perused the materials placed on record. Although the Respondents have rightly pointed out that by the introduction of Fast Track Promotion Scheme, the procedure of giving promotion from B.C.R. to H.S.G. I dispensed on exhaustion of the panel approved by the DPC dated 20.3.2002, the Respondents have not in particular indicated as to the exact date when the panel approved by the DPC dated 20.3.2002 exhausted. Admittedly the Fast Track Promotion Scheme came into effect from January, 2003. The Respondents have also not specifically averred as to whether the panel approved by the DPC dated 20.3.2002 got exhausted in so far as the case of the applicant is concerned, having regard to the relevant Rules "Refusal for Promotion". For the sake of clarity this Rule is quoted hereunder:

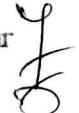
Refusal for Promotion:



"17.12. When a Government employee does not want to accept a promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later...."

5. We are conscious that by the introduction of Fast Track Promotion Scheme, the procedure for giving promotion from BCR to HSG I got extinguished with effect from January, 2003. But the fact remains that the very procedure of giving promotion from BCR to HSG I was as per the prevalent Rules then in force and that was already approved by the DPC dated 20.3.2002. This being the position, the Fast Track Rules which came into effect from January, 2003 cannot have any retrospective application and that is how the Respondents have rightly pointed out that by the introduction of Fast Track Promotion the procedure for giving promotion from BCR to HSG I dispensed with on exhaustion of the panel approved by the DPC dated 20.3.2002. That means, the Respondents have already given effect to the panel that was drawn by the DPC on 20.3.2002. Since the refusal of promotion from BCR cadre to HSG I is governed by the relevant Rules as extracted above, the panel dated 20.3.2002 on introduction and by implication of Fast Track Promotion Scheme, cannot be said to have been exhausted without having regard to the said Rules.

6. On the above findings, we direct the Respondents to examine the matter to come to the conclusion that the panel dated 20.3.2003, in so far



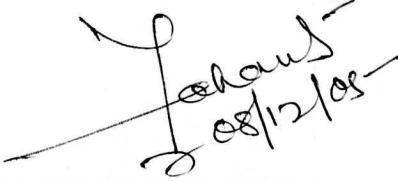
as the case of the Applicant is concerned, had exhausted having regard to the rules as extracted above and, in that event, they should pass a reasoned order and communicate to the Applicant, within a period of 90 (ninety) days from the date of receipt of this order; which, in our considered opinion, would meet the ends of justice.

7. With the above observation and direction, this O.A. stands disposed of. No costs.



(B.N.SOM)

VICE-CHAIRMAN



(M.R.MOHANTY)

MEMBER(JUDICIAL)