

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.1273 OF 2004

Cuttack this the 19th day of Jan. 2006

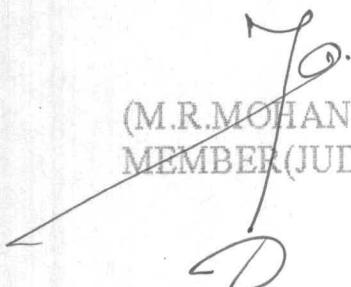
Priyanath Moharana ... Applicant(s)

-VERSUS-

Union of India & Ors. Respondent(s)

FOR INSTRUCTIONS

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


(M.R.MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

VII

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1273 OF 2004
Cuttack this the 19th day of Jan. 2006

CORAM:

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

Sri Priyanath Moharana, aged about 52 years, Son of late Ganhdarba Moharana, resident of Vill-Nuapitapada, PO-Krushnaprasad, PS-Niali, Dist-Cuttack, at present working as Assistant Provident Fund Commissioner on current charge basis at Regional Office, Office of Regional Provident Fund Commissioner, Unit-9, Bhubaneswar-22, Dist-Khurda

By the Advocates : Applicant
M/s.K.C.Kanungo
S.Behera
B.Das

- VERSUS -

Central Board of Trustee represented through :

1. Central Provident Fund Commissioner, Bhavishyanidhi Bhawan, 14, Bhikaji Cama Place, New Delhi – 110066
2. Regional Provident Fund Commissioner, Orissa, Bhavishyanidhi Bhawan, Janpath, Unit-9, Bhubaneswar-22, Dist-Khurda

By the Advocates : Respondents
Mr.S.S.Mohanty

ORDER

MR.B.N.SOM, VICE-CHAIRMAN:Applicant (Priyanath Moharana) alleging discrimination that he has been discriminated in the matter of allotting his seniority in the cadre of Enforcement

Officer/Assistant Accounts Officer/Superintendent has challenged the impugned seniority list that was published on 21.10.2004.

2. The facts of the case in short are that the applicant was promoted on ad hoc basis to the grade of Enforcement Officer/Asst.Accounts Officer vide order dated 1.12.1988. The recruitment rules for the said cadre of EO/AAO were amended and notified vide Annexure-6 dated 14.9.1991. In this background, the applicant has drawn our notice to Note (2) below Para 2, which reads as under:

“ During the period between 5.8.82 to 2.3.90 when no notified recruitment rules were in existence for the post of Enforcement Officer/Assistant Accounts Officer, Officials were promoted on ad hoc basis to the post of Enforcement Officer/Assistant Accounts Officer to avoid administrative problems by keeping a large number of posts vacant. To regularize the appointment of these officials, initial constitution clause in the recruitment rules as notified Notification No. P.IV/2(3)/82/Class.II published in the Gazette of India, Part-III, Section04 on 03.03.90 is being amended with effect from the date of publication of this notification in the official Gazette. It is to certify that this amendment will not in any way affect adversely the interest of any official of the Employees' Provident Fund Organization”.

3. The applicant further referring to Civil Appeal No.1034/89 filed before the Apex Court has submitted that in the matter of ad hoc appointment to the post of EO/AAO, the Apex Court, after considering the application disposed of the same with the following observations:

“ Having perused the material and heard counsel on both sides, it seems to us that it is not necessary to consider the question of law raised in these Petitions. While issuing notice, we have already made it clear that this is a fit case for creating supernumerary posts to accommodate the petitioners without disturbing the legitimate

seniority of others. In our opinion, it should be done since the petitioners have been working in the present posts for quite a number of years. They cannot now be reverted. We, therefore, direct the Respondents to create supernumerary posts and continue the Petitioners in the present posts. With this direction, the order of the Tribunal is kept undisturbed".

4. Based on this, it is the case of the applicant that as he has been continuously holding the post of EO/AAO on ad hoc basis from 1.12.1988, he is entitled to the benefit of seniority from that date in terms of the decision of the Supreme Court under Annexure-A/4 and the explanatory memorandum at Annexure A/6 relating to the recruitment rules and in the circumstances the seniority list dated 21.4.1998 deserves to be quashed being contrary to the Recruitment Rules and the decision of the Apex Court.

5. The Respondents have filed a detailed counter opposing the prayer of the applicant, inter alia stating that the O.A. is not maintainable and is liable to be dismissed as the main grievance of the applicant has been redressed by the competent authority by promoting him to the higher grade of Assistant Provident Fund Commissioner vide office orders dated 3.4.1992 and 29.7.2005.

6. The applicant, however, by filing a rejoinder has stoutly opposed the counter reply being misleading and contrary to law.

7. Having heard the learned counsel on both the sides and having perused the records, we are of the opinion that the applicant having

continued in the grade of EO/AAO undisputedly since 1.12.1988 is entitled to the benefit of the provision made under explanatory memorandum attached to the notification dated 14.9.1991 wherein it has been clearly stipulated that the officials who had been appointed to EO/AAO between 5.8.82 to 2.3.90 (applicant was appointed on 1.12.1988) when no notified recruitment rules were in existence for the said posts and officials were promoted on adhoc basis to avoid administrative problems of keeping a large number of posts vacant the appointment of those officials are to be regularized by amending the initial constitution clause in the recruitment rules. It was also certified that this amendment would not in any way affect adversely the interest of any official of the Employees' Provident Fund Organization. That being the conscious decision of the Department and of the rule makers, as early as 14.9.1991, the Respondents were ill-advised to have deviated from that provision and in not declaring the applicant to have been regularly appointed to the grade of EO/AAO with effect from 1.12.1988 It was undoubtedly a case of injustice which needs to be rectified sooner than later. We, therefore, call upon the respondents to declare the applicant to have been regularly appointed to the grade of EO/AAO with effect from 1.12.1988 and to give him all consequential financial as well as career benefits as given to his juniors in the grade of EO/AAO. This exercise shall be carried out by the

Respondents within a period of 150 (one hundred and fifty) days from the date of receipt of this order.

8. In the result the O.A. is allowed. No costs.

~~(M.R.MOHANTY)~~
~~MEMBER(JUDICIAL)~~

Arsh
~~(B.N.SOM)~~
VICE-CHAIRMAN