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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.105 OF 2005

Cuttack this the 19th day of Jan. 2006

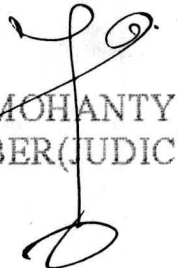
Mytyalu Ch.Jena... Applicant(s)

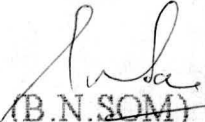
-VERSUS-

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

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

...

Mytyalu Ch.Jena, Group - "D", Koraput H.O.
Koraput

By the Advocates :

... Applicant
Mr.D.P.Dhalasamant
P.K.Bhera

1. Union of India represented through its Director General, Department of Posts, Ministry of Clommunication, Government of India, Dak Bhawan, New Delhi-110001
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda

By the Advocates:

... Respondents
Mr.A.Kanungo

ORDER

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Mytyalu Ch.Jena)

has filed this Original Application being aggrieved by the inaction of the Respondents with regard to granting him the benefit under the T.B.O.P. and B.C.R. Scheme which has been granted to similarly situated employees. He has, therefore, approached the Tribunal with the following relief:

"...direction be issued to the respondents particularly to respondent No.1 to computing the past service of the applicant under the Rehabilitation Deptt. For the purpose of promotion under the TBOP and BCR Scheme as similarly

situated persons having been promoted the TBOP and BCR Scheme as per the Judicial Pronouncement of the Hon'ble Supreme Court of India and learned Central Administrative Tribunal, Kolkata and learned C.A.T., Cuttack Bench.

...the respondents be directed to promote the applicant to the next higher scale of pay under TBOP Scheme with effect from 30.4.1987 and BCR after completion of his 26 years, i.e., 1.10.1991 with consequential benefit".

2. The case of the applicant is that he was initially appointed in the Dandakaranya Development Authority under the Ministry of Home Affairs with effect from 16.3.1962. After the Dandakaranya project was closed ^{down} by the Government of India, he was treated as surplus and subsequently, he was redeployed as a Group D employee of the Postal Printing Press on 30.4.1987 in the same scale of pay. The grievance of the applicant is that although in that Department the scheme for financial up-gradation of the employees under the TBOP and BCR on completion of 16 years and 26 years of service have been introduced from 30.11.1983 and 1.10.1991 respectively, he was not given the financial up gradation either under the 16 years scheme (TBOP) or under the 26 years Scheme (BCR). Some similarly situated persons had filed an application before the Kolkata Bench of this Tribunal for grant of benefit under TBOP Scheme. Although that application was dismissed by the Tribunal, the same was allowed by the Hon'ble Supreme Court in Civil Appeal No.3039 of 1988 disposed of on 15.12.1988. The Apex Court had observed that the applicants were entitled to higher grade from the date

they had completed 16 years of service computing the same by taking into account their past service in the Rehabilitation Department also along with services in the P & T Department. It has been further submitted by the applicant that the persons similarly situated have been given the benefit of TBOP and BCR by computing their past service by the CPMG, West Bengal Circle, Kolkata in obedience of the order dated 7.9.2000 passed in O.A.No.1469/99 by the Kolkata Bench of this Tribunal

3. The Respondents have, however, opposed the prayer of the applicant by filing a detailed counter. They have submitted that the order of Jabalpur Bench of this Tribunal and the judgment passed by the Hon'ble Supreme Court referred to in the O.A. relate to the service conditions of the employees belonging to the Telecom Department. Therefore, it was decided by the Respondents-Department, in consultation with the Department of Personnel & Training not to extend it to the employees of the Postal Department. The Respondents have taken the stand that as per D.G. Posts, New Delhi letter No.20-2/88-PE.I dated 26.7.1991, the benefit of TBOP/BCR should be considered only after an employee completes the requisite years of service in the respective grade in the Department. They have, therefore, argued that the case of extension of benefit to similarly placed employees does not arise in this case and therefore the O.A. devoid of merit.

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4. We have heard the learned counsel for the rival parties and have perused the materials placed before us. The question raised in this O.A. is as to whether the service rendered by an employee who makes lateral entry into the service in the Department as the applicant herein could count his past service under the Central Government for the purpose of benefit under the TBOP/BCR Scheme. This issue has already been considered by us in O.A.No.406/2003, in which we held that once an employee completes 16/26 years of service in the Government of India, he is entitled to the benefit of TBOP/BCR and accordingly, they should be given the benefit from the date they completed the eligible period of service. The Respondents at Para 6 of their counter reply have disclosed as under :

“...Further DG(Posts) letter No.93-33/2004-SPB.II dated 6.4.2005 also categorical about the extension of the benefit only to the applicants of O.A.No.406/2003”.

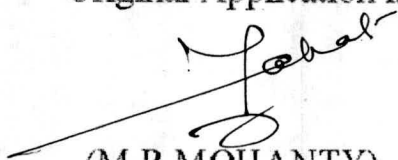
5. We are not, however, impressed by the line of argument advanced by the Respondents-Department nor are we impressed by the advice of the DOPT limiting the application of the principles in the matter of determining the regular years of service for the purpose of grant of benefit under the TBOP/BCR Scheme in case of those who seek remedy before the Court/Tribunal. In this connection, it would be profitable to quote hereunder what their Lordships of the Hon'ble Supreme Court in

K.I. Shephered vs. Union of India reported in AIR 1988 SC 686 had observed:

"Some of the excluded employees have not come to Court. There is no justification to penalize them for not being litigated. They too shall be entitled to some benefits as the petitioners."

6. As indicated above, the principle has also been decided once for all and in this case for the employees of the surplus staff of D.D.A. their past service has to be counted in the new Department for all service benefits, be it TBOP/BCR Scheme or ACP Scheme or any other scheme. That being the settled position of law, the Respondent-Department will be well advised to issue necessary instructions extending the benefit of TBOP/BCR to the employees who have made lateral entry into the Department having past service in any other Department under the Central Government.

7. Having regard to what has been discussed above, this Original Application is allowed. No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN