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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


OA No. 586 of 2005
Cuttack, this the 10th day of December, 2008

Narahari Jena Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

3. Whether it be referred to the reporters or not?
4. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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CUTTACK BENCH: CUTTACK

O.A.No. 586 of 2005

Cuttack, this the 10th day of December, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Sri Narahari Jena aged about 65 years, Son of Late Krushna Chandra Jena, Ranihat, Sagadiasahi, PO Buxi Bazar, Dist. Cuttack, Orissa.

Legal practitioner :Mr.K.C.Kanungo, Miss.Chitra Padhi
and Smt.Sabita Adhikary, Counsel.
- Versus -

.....Applicant

Central Board of Trustees represented through:

1. Central Provident Fund Commissioner, 14, Bhikaji Cama Place, New Delhi-110 066.
2. Regional Provident Fund Commissioner, Orissas, Bhavishayanidhi Bhawan, Janpath, Unit-9, Bhubaneswar-751022, Dist. Khurda.

....Respondents

Legal Practitioner :Mr. S.S.Mohanty, Counsel.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

The Applicant (Shri Narahari Jena) was an employee of the Regional Provident Fund Commissioner, Orissa Bhubaneswar. He retired from service on 30-06-1997. By filing this Original Application U/s.19 of the A.T. Act, 1985 he seeks the following relief:

"To quash Annexure-A/7 to the extent it rejected the claim of promotion of Applicant to the post of Assistant Provident Fund Commissioner w.e.f. 28.04.1995, the date of promotion of Sri Nilamani Pradhan;

To accord/fix due seniority position of Applicant in the seniority list of Enforcement

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Officer/Assistant Accounts Officer from 1976 onwards;

To re-fix the pay of the Applicant in the promotional post of Provident Fund Inspector-II w.e.f. the date his immediate junior in the eligible list of Head Clerk was promoted to the post of Provident Fund Inspector Grade-II or at least from 31.01.76 (the date of promotion of his junior Sri Nilamani Pradhan) with all consequential fixational arrears including revision of retiral benefits;

To direct the Respondents to consider the promotion of Applicant to the post of Assistant Provident Fund Commissioner w.e.f. the date his immediate junior in All India gradation list of Enforcement Officer/Assistant Accounts Officer got promotion to the post of Assistant Provident Fund Commissioner or w.e.f. 28-04-1995, the date of promotion of Nilamani Pradhan to the post of Assistant Provident Fund Commissioner with all consequential fixational benefits including revision of retiral benefits;

To issue any other/further order(s) or direction(s) as deemed fit in the circumstances of the case."

2. Respondents by filing counter opposed the prayer of the Applicant on merit, on the ground of law of limitation as also non-joinder of necessary party and have prayed for dismissal of this OA.

3. Arguments were heard and materials placed on record were perused.

4. It is seen that the Applicant had earlier approached this Tribunal challenging his seniority position as fixed by the Respondent in the Gradation List of Enforcement Officer/Assistant Accounts Officer/Superintendents. This Tribunal disposed of the aforesaid OA in its order dated 10th August, 2004. Relevant portion of the order of this Tribunal is quoted herein below:

"4. We have heard the Ld. Counsel for both the sides and perused the materials available on

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record. We agree with the submissions made by the Ld. Counsel for the Respondents that this OA is hopelessly barred by limitation and therefore, the applicant, after a long lapse of time is estopped to agitate his seniority position, particularly when he was afforded opportunities to have his say. On merit of the case also, it appears that the applicant has no case, because his allegation that his junior, viz Shri N.Pradhan was given promotion earlier than him is factually incorrect as Shri Pradhan was promoted to Head Clerk on his qualifying in the departmental examination but not against the seniority quota. A long drawn battle with regard to seniority of the personnel of Provident Fund Organization has been set at rest with the pronouncement of the judgment passed in the case of Ashok Ku. Meheta (Supra) followed by the order of the Ernakulam Bench in N.Ravindran's case and further vide the order of this Tribunal dt. 28.01.03 in OA No. 908/96. As the principles of determining seniority of promotees under seniority quota and the examination quota have already been settled and we have been informed that the Respondents had already published the revised seniority list on the principles laid down in the order dt. 11.06.03 passed by this Bench and have asked the officials to represent with regard to errors and omissions, if any, in the said seniority list, we dispose of this OA by giving a direction to the applicant that, if so desired, he may file a representation to Respondent No.1 ventilating his grievance as he had disclosed during oral argument that his name did not appear in the seniority list, although names of several retired officials are appearing and in the event such a representation is filed by the applicant, Respondent No.1 shall dispose of the same with a reasoned and speaking order, within four corners of Rules, within a period of two months from the date of receipt of such representation. No costs."

(Emphasis supplied)

5. The impugned order under Annexure-A/7 dated 24/25-05-2005 is the out come of the order of this Tribunal in OA No. 565 of 2001 under Annexure-A/4 dated 10th August, 2004. Relevant portion of the impugned order speaks as under:

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"AND WHEREAS on going through the records available in this office it has been observed that the contention of Sri Narahari Jena that he should be placed above Shri Nilamani Pradhan on the ground that he was promoted to the post of Head Clerk on regular basis prior to Sri Nilamani Pradhan is found to be correct. This fact has further been substantiated by RPFC, Orissa that the Seniority List of Section Supervisors of Orissa region dated 14.2.1990 which was considered as final and not contested in any court of law shows Sri Narahari Jena senior to Sri Nilamani Pradhan. Moreover, RPFC, Orissa has also offered the explanation for the non-inclusion of the name of Sri Narahari Jena in the Seniority List of Section Supervisor dated 11.6.2003 that Sri Narahari Jena was already senior to all the individuals in the list and since he had already retired, his name was not included.

AND WHEREAS, in view of the above facts, I am convinced of the claim of Sri Narahari Jena that he is senior to Sri Nilamani Pradhan and that his placement at serial number 162 below Sri Nilamani Pradhan placed at Serial number 61 in the Seniority List of EO/AAO as on 3.3.90 circulated vide this office letter No. P II/17(2)90/VOL.III Dated 21.4.1998 is erroneously done.

AND WHEREAS, having established the fact of his seniority, it was examined whether Sri Narahari Jena was eligible for promotion to the post of APFC on adhoc basis when his juniors Sri Nilamani Pradhan and Sri R.K.Kanungo were promoted i.e. with effect from 28.4.95. From the records available in this office it has been observed that the name of Sri Narahari Jena has been considered for promotion to the post of APFC on adhoc basis but the Competent Authority, at that point of time had not approved his promotion on adhoc basis since he was not clear from vigilance point of view. Hence the claim of SRI Narahari Jena that he should be promoted from the date that his juniors were promoted has no merit.

AND WHEREAS it has further been observed from the records available that Sri Narahari Jena was awarded with the penalty of "Censure" vide order No.OR/Vig/19/93/383 dated 10.07.96. He was, thus, clear from vigilance point of view only after 10.07.1996 i.e. the date of awarding of penalty. However, during the period from

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11.07.1996 to 30.06.1996 (date of his superannuation) no promotion took place from EO/AAO cadre to APFC; the benefits of adhoc promotion given to the juniors of Sri Narahari Jena cannot be extended to him.

NOW therefore, having regard to the above consideration and facts it is ordered that though the claim of Sri Narahari Jena of being senior to Sri Nilamani Pradhan and Sri R.K.Kanungo is accepted on the basis of records available, his claim for promotion to the post of APFC on adhoc basis w.e.f. 28.4.1995 when his juniors were promoted has no merit since he was not clear from vigilance angle at that point of time and no promotion had been made from the period that he was clear from vigilance angle till the date of his superannuation."

6. According to the Learned Counsel for the Applicant minor penalty proceedings under Rule-12 of EPF Staff (CC&A) Rules, 1971 was initiated against the Applicant by serving a memorandum of charge dated 27.10.1993 to which Applicant submitted his reply on 05.11.1993. On 25.04.1995 Ad-hoc promotion was given to Shri Nilamani Pradhan, R.K.Kanungo and others. While no order was passed on the aforesaid disciplinary proceedings, another charge sheet was drawn up against the Applicant vide Memorandum dated 28.11.1995 in which the Applicant was awarded the punishment of 'censure' vide order dated 10.07.1996. It is the further case of the Applicant that since as on 25.04.1995 there was nothing adverse against the Applicant pending, non-consideration of the case of Applicant for his adhoc promotion was bad in law and as such, as argued by learned counsel for the applicant, he is entitled to the relief claimed by him in this OA. On the other hand, relying on the averments made in the counter, learned counsel for the respondents

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argued that there has been no miscarriage of justice in the decision making process of the matter; because when others were given promotion to APFC on ad hoc basis, the case of the applicant was considered but it was not approved by the competent authority in absence of vigilance clearance certificate and it was further pointed out that as on the date of consideration of such promotion disciplinary proceedings was very much pending against the applicant and from 27.10.1993 till the retirement of applicant no promotion was given to the cadre of APFC.

7. In this Original Application, the Applicant in fact seeks to quash the order of rejection of his representation under Annexure-A/7 dated 24/25-05-2005; and consequently he seeks direction for change of his seniority position from 1976, promotion to the post of Assistant Provident Fund Commissioner with effect from the date his junior Shri Nilamani Pradhan got the promotion to the said post i.e. w.e.f. 28.04.1995 with further direction to re-fix his pay in the promotional post of Provident Fund Inspector-II w.e.f. the date his immediate junior in the eligible list of Head Clerk was promoted to the post of Provident Fund Inspector Grade-II or at least from 31.01.76 (the date of promotion of his junior Sri Nilamani Pradhan) with all consequential fixational arrears including revision of retiral benefits. It is seen that earlier by filing OA No. 565 of 2001 Applicant challenged his seniority position as fixed by the Respondents in the gradation list of Enforcement Officer/Assistant Accounts Officer/Superintendents. The applicant has placed no material to show what steps he had taken

soon after the promotion of his juniors in the year 1995 and not to speak of making any representation as against his supersession. He has also not made Nilamani Pradhan as party in this OA nor even impugned his order of promotion.

8. It is the well settled law that plea of limitation should not be ignored by the Court/Tribunal if it is raised by the parties. It is well propounded rulings of the court are that a person who sleeps over his right not only loses his remedy but right as well (vide **Ratan Chandra Sammanta and others vs. UOI and others**, JT 1993 (3) SC 418). Laches and delay have been considered to be an important factor in exercise of the discretionary relief. When a person is not vigilant of his rights and acquiesces with the situation, his writ petition cannot be heard after a couple of years. (**U.P. Jainigam and Another v Jaswant Singh and Another**, (2007) 1 SCC (L&S) 500). The above view has also been reiterated by the Hon'ble Apex Court in the case of **Nadia Distt. Primary School Council and Another v Sristidhar Biswas and Others**, (2008) 2 SCC (L&S) 946 holding that delay is very significant in matters of granting relief and courts cannot come to the rescue of the persons who are not vigilance of their rights. Applicant having slept over his right, by applying the ratio of the above decision, we find that this OA deserves to be dismissed.

9. The question of change of seniority came up for consideration before the Hon'ble Apex Court in the case of **State of Punjab and another v Balkaran Singh**, (2007) 2 SCC (L&S) 645. In deciding the matter it has been held by the Hon'ble Apex Court that

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petition is barred by acquiescence and estoppel. No one in a service can sleep over the question of seniority for more than twelve years and then come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Therefore on the face of it, a declaratory relief that will have the effect of altering a twelve year old and a nine year old seniority list could not have been granted by the courts. Further it has been held by the Hon'ble Apex Court in the case of **B.S.Bajwa v State of Punjab and others**, 1998 SCC (L&S) 611 that in service matters, question of seniority should not be reopened in such situations after the lapse of a reasonable period because that result in disturbing the settled position which is not justifiable.

10. That apart, we do not find that Nilamani Pradhan though is a necessary party in this OA has been made as a party nor has his order of promotion been assailed in this OA. It is well established that when seniority is challenged and persons who are claimed to be junior are not impleaded as parties, no relief can be given without giving an opportunity to such persons claimed to be juniors -**Ranga Reddy vrs. State of AP** 1987 SCC (L&S) 271, **J.S.Dhillon v. Union of India and others** (1989) 11 ATC 499. It has been held by the Hon'ble Apex Court that selected candidates having not been impleaded as parties, the petition is not maintainable -vide **Prabodh Verma and others v State of Uttar Pradesh and Others**, (1984) 4 SCC 251.

11. Besides the above, when the competent authority did not find the applicant suitable for the reason of overall

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performance/grading in his ACR as also cloud on vigilance point of view, this Tribunal being not the appellate authority over the decision of the competent authority and there having no miscarriage of justice in the decision making process specifically pointed out by the Applicant, we do not feel inclined to interfere in the order under Annexure-A/7.

12. Resultantly, this OA stands dismissed. No costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)