

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 683 OF 2005  
CUTTACK, THIS THE 30<sup>th</sup> DAY OF January, 2009

Pradipta Kumar Mohanty ..... Applicant

Vs

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

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

(K. THANKAPPAN)  
MEMBER (JUDL.)

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

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 683 OF 2005**  
CUTTACK, THIS THE <sup>30<sup>th</sup></sup> DAY OF January, 2009

**CORAM :**

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

.....  
Pradipta Kumar Mohanty, aged about 57 years, S/o Late Chatrubhuja Mohanty, Sub-Divisional Engineer, Telecom, Microwave Project, Bhubneswar.

.....Applicant

Advocate(s) for the Applicant- M/s. G.Rath, S.Mishra, T.K.Prahraj,  
S.Rath, S.N.Mishra and  
Mr.Susant K. Das.

**VERSUS**

1. Union of India represented by The Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi-110001.
2. Member (services), Department of Telecommunications, Govt. of India, Sanchar Bhawan, Ashoka Road, New Delhi-110001.

..... Respondents

Advocates for the Respondents – Mr. S.B.Jena.

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## ORDER

HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)

The present O.A. has been filed under Section 19 of the Administrative Tribunals Act 1985 as the applicant is aggrieved by the inaction of the Respondents in not promoting him as Sr. Sub Divisional Engineer and Divisional Engineer on ad hoc basis whereas his juniors have been promoted retrospectively w.e.f. 19.11.2002 on completion of 12 years of regular service as Sr. SDE and further promoted as DET on local, officiating and ad hoc basis. His representation at Annexure-A/6 having not been favourably disposed of, he has approached this Tribunal seeking the following reliefs:

“(a) to issue direction(s) to the respondents to consider the case of promotion of the applicant to the post of Sr. SDE and DET w.e.f. 19.11.2002 and 27.06.2003 respectively, i.e. the dates his juniors are promoted as Sr. SDE and dET in accordance with the Department of Telecommunication Memo dated 27.6.2003 and  
(b) ....  
(c) ....”

2. The applicant was under disciplinary proceedings from 10.12.2002 and after completion of his disciplinary proceedings, another proceeding was initiated against him on 23.10.2003. The disciplinary proceedings initiated against him on 10.12.2002 has already been completed and the applicant was imposed with the

penalty of deduction of one stage increment for six months without cumulative effect. But the proceeding initiated on 23.10.2003 is continuing. The applicant contends that pursuant to the orders contained in DOT, New Delhi Memo No. 19-2/93-STG.II dated 23.09.1993, No. 19-3/92-STG-II dated 18.1.1994 and 19-3/92-STG dated 09.02.2001, 29 juniors of the applicant were promoted as Sr. S.D.E in the scale of pay of Rs. 8000-275-13,500 retrospectively w.e.f. 19-11-2002 vide CGMT Orissa Circle memo No. ST-101-41/2002 dated 27.6.2003. In the said list 31 SDEs were promoted as Sr. SDE out of which 29 from Sl.No. 3 to Sl.No.31 were junior to the applicant. A copy of such order of CGMT Orissa dated 27-6-2003 is made Annexure-A/4 to this O.A. Though the applicant had completed 12 years of service as on 19.11.2002, he was not promoted as Sr. SDE and he is still continuing as SDE as on date. Further contention of the applicant is that even though disciplinary proceedings were pending against him, his case ought to have been considered for promotion on ad hoc basis in accordance with the DoPT O.M No. 22011/4/91-Estt.(A)14.09.1992.

3. The Respondents by filing counter have opposed the prayer of the applicant and have stated that officers/officials, who have vigilance cases or departmental proceeding pending against them, they shall not be considered for promotion till they are exonerated from the charges. They have further stated that applicant is

facing departmental proceedings as well as Criminal Case No.RC 18(a)/99-BBS in the CBI Court, Bhubaneswar. It is the contention of the Respondents that the case of the applicant for promotion to the post of Sr. SDE/DET cannot be considered till finalization of the criminal /departmental proceedings. They have stated that the applicant was under suspension from 9.9.1999 to 18.09.2003 because of his CBI case for possessing disproportionate assets.

4. The applicant has filed rejoinder, in which, the provisions of DoPT O.M. dated 14.09.1992 have been cited in favour of his claim for promotion. The applicant has cited this circular to reinforce his claim as under:

“ if any junior has been promoted and the senior could not be promoted due to pendency of any disciplinary or criminal case pending against him, then his case of promotion should be reviewed once in every six months by opening the sealed cover. More over, the promotions to the posts of DET are given to the juniors of the applicant are adhoc promotions and not regular promotions for which there is no bar for the promotion of the applicant while the case was pending against him. More over the promotion to the post of Sr. SDE is a time bound promotion for which there can not be any bar because of the pendency of the case.”

5. Heard Ld. Counsel for either side and perused the materials placed on record.

6. Arguments were advanced by the Ld. Counsels on either side by relying on their respective pleadings. The fact that the

applicant is senior to the officers who have been already promoted as Sr. SDE/DET has not been questioned by the Respondents either in their counter or during the hearing. They also do not dispute regarding the eligibility of the applicant to the promotional post as mentioned above. The only ground which was advanced by the Respondents is that disciplinary proceeding was continuing in addition to the pending criminal case due to a CBI case relating to disproportionate assets. The Respondents have not answered either in their counter or during hearing as to whether they have considered the case of the applicant in terms of the DoPT O.M dated 14.09.1992, which has been cited by the applicant. Respondents have also not given any submission as to whether they have considered the representation of the applicant, which is enclosed as Annexure-A/6 to this O.A.

7. In the above context, the entire case of the applicant hinges on the implementation of the provisions of the DoPT O.M.No. 22011/4/91-Estt.(A), dated 14.09.1992. The relevant portion of this memorandum is extracted below:

“Procedure for ad hoc promotion:

5. In spite of the six monthly review referred to in para.4 above, there may be some cases, where the disciplinary case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the Government servant, provided he is not under suspension, to

consider the desirability of giving him ad hoc promotion keeping in view the following aspects:-

- (a) Whether the promotion of the officer will be against public interest;
- (b) Whether the charges are grave enough to warrant continued denial of promotion;
- (c) Whether there is any likelihood of the case coming to a conclusion in the near future;
- (d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the government servant concerned; and
- (e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.

The appointing authority should also consult the Central Bureau of Investigation and take their views into account where the departmental proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.

5.1 In case the appointing authority comes to a conclusion that it would not be against the public interest to allow ad hoc promotion to the Government servant, his case should be placed before the next DPC held in the normal course after the expiry of the two years period to decide whether the officer is suitable for promotion on ad hoc basis. Where the Government servant is considered for ad hoc promotion, the Departmental Promotion Committee should make its assessment on the basis of the totality of the individual's record of service without taking into account the pending disciplinary case/criminal prosecution against him.

5.2 After a decision is taken to promote a Government servant on an ad hoc basis, an order of promotion may be issued making it clear in the order itself that -

(i) the promotion is being made on purely ad hoc basis and the ad hoc promotion will not confer any right for regular promotion; and

(ii) the promotion shall be "until further orders". It should also be indicated in the orders that the Government reserve the right to cancel at any time the ad hoc promotion and revert the Government servant to the post from which he was promoted."

8. In the meantime, as intimated by the applicant, he has retired from service on reaching the age of superannuation. The Respondents are silent in their counter and also could not throw any light during the hearing about the consideration of the case of the applicant in the light of the instruction of the DoPT, quoted above. Therefore, ends of justice would be met if we direct the Respondents to consider the case of the applicant for ad hoc promotion from the date his juniors were given such ad hoc promotion, in the light of the DoPT instructions quoted above within a period of 45 days from the date of receipt of a copy of this order and communicate the result to the applicant within a period of 15 days thereafter. Ordered accordingly.

9. With the above observation and direction, the O.A. is disposed of. Parties to bear their own costs.

K. Thankappan  
(K. THANKAPPAN)

MEMBER (JUDL.)

C.R. Mohapatra  
(C.R. MOHAPATRA)

MEMBER (ADMN.)

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O.A.No. 683 of 2005

Order dated: 01.07.2009

Coram: Hon'ble Mr. Justice K. Thankappan, M(J)  
Hon'ble Mr. C.R.Mohapatra, M(A)

Ld. Counsel for the Respondents by filing M.A.

155/09 wants further time of two months to comply the order of  
this Tribunal.

After having considered the order passed and direction  
issued by this Tribunal, we are inclined to give two months more  
time to implement the order as last chance.

M.A. is accordingly disposed of.

Member (Admn.)

Member (Judl.)

Copied & order  
on 01.07.09  
prepared for  
Counsel for  
both side

12/07

07/07  
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