

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.79 of 2006
Cuttack, this the 05th day of May, 2009

Prabhas Chandra Mohapatra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.79 of 2006
Cuttack, this the 05th day of May, 2009

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)

.....
Prabhas Chandra Mohapatra, Son of Late Brundaban Mohapatra,
At/Po. Gandhinagar, 5th Lane (East) Berhampur, Dist. Ganjam at
present Superintendent, Central Excise & Customs, Bhubaneswar
Divisons, At/Po.Patia, Dist. Khurda.

.....Applicants

Advocate for Applicant: M/s.A.K.Bose, P.K.Das, D.K.Mallick
-Vs-

1. Union of India represented by the Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
2. The Commissioner, Central Excise & Customs, Bhubaneswar I Commissionerate, Rajaswa Vihar, Bhubaneswar, Dist. Khurda.
3. The Commissioner, Central Excise & Customs, Bhubaneswar II Commissionerate, Rajaswa Vihar, Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.U.B.Mohapatra,SSC.

O R D E R

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

Applicant is working as Superintendent (Group 'B') of Central Excise and Customs, Bhubaneswar Division, Bhubaneswar since 16.05.1997. According to him, he joined in the grade of Inspector, Central Excise and Customs on 16.12.77. In the gradation list of Inspector his name was placed at Sl.No.57 and the name of Shri Purusottam Pani and Chittaranjan Sastri were placed in the seniority list of Inspectors at Sl.Nos.58 & 59 respectively. Although he was senior in

the grade of Inspectors, Shri Pani (Sl.No.57) was promoted on adhoc basis to the post of Supdt. Of Central Excise on 28.11.1995 and on regular basis w.e.f. 14.12.1995 and Shri Sastri (Sl.No.58) was promoted to the post of Supdt on adhoc basis on 15.12.1995. Shri Sastri was promoted to the post of Supdt. on regular basis w.e.f. 10.08.1996. Although the Applicant was senior to the above two officers, he was promoted to the post of Supdt of excise and customs on adhoc basis only on 30.09.1996. On 08.12.1996 adverse remarks in his ACR for the years 1994-95 were communicated to him against which the applicant submitted representation on 22.12.1995. The adverse ACR of the applicant was expunged on 05.09.1996 and he was promoted to the post of Supdt. of Excise on regular basis on 16.5.1997. For unauthorized absence during 31.5.1990 to 21.11.1990, the applicant was imposed with the punishment of stoppage of one increment for two years w.e.f. 1.1.1997 and the period of his unauthorized absence was directed not to be counted for service. Applicant challenged the order of punishment in OA No.445/92 which was dismissed by this Tribunal in order dated 08.02.2000. Thereafter, he approached the Hon'ble High Court of Orissa in OJC NO. 3951/2000. The Hon'ble High Court of Orissa in order dated 30-04.2003 disposed of the aforesaid writ petition directing the respondents that since the applicant had leave at his credit, the authorities should have granted leave and regularized his service. Therefore, the period during which the petitioner remained unauthorized

1

11
absent is directed to be treated as extra-ordinary leave for the purpose of counting of service but no salary can be given to the petitioner. It was further held by the Hon'ble High Court of Orissa that the disciplinary authority is well with its competency to impose punishment of stoppage of two increments with cumulative effect under Rule 11 of CCS (CC&A Rules). Thereafter, by filing representation, the applicant sought antedating his date of promotion to the post of Superintendent to 28.11.1995 i.e. the date when his immediate Junior Shri Pani was promoted. In letter dated 19.4.2004 the applicant was intimated that his grievance pertaining to counting his service for the unauthorized absence period is pending with the Ministry. In this context by filing the present OA under section 19 of the A.T. Act, 1985 he sought direction to the Respondents to consider his promotion to the grade of Superintendent, Group B, Central Excise and Customs w.e.f. 28.11.1995 on adhoc basis and on regular basis with effect from 14.12.1995. He also sought direction to the Respondents to pay him other consequential service and financial benefits in the grade of Supdt. retrospectively. The ground of his challenge is that in term of the instruction of the DoP&T for adhoc promotion there should not have been any DPC. Even if the Department convened DPC for adhoc promotion, since representation for expunction of adverse remarks was pending with the authority, the DPC ought not to have taken into consideration such adverse remarks for denying him the promotion and even after expunction of his adverse remarks, his date of

1

12
adhoc as well as regular promotion ought to have been antedated by the Respondents. By not following the said principle, there has been gross injustice caused to the applicant in the decision making process of the matter which needs rectification by way of issuing the direction sought by the applicant in this OA.

2. Respondents, by filing counter, strongly refuted the contention of the Applicant made in the OA. It has been contended by the respondents that it is not correct on the part of the Applicant to state that the reason of his non-promotion/ non-recommendation of his case for promotion by the DPC was due to the adverse remarks. His case was duly considered by the DPC which recommended as under:

"Shri Pravash Chandra Mohapatra was imposed with a penalty of stoppage of one increment of pay for 2 (two) years with cumulative effect vide Disciplinary Authority's Order C No.II (10)A-7/CON/90/1-C dated 31.12.1991. Shri Mohapatra had appealed against the aforesaid order which was rejected by the Appellate Authority vide order C.No.II (26) CON/92/771-76-C, dated 3.7.92. Shri Mohapatra also filed an application before the Hon'ble CAT, Cuttack Bench, Cuttack and the CAT vide its Order No.OA/445/1992 dated 17.9.1992 stayed the operation of the said order. The application is yet to be disposed of by the CAT.

By stating so, the Respondents further stated that the case of the applicant was duly considered by the DPC but in the aforesaid circumstances, the DPC did not find him fit for promotion to the grade of Superintendent (Group-B). As such, they have prayed for dismissal of this OA.

B

3. Heard the rival contention of the parties and perused the materials placed on record. From the above, it is clear that the case of the applicant was not recommended by the DPC for the reason that the applicant was imposed with a penalty of stoppage of one increment of pay for 2 (two) years with cumulative effect vide Disciplinary Authority's Order C No.II (10)A-7/CON/90/1-C dated 31.12.1991. Applicant preferred appeal against the aforesaid order which was rejected by the Appellate Authority vide order C.No.II (26) CON/92/771-76-C, dated 3.7.92. Against the said order, applicant filed OA No.445/1992 in this Tribunal and this Tribunal vide order dated 17.09.1992 stayed the order of punishment and the said OA was pending in this Tribunal when the DPC met and considered the cases of eligible employees for promotion to Supdt. of Central Excise. But fact of the matter is that OA No. 445 of 1992 was dismissed by this Tribunal on 08.02.2000. Thereafter, the applicant approached the Hon'ble High Court of Orissa in OJC NO. 3951/2000. The Hon'ble High Court of Orissa in order dated 30.-04.2003 disposed of the aforesaid writ petition directing the respondents that since the applicant had leave at his credit, the authorities should have granted leave and regularized his service. Therefore, the period during which the petitioner remained unauthorized absent is directed to be treated as extra-ordinary leave for the purpose of counting of service but no salary can be given to the petitioner. It was further held by the Hon'ble High Court of Orissa that the disciplinary authority is well with

L

its competency to impose punishment of stoppage of two increments with cumulative effect under Rule 11 of CCS (CC&A Rules). At the time when DPC convened admittedly, the OA filed by the applicant challenging the order of punishment was pending. On dismissal of the OA, the applicant approached the Hon'ble High Court of Orissa in OJC No.3951/2000 and on 30.04.2003 the Hon'ble High Court disposed of the matter with the direction stated above. Hence the ground on which the case of the Applicant for promotion was rejected no longer survived. In view of the above, in our considered view, the case of the applicant needs consideration by a review DPC.

4. For the reasons stated above, the Respondents are hereby directed to convene a Review DPC for consideration of the case of the applicant for antedating his date of promotion to the Superintendent of Central Excise and Customs from the date his immediate junior was promoted to the said grade and on the basis of the recommendation of the Review DPC, the Respondents should process the matter further as per rules. The entire exercise shall be completed within a period of 60(sixty) days from the date of receipt of this order.

5. In the result, this OA stands disposed of with the observations and directions made above. No costs.

Kappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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