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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 95 of 2006
Cuttack, this the 16th day of July, 2008

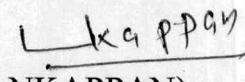
Prasanna Kumar Das (since dead)
after him Nirupama Mangaraj Applicant
Vrs.
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?

2. Whether it be sent to the Principal Bench or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 95 of 2006

Cuttack, this the 16th day of July, 2008

CORAM:

**HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADINISTRATIVE MEMBER**

.....
Prasanna Kumar Das, aged about 49 years,
Son of Dadhibaman Das, At-Kazibazar, P.O.Buxibazar,
Dist. Cutback, at present working as Sub Inspector (Ord) ARC,
Charbatia, Cuttack (SINCE DEAD),
after him Nirupama Mangaraj, w/o late Prasanna Kumar Das
..... Applicant

Advocate for applicant - Mr.B.K.Patnaik

Vrs.

1. Union of India, represented by the Secretary to Government, Cabinet Secretariat, R.K.Puram, New Delhi 110012.
2. Special Secretary, Aviation Research Centre, Cabinet Secretariat, Block V, East R.K.Puram, New Delhi 110012.
3. Deputy Director, Aviation Research Centre, At/PO-Charbatia, Dist. Cuttack

.....Respondents

Advocate for Respondents - Mr.P.R.J.Dash, ACGSC

.....
O R D E R

K.THANKAPPAN, JUDICIAL MEMBER

The moot question involved in this Original Application is,
whether the applicant is entitled to be promoted to the post of Sub-



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Inspector in ARC Ordnance Service/CSD with effect from 28.1.1985 as against the order dated 9.7.2004 (Annexure A/9) or not.

2. The applicant approached this Tribunal for the second time to redress his grievance of not promoting him as Sub-Inspector from the date of arising of the vacancy in the Department. The applicant had earlier filed OA No. 411 of 1994 praying for a direction to the Respondent-authorities to give him promotion to the post of Sub Inspector with all monetary benefits. But as per the order dated 5.10.2001 (Anexure A/8 (c), relying on the factual situation narrated before this Tribunal at that time with regard to seniority of the applicant and other candidates in the feeder cadre and also relying on a policy decision sought to be taken by the Respondent-Department, this Tribunal dismissed the said O.A. However, the applicant had taken the matter before the Hon'ble High Court in OJC No. 216 of 2002, and on hearing the parties, the Hon'ble Court had disposed of the writ petition by directing as follows:

“4. From the submission and counter submission advanced by the learned counsel it appears that after such representation was disposed of, no person was given promotion. In the above situation, we have no other option but to direct the opposite parties to consider the case of the petitioner for promotion to the post of Sub Inspector, if any such post is available, within 4 months from the date of communication of the order. Such promotion shall take effect from the date when the actual vacancy arose. It is submitted that two posts were surrendered by virtue of 10% cut policy issued by the Central Government. Since in this case the petitioner deserves promotion prior to the

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policy decision taken by the Central Government, therefore out of the two posts, which have been surrendered, against one such post the name of the petitioner shall be considered for promotion."

3. The present grievances of the applicant are that in spite of the direction given by the Hon'ble High Court, as aforesaid, he was not given promotion with all monetary benefits and that as per Annexure A/9 he was given promotion to the post of Sub Inspector on 9.7.2004 with effect from 1.3.1994 on notional basis without any monetary benefits accrued from the promotion order.

4. This Tribunal heard Shri B.K.Pattanaik, the learned counsel for the applicant, and Shri P.R.J.Dash, the learned Additional Central Government Standing Counsel for the Respondents, and perused all the records produced in the O.A. and the provisions of law and rules under which the applicant claims his right for promotion as well as financial benefits.

5. Shri Pattnaik, the learned counsel for the applicant raised his contentions of threefold. Firstly, he contended that as the applicant is entitled to be promoted from the date of arising of the vacancy in the light of the judgment given by the Hon'ble High Court, the order now passed, as at Annexure A/9, is a sheer violation and flouting of the judgment of the Hon'ble High Court. Secondly, the learned counsel contended that as the factual situation and the service conditions of seniority, appointment and promotional right of the applicant have not been disputed, the Respondent-authorities ought to have given promotion to the applicant



with effect from the date of arising of the vacancy in the grade of Sub Inspector, viz., from 28.1.1985. The third contention of the learned counsel is that as the applicant is entitled to all financial benefits, the notional promotion now given to him without financial benefits is irregular and illegal and therefore, he is entitled to all financial benefits with interest.

6. To the above contentions, Mr.Dash, the learned ACGSC appearing for the Respondents, relying on the counter affidavit filed on behalf of the Respondents, contended that the reliefs now claimed by the applicant had been adjudicated once by this Tribunal and hence the applicant is estopped from filing another Original Application before this Tribunal. It was further contended by the learned counsel for the Respondents that as the Hon'ble High Court had not given any direction to promote the applicant with all financial benefits, the order dated 9.7.2004 (AnnexureA/9) passed by the Respondent-Department is justifiable and tenable in law. Further, the learned counsel for the Respondents contended that the applicant was not given promotion only because of the reason that 2 (two) posts were reduced in the grade of Sub Inspector in view of the 10% cut policy taken by the Respondent-Department. However, though the Hon'ble High Court had directed to give promotion to the applicant on adjusting the promotion among the candidates like the applicant who were in service in 1972, the applicant was given promotion only with effect from 1.3.1994, vide Annexure A/9,

as he joined the service in 1976. This is only because of the adjustment for giving promotion to the candidates who are similarly placed with that of the applicant and not of any willful laches on the part of the Respondent-Department. The Respondents' counsel further contended that as the Hon'ble High Court had not given any direction to give financial benefits to the applicant from his promotion, as per the judgment of the Hon'ble Supreme Court reported in (2002) 4 SCC 247 (*All India Judges Association v. Union of India and others*), even if the applicant is aggrieved by the order now passed by the Respondent-Department, he has to move the Hon'ble High Court for redressal of his grievance.

7. With the above rival contentions and on going through the records produced before this Tribunal, we have to examine as to whether the applicant is entitled to be promoted from the date of arising of the vacancy or not, and whether he is entitled to the financial benefits from the date of his promotion or not.

8. Admittedly, the applicant joined the Department as an Armourer on 21.6.1976, and after constitution of the cadre he was promoted as Senior Armourer with effect from 28.12.1983. As per the seniority list kept by the Respondent-Department in the feeder grade for promotion to the post of Sub Inspector the applicant was found eligible. But the applicant was not given promotion on the ground that the Respondent-Department had adopted a policy of 10% reduction of the

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posts of Sub Inspector on 20.1.1994. But as per the judgment of the Hon'ble High Court, it is categorically found that the policy decision was taken only after the date of arising of the vacancy in the grade of Sub Inspector to which the applicant ought to have been promoted. That is why the Hon'ble High Court had given a positive direction that the applicant should be promoted with effect from the date he became qualified to be promoted. From the records now available to this Tribunal and as averred in the O.A., vide paragraph 5 of the O.A., we find that it is the case of the applicant that the actual vacancy in the grade of Sub Inspector had arisen on 28.1.1985. In view of this, the contention of the Respondents that the applicant is only entitled to promotion with effect from 1.3.1994 is untenable and we are of the view that the applicant is entitled to be promoted to the grade of Sub Inspector retrospectively from 28.1.1985. The date of arising of the vacancy has not been disputed in the counter filed by the Respondents whereas the only objection taken in the counter is that while adjusting the promotion of similarly placed persons, the applicant was given promotion only with effect from 1994, as evidenced from Annexure A/9. Hence we are of the view that Annexure A/9 requires reconsideration by the Respondent-Department and the applicant is entitled to all the promotional benefits retrospectively with effect from 28.1.1985. We declare so.

9. The next question to be answered is, whether or not the applicant is entitled to the financial benefits arising out of the promotion



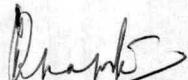
order, though now on notional basis. In this context, the catena of judgments of the Hon'ble Supreme Court have to be considered, in which the Apex Court had taken the principle of "no work no pay". Admittedly, though the applicant was promoted to the post of Sub Inspector or entitled to be promoted to the post of Sub Inspector, unless and until he was promoted and he joined as Sub Inspector and worked in that post, the applicant is not entitled to any financial benefits accruing from the promotion to the post of Sub Inspector. In this context, the learned counsel appearing for the applicant contended that it is not because of the fault of the applicant that his promotion has not been effected in time and that only because of the laches and delay and carelessness or unscrupulousness of the Respondent-authorities, the promotion of the applicant has been delayed and therefore, the applicant shall not be put in such a condition to suffer any financial loss. However, it has come out in evidence that the Respondent-Department had taken a policy decision to reduce 10% of the cadre posts and there occurred some delay, although now the same has not been approved by the Hon'ble High Court, we are not in a position to hold that the Respondent-Department had committed any culpable delay or mischief in the matter. Hence the question is answered accordingly.

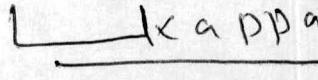
10. In the light of the discussions made above, the Original Application is allowed by directing Respondent Nos. 2 and 3 to reconsider Annexure A/9, the order dated 9.7.2004, and to pass



appropriate orders granting promotion to the applicant retrospectively with effect from 28.1.1985 with all promotional benefits, except financial benefits, i.e., on notional basis. This has to be done within a period of 60 (sixty) days from the date of receipt of copy of this order. .

11. The Original Application is allowed as above. No order as to costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

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