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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.155 OF 2006  
CUTTACK, THIS THE DAY OF 24th SEPTEMBER, 2007**

Sri Dhaneswar Das

.....Applicant

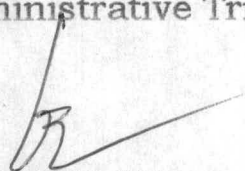
**-VERSUS-**

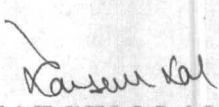
Union of India & others

.....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 ? ✓

  
DR. K.B. RAJAN  
MEMBER (JUDL.)

  
TARSEM LAL  
MEMBER (ADMN.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O.A.NO.155 OF 2006  
(DECIDED ON 24th SEPTEMBER, 2007)**

CORAM:

**HON'BLE SHRI K.B.N.RAJAN, JUDICIAL MEMBER**

**AND**

**HON'BLE SHRI TARSEM LAL, ADMINISTRATIVE MEMBER**

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Sri Dhaneswar Das, aged 53 years S/O.Late Babaji  
Ch.Das, At:Chatra PO/P.S/Dist: Jagatsinghpur, 754103.

Advocate for the Applicant

.....Applicant  
.....Mr.P.K.Padhi.

Versus:

1. Union of India, represented by Director General of posts,  
Dak Bhawan, Sansad Margt, New Delhi-110001.
2. Chief Post Master General,(Orissa Circle) At/Po:  
Bhubaneswar, Dist:Khurda-751001.
3. Director of Postal Services, (Hqrs.)O/O.Chief Post Master  
General (Orissa Circle) At/Po: Bhubaneswar,  
Dist:Khurda-751001.
4. Superintendent of Post Offices, Cuttack South Division,  
At:P.K.Parija Marg, PO:Cuttack G.P.O.,Dist:Cuttack-  
753001.

..... Respondents

Advocate for the Respondents

..... Mr.S.Barik

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ORDERHON'BLE SHRI TARSEM LAL, MEMBER(ADMN.):

Mr.Dhaneswar Das, applicant has filed an Original Application No.155/06 asking for the following relief:

“To consider the case of applicant for promotion to HSG-II under BCR Scheme/ BCR scale of pay w.e.f. 3.8.99 with all consequential service benefits.”

2. The brief facts of the case as explained by the applicant all that he was appointed as a time-scale clerk in the Cuttack Division vide order dated 14.09.1973 (Annexure-A/1) in the pay-scale of Rs.110-240/-. He has already rendered more than 32 years of service to the department. As per the existing scheme in the department, an official is entitled to get promotion to HSG-II under BCR scheme after completion of 26 years of satisfactory service as on 3.8.1999.

3. The applicant has explained that as on 03.08.1999 there was no charge-sheet issued and no punishment was awarded to him. The applicant was charge sheeted under Rule 16 for imposition of minor punishment vide Memo dated 20.02.01(Annexure-A/2).

4. The applicant was eligible to be considered for promotion to HSG-II under BCR w.e.f. 03.08.1999. The case of the applicant was considered at a later stage by the DPC and Res.No.3 approved the same w.e.f.1.1.2000 along with other officials but not implemented till date. Consequently the pay of the applicant has not been upgraded as a result of which he is

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loosing Rs.500/- per month for non payment of BCR scale of pay. Aggrieved by the above, he has filed several representations but he has not received any response to the same. A copy of the last representation dated 23.04.05 is placed at Annexure-A/4.

5. Although the period of five years has elapsed, the Res.No.4 has not considered the case of the applicant for payment of BCR scale. The minor punishment of stoppage of increment and recovery are not bar for promotion. However, there was no punishment as on due date for promotion and there was also no charge-sheet issued to him as on that date. The applicant has explained that the other officials have been given promotion w.e.f. 1.1.02 but he has not been given the above promotion.

6. The applicant has further explained that due to non-consideration of his case by the Resp.No.4, he is deprived to get promotion to HSG-II under BCR as a result of which his juniors are holding higher posts and the applicant is being deprived of getting HSG-I in proper time. Aggrieved by the above, the applicant has filed the above O.A. and asked for the relief as given in the para-1 above.

7. On the other hand, the Respondents have filed a detailed reply to the O.A. and have not agreed to the relief asked for by the applicant. They have explained that Mr.Dhaneswar Das was appointed as Postal Assistant w.e.f. 3.8.1973 and he was approved for promotion and approved in LSG cadre under time bound one promotion and was ante dated to 4.3.1989.

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8. The department of posts has introduced the scheme of promotion under Biennial Cadre Review with effect from 1.10.91. The eligibility criterion for the promotion is completion of 26 years satisfactory service subject to the disciplinary/vigilance clearance. Shri Dhaneswar Das completed 26 years of service as on 3.8.99 and was due to be promoted in Biennial Cadre Review as on 1.1.2000 as per the scheme of promotion. Accordingly the promotion of the applicant under the Biennial Cadre Review scheme in the pay-scale of Rs.5000-8000/- was considered as on 5.11.01 and the promotion was effected w.e.f. 1.1.2000. It was specifically mentioned in the memo dated 5.11.01 that no vigilance nor any disciplinary case was pending against the official nor any punishment is in the current and has actually completed 26 years of relevant service on the date of his promotion.

9. Shri Das was proceeded under Rule 16 of the CCS(CC&A) rules, 1965 by the Res.No.4 vide his memo dated 23.11.2000 and was awarded the punishment of withholding one increment for the period of 30 months falling due next without cumulative effect under memo dated 20.2.01 (Annexure-A/2) as a result of finalization of the proceedings initiated under the Rule 16 of the CCS (CC&A) rules.

10. Subsequently applicant was awarded with the punishment of reduction of one stage from 5750 to 5625 in the time scale of Rs.4500-125-7000/- for a period of one year with immediate effect vide memo dated 12.11.02 (Annexure-R/1). Mr.Das was also involved in SB/TD misappropriation case while he was working as SPB Naugaonhat SO and was placed under suspension with effect from 11.02.03. Mr.Das

committed misappropriation of Rs.1,40,546/- out of which he has credited Rs.59,934/- and an amount of Rs.80,612/- is still outstanding as loss to the Department for the alleged misconduct by the applicant. He has also proceeded under Rule-14 of the CCS(CC&A) rules, 1965 on 1.4.2004 (Annexure-R/2). The enquiry has been conducted and submitted to the appropriate Disciplinary Authority for finalization. After initiation of Rule-14 proceedings, Mr.Das was reinstated in the service on 8.05.04 and continuing as a Postal Assistant in the Headquarters since then. The case of misappropriation of Savings Bank/Recurring Deposits by the applicant as SPM Naugaonhat was taken up for inquiry by the CBI,SPE, Bhubaneswar and registered a case No. RC08(A)/2004 dated 13.02.04 under Section 120(B), 420 of IPC and Section 13 (2) read with 13 (1) (d) of PC Act 1988 (Annexure-R3).

11. It is a fact that the date of effect of promotion was 1.1.2000 but the Departmental Promotion Committee approved the promotion on 5.11.2001 which was received by Res.No.4 on 7.11.2001. As per the instruction contained in the chapter promotion in Swami's Complete Manual on Establishment and Administration a clearance from the Vigilance Section of the office/departmental should be obtained before making actual promotion of the officer approved by the Departmental Promotion Committee to ensure that no disciplinary proceedings is pending against the official concerned. Here the applicant was though promoted with effect from 1.1.2000, the punishment was current as on





5.11.01 i.e. the date on which the Departmental Promotion Committee approved the promotion, this punishment is outcome of the disciplinary case initiated against applicant.

12. From the foregoing discussion, it is evident that the punishment was current against the official as on the date holding the Departmental Promotion Committee on 5.11.01. Moreover Rule-14 proceedings was pending against the applicant till date. Since the punishment was current, the promotion was not effected due to specific instruction of the appointing authority as in the said promotion order that it was stipulated to ensure that no Vig/Disc. or punishment was current against the official.

13. The Respondents have explained that promotion of ten official of Cuttack Sub-Division was ordered under Biennial Cadre Review Scheme as per memo dated 5.11.01, out of which, promotion of 9 officials effected since there was no vigilance/disciplinary case pending or punishment current against them. In view of the above position, the Respondents have stated that the above O.A. is misconceived by the applicant and is liable for rejection.

14. Ld.Counsel for both the parties have been heard. The Ld.Counsel for the applicant reiterated the arguments given in the O.A. and stated that his promotion was due as on 3.8.99 when neither any case was pending nor contemplated against him. Whereas his promotion was considered by the DPC as on 5.11.01 and promotion was contemplated w.e.f. 1.1.2000 which is not fair.



15. Ld.Counsel for the applicant has relied in the case of Piran Ditta and 25 ors Vrs. Union of India and ors. decided by the full Bench CAT, Chandigarh Circuit Sitting at Jammu in the O.A.No.7/JK/2003 decided on 14.01.05 ATJ 2005(1) page 430 wherein the Hon'ble CAT, Chandigarh Bench has held as under:

'Promotion-Biennial Cadre Review-benefits under BCR scheme dated 11.10.1991 has to be granted from the date one completed 26 years of satisfactory service and not from the 1<sup>st</sup> January or 1st July or when the committee meets to consider the suitability of the person concerned-instruction dated 31.10.2001 and 19.03.2002 held contrary to the scheme dated 11.10.1991 hence not applicable.'

16. The Ld.Counsel for the applicant therefore concluded that the applicant has been denied the promotion in an unfair manner and he has been incurring the substantial loss on account of the same.

17. The Ld.Counsel for the Respondents also reiterated all the facts in their reply to the O.A. and made us to traverse through various documents. He explained that the promotion of the applicant was considered by the DPC held on 5.11.01 and his promotion was going to be effected from 1.1.2000. It was observed that as on 5.11.01, the date on which a DPC approved the promotion, the outcome of the disciplinary proceedings was already effected against the applicant. Thereafter the applicant was awarded with the punishment of reduction of one stage from Rs.5750 to 5625 in the pay-scale of Rs.4500-125-7000/-for a period of one year w.e.f. 12.11.01. Again Mr.Das was involved in SB/TD, Bhubaneswar

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and was placed under suspension w.e.f. 11.2.03 and he has not been able to get his promotion till date.

18. We have heard rival contentions and perused the pleadings placed on record. It is admitted position by the Respondents that the applicant was appointed as Postal Ad-hoc Assistant w.e.f. 3.8.73 and a Scheme of Cadre Review was introduced w.e.f. 1.10.91. The eligibility criterion for the promotion was completion of 26 years of service subject to the disciplinary/vigilance clearance. Shri D.Das completed his 26 years of service as on 3.8.99.

19. The DPC was not held on the completion of 26 years of service by the applicant as on 3.8.99 whereas the DPC is being held on biennial basis for the administrative convenience. His actual DPC was held on 5.11.01 and his promotion was effected w.e.f. 1.1.2000. As on 5.11.01 the date on which the DPC approved the promotion, the outcome of the disciplinary proceedings initiated against him under article 16 was already under implementation. Subsequently, he has been awarded another punishment of reduction of one stage from Rs.5750-5625 in the time scale of Rs.4500-125-7000 for a period of one year with effect from 12.11.02 (Annexure-R1). He was further involved in a case of misappropriation in SB/TD and was also placed under suspension from 11.02.03 and he has not been able to get his promotion till date.

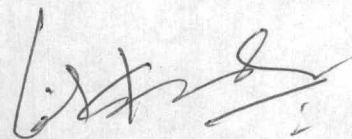
20. The Hon'ble Apex Court in the case of Bank of India V.Degala Suryanarayana,(1999) vol-5 SCC 762 (at page 770) has held as under:



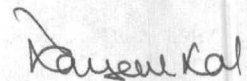
“The departmental enquiry proceedings were initiated with the delivery of the charge-sheet on 3.12.1991. In the year 1986-87 when the respondent became due for promotion and when the Promotion Committee held its proceedings, there were no departmental enquiry proceedings pending against the respondent. The sealed cover procedure could not have been resorted to nor could the promotion in the year 1986-87 be withheld for the DE proceedings initiated at the fag end of the year 1991. The High Court was therefore right in directing the promotion to be given effect to, to which the respondent was found entitled as on 1.1.1986. In the facts and circumstances of the case, the order of punishment made in the year 1995 cannot deprive the respondent of the benefit of the promotion earned on 1.1.1986.”

21. In view of the above discussion it is clear that on the date when he completed 26 years of service i.e. on 3.8.99 there was no case pending against him. The Respondents are directed to hold a Review DPC to consider the promotion of the applicant as on 3.8.99 without taking into account any subsequent events.

22. Accordingly, the O.A. is allowed. No order as to costs.



DR.K.B.S.RAJAN  
MEMBER(JUDL.)



TARSEM LAL  
MEMBER(ADMN.)