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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.255 of 2006
Cuttack, this the 20th day of May, 2009

E. Rama Chandra Patrao 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.)

V
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.255 of 2006
Cuttack, this the 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)

.....
E.Rama Chandra Patro, aged about 54 years, son of Eepari Appana Patra working as a Upper Divison Clerk in Regional Lepercy Training and Research Institute, At/Po-Aska, Dist. Ganjam.

.....Applicant

Advocate for Applicant: M/s. Rama Prasad Mohapatra,
D.Mohapatra.

-Versus-

1. Union of India represented through its Secretary, Department of Health and Family Welfare, New Delhi.
2. Director General of Health Services, Lepercy Section, Nirman Bhawan, New Delhi.
3. Deputy Director, Administration (Lepercy), Director General of Health Services, Nirman Bhavan, New Delhi.
4. Director, Regional Lepercy Training and Research Institute, At-Aska, Dist. Ganjam.
5. M.K.Gedi, Upper Division Clerk in Regional Lepercy Training and Research Institute, At/Po. Aska Dist. Ganjam.

....Respondents

Advocate for Respondents: Mr.S.B.Jena, ASC

O R D E R

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

Fact of the matter is that the voluntary Denis Saves the Children Organization established in the year 1969 was taken over by the Government of India, Ministry of Family Welfare, Regional Leprosy Training, Institute in the year 1972. The Applicant who was working as Kitchen Assistant in the aforesaid voluntary organization vide order under Annexure-I dated 7th April, 1979 was appointed as LDC. Thereafter he was promoted to the post of UDC vide order under Annexure-4 dated 19th October, 1995. On the recommendation of the

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Fifth Central Pay Commission, Government of India as a matter of policy issued instruction under Annexure-5 dated 9th August, 1999 known as "ACP" for grant of two financial up-gradations to the employees of the Government on completion of 12 and 24 years of regular service, without any promotion. The aforesaid 'ACP' scheme is placed at Annexures-5&6 respectively. According to the Applicant the voluntary organization in which the Applicant was working as Kitchen Assistant since 1972 was taken over by the Government of India and consequently, he was appointed as LDC in the year 1979 through a regular process of selection and hence he was entitled to the benefit of ACP by taking into consideration his past service. But the Respondents illegally and arbitrarily denied the said benefit to the Applicant under Annexure-A/15; which order the Applicant challenges in this OA with prayer to direct the Respondents to grant him the benefit of ACP.

2. According to the Respondents all appointments under direct recruitment quota vacancies of Government of India are being made through SSC. Since no such procedure was followed it was not a case of direct recruitment but is a case of promotion to the post of LDC and this was rightly reflected in the service book of the applicant copy of which is placed in the counter as Annexure-R/2. But while issuing the order under Annexure-1, it was wrongly mentioned that the applicant was appointed instead of promoted to the post of LDC. It is the case of the Respondents that the ACP scheme became operational w.e.f. 09.08.1999. Applicant was promoted in the year 1979 to the post of LDC and again to the post of UDC in the year 1995. According to the Respondents as per the instructions dated

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10.2.2000, (point No.8) Gr.D employees who became LDC on the basis of departmental examinant their appointment of LDC shall be counted as promotion for the purpose of ACP scheme. Since the Applicant already got two promotions during his service career, he was not entitled to the benefit of ACP under the scheme.

3. Now the only question that requires determination whether the applicant was appointed by way of direct recruitment or promoted to the post of LDC and whether the applicant was placed in the higher scale of UDC by way of financial up-gradation in the year 1995 vide order dated 10th October, 1995 or was regularly promoted to the said grade. Even on a cursory glance of the order under Annexure-1 followed by the order under Annexure-2 confirming the applicant after completion of the period of probation it is inconceivable to come to the conclusion even by going through the recording made in the service book of the applicant under Annexure-R/2 that the applicant was not appointed but promoted to the post of LDC in the year 1979. This is because, if according to the Respondents the applicant was not appointed they could have rectified subsequently. Neither any memorandum of agreement has been filed by the Respondents showing that persons continuing in the voluntary organization before it was taken by them have been treated as employees of the Department nor any order has been filed substantiating that the applicant had ever been appointed in Group D post before he was being considered and appointed to the post of LDC. The order under Annexure-1 clearly shows that the applicant was appointed to the post of LDC against direct recruitment quota. Merely because it was written in the service book maintained by the

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Department that the applicant was promoted will not ip-so-facto take away the order under Annexure-1&2. Similarly, on going through the office order dated 19th October, 1995 it is difficult to come to the conclusion that the same was not a regular promotion but was merely a financial up-gradation. In view of the above, we find substantial force in the contention of Ms. Subhasree Mohanty, Learned Counsel for the Applicant that as there has been miscarriage of justice in the decision making process of the matter, the same needs reconsideration by the Respondents.

4. For the aforesaid reasons, the order under Annexure-15 dated 24.01.2006 is hereby quashed. The matter is remitted back to the Respondents to consider/reconsider the case of the Applicant for grant of financial up-gradation under the ACP scheme treating the initial appointment of the applicant as LDC since 1979 and promoted to the post of UDC in the year 1995 within a period of 60 (sixty) days from the date of receipt of copy of this order. 5. With the aforesaid observation and direction, this OA stands disposed of. No costs.

KAPPAN
 (JUSTICE K. THANKAPPAN)
 MEMBER (JUDICIAL)

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