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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 409 OF 2006
Cuttack, this the 6th day of January, 2009

Nandalal Bose Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 409 OF 2006

Cuttack, this the 6th day of January, 2009

CORAM:

**Hon'ble Mr. Justice K. Thankappan, Judicial Member
&**

Hon'ble Mr. C.R. Mohapatra, Administrative Member

Nandalal Bose, aged about 52 years, S/o Late Biswanath Bose, UDC, At present working as UDC, HPT, T.V., Cuttack.

..... **Applicant**

By the Advocate(s) M/s. R.K. Mohapatra,
M.K. Mohapatra,
P. Jena,
S.K. Sartia
S. Patra

Vs.

1. Union of India, represented through, Director General, AIR, Parliament Street, New Delhi.
2. Director General Doordarshan, Doordarshan Bhawan, Mandi House, New Delhi.
3. Chief Executive Officer, Ministry of I.B., PTI Building, Parliament Street, New Delhi.
4. station Director, AIR, Camtonment Road, Cuttack
5. Station Director, AIR, Jeypore,(Orissa).

..... **Respondent(s)**

By the Advocate(s)..... **Mr. S.B. Jena, ASC**

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

Heard Mr. R.K. Mohapatra, Ld. Counsel for the Applicant and Mr. S.B. Jena, Ld. Addl. Standing Counsel for the Respondents.

2. This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for a direction to the Respondents to convene review DPC and consider his case for promotion to the cadre of Head Clerk/Accountant/Senior Store Keeper with effect from the date the vacancy arose in the said post. Further, it is prayed, that the order dated 20/22.03.2006 be quashed. When the O.A. came up for admission, notice was ordered to the Respondents and after getting notice, a reply statement has already been filed.

3. After getting the reply statement, a rejoinder has also been filed for and on behalf of the applicant, in which it is stated that the applicant is entitled for promotion to the post of Head Clerk/Accountant/Senior Store Keeper with effect from 1996 as the vacancy of Head Clerk was kept vacant even after offering the post of Senior Store Keeper though he relinquished the same as he did not join the post.

4. When the O.A. came up for hearing, we have heard Ld. Counsel for both parties and also perused the averments contained in the O.A. and documents produced therein. The case set up by the applicant in the O.A. is that while he was working as U.D. Clerk, he became eligible to be promoted to the post of either

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Head Clerk or Accountant or Senior Store Keeper. However, as per Annexure-A/1 the applicant was offered promotion to the post of Senior Storekeeper in the Pay Scale of Rs.5000-150-8000/- at All India Radio, Jeypore (Orissa), with effect from the date of his joining the post. But as the applicant was not promoted as Head Clerk at Cuttack, which was a post equal to that of the post of Senior Store Keeper, the applicant did not join the post of Senior Store Keeper at Jeypore. Thereafter, the applicant filed Annexure-A/2 series, representations before the authorities requesting them to promote him to the post of Head Clerk/Accountant/Senior Store Keeper in Cuttack. However, subsequent to Annexure-A/2 series the applicant was again offered promotion to the post of Senior Store Keeper at Jeypore, and subsequently he joined at Berhampur as per order dated 30.07.07.

5. Now the present prayer of the applicant is that as the post of Head Clerk was kept vacant and the period of relinquishment of his right for promotion to the post of Senior Store Keeper has expired, the applicant ought to have been promoted to the post of Head Clerk and posted to Cuttack. However, that was not done by the Department and he is claiming promotion to the post of Senior Store Keeper w.e.f. 1996 from the date of the post of Senior Store Keeper fell vacant.

6. Further, the applicant had challenged Annexure-A/5 order dated 14.03.2006 by which the Station Director had given an order stating that representations of the applicant dated 28.01.2000, 16.02.2000 and 03.03.2000 have already been disposed of vide letter No.1(3)/2000-S/58 dated 05.04.2000. In an earlier order, however, as the applicant had not joined the post of Senior Store Keeper, he cannot claim any entitlement for

promotion w.e.f. 1996 to the post of Senior Store Keeper. That order is also challenged before us.

7. To the above contentions of the applicant, a reply statement has been filed for and on behalf of the Respondents and it is subsequently stated that as the applicant had not joined the post of Senior Store Keeper which was offered to him during 2000, as per Annexure-A/1 the posting of the applicant as Head Clerk is not possible as he is not in a position to choose his promotion. It is also stated in the reply affidavit that in Paragraphs 9 & 10 of the reply affidavit as follows:-

“ 9. That as regards the averments made in Para-9 of the rejoinder, it is submitted the contention is not correct.

10. That as regards the averments made in Para-10 of the rejoinder, it is submitted that when ever the turn of promotion comes, the candidate is given the opportunity on the basis of seniority-cum-fitness out of the eligible candidates as found by the DPC. Shri Bose, UDC has also been offered the post of Head Clerk/Accountant/SSK on promotion basis as and when his turn came.”

It is further stated in the reply statement that even though the applicant had not joined the post offered to him during 2000, his representation dated 14.03.2006 has been considered and a review D.P.C. has been convened and the applicant was again promoted to the post of Senior Store Keeper. In the above circumstances, the applicant himself was responsible for not joining the post of Senior Store Keeper which was offered to him during 2000. The Respondents are not liable to give any relief to the applicant as now claimed. It is further stated in Paragraph 19 of the reply statement as follows:

“That as regards the averments made para-4.24 of the Original Application, it is submitted

that the allegation that the Station Director, AIR, Cuttack without examining the genuine and long standing grievance of the applicant in true perspective and without properly applying his mind to the facts and circumstances of the case and turned down the request of the applicant vide letter dt.20/22.03.06 is false and baseless."

8. After receipt of the reply statement, rejoinder has also been filed by the applicant in which it is stated that since the post of Head Clerk was kept vacant for more than 04 years the said post of Head Clerk has been offered to him and promotion could have been given to him to that post. It is further stated in the rejoinder that the applicant was offered the post of Senior Store Keeper only after filling up of the post of Head Clerk at Cuttack and that is against the Rule of promotion of the quota prescribed for the promotes. It is also stated in the rejoinder in Paragraph 8 of the rejoinder as follows:

" It is humbly submitted that the promotions are given as per the eligibility list and seniority list in this organization which are approved by the DPC. Promotion is given to the engineering and the programme employees as per the eligibility list. The said candidates are given promotion on purely adhoc and temporary basis but the administrative employees in this organization are given promotion on the basis of seniority against a clear vacancy on the basis of ratio i.e. seniority examining and S.s.C. approved by the DPC the above ratio cannot be changed. But it is pertinent to mention here that this is a solitary case where the applicant was offered promotion at A.I.R. Jaypore in the year, 2000 but the said post was vacant since November, 1996 against the seniority quota. Hence the applicant's case could have been decided by giving promotion w.e.f. November, 1996. In fact the applicant became eligible for the above post since 1986 as per the recruitment rules. But inadvertantly it has been mentioned in my petition it was due on 1992."

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9. On considering the entire case of the applicant at length and on hearing the Ld. Counsel for both sides and perusing the documents, the question to be decided in this O.A is that whether the applicant is entitled for promotion to the post of Senior Store Keeper or not. Admittedly the applicant was offered the post of Senior Store Keeper on 18.01.2000. The posts of Head Clerk/Accountant/Senior Store Keeper are interchangeable, but only because of the position of the post the applicant is not entitled to choose his promotion either to the post of Head Clerk or Accountant or Senior Store Keeper. Even if as per the law prevalent now the applicant is entitled for his promotion for a period of one year, it is left to the discretion of the Department to promote him in the next available vacancy or the vacancy which is still kept. In this context, it has to be borne in mind Annexure-A/2 series, the applicant is at Cuttack and not as Senior Store Keeper including that of Jaypore, even the post of Senior Store Keeper at Jeypore from 2000. The applicant further represented which was considered by the Department to the post of Sr. Head Clerk. As per the promotion rules and as per the quota for the post of Head Clerk/Accountant/Senior Store Keeper the applicant or any such candidate can be offered any such post as per the prescribed quota for promotion. In this context, it has to be borne in mind that the applicant has not been able to establish that though the post of Senior Store Keeper was vacant at Cuttack at the relevant point of time but the authorities, did not consider his case. We also see that the Respondents by their acts and deeds have not isolated any rules or instructions in so far as posting of the applicant on promotion is concerned.

10. In the above circumstances we are of the view that the applicant is not entitled to any relief unless it is proved by

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materials that the post of Senior Store Keeper was vacant either at Jeypore or at Cuttack in the Department at the relevant time. Accordingly, the O.A. fails and is dismissed. No costs.

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(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

Thankappan
(K. THANKAPPAN)
JUDICIAL MEMBER

Kalpeswar