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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.433 OF 2006
Cuttack, this the 03rd Day of March, 2008


Nandalal Bose Applicant

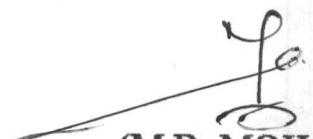
Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

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


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


(M.R. MOHANTY)
VICE-CHAIRMAN

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.433 OF 2006
Cuttack, this the 03rd Day of March, 2008

CORAM:

Hon'ble Shri M.R. Mohanty, Vice-Chairman
Hon'ble Shri C.R. Mohapatra, Member(A)

.....

IN THE CASE OF:

Nandalal Bose, aged about 52 years, S/o. Late Biswanath Bose, Upper Division Clerk, At present working as Upper Division Clerk, High Power TGransmitter T.V., Cuttack.

..... Applicant

By the Advocate(s)


..... M/s. Ramakanta Mohapatra,
M.K. Mohapatra,
P. Jena,

Vs.

1. Union of India, represented through Director General, All India Radio, 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, All India Radio, Cantonment Road, Cuttack.
5. Station Director, All India Radio, Bhawanipatna.

..... Respondent(s)

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



O.A.No. 433 of 2006

Order dated:03.03.2008

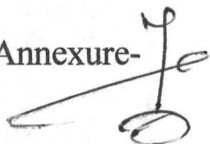
C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

A n d

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)

Consequent upon the recommendation of the DPC, the Station Director of All India Radio at Cuttack (the Cadre Controlling Authority) conveyed its approval for promoting the Applicant and posting him as Senior Store Keeper of AIR at Bhawanipatna vide orders 02.03.2006 and 24/27.02.2006. Consequently, the Station Director of AIR at Bhawanipatna, (by order under Annexure-1 dated 08.03.2006) asked the Applicant to report to duty as Store Keeper at AIR/Bhawanipatna on or before 31st March,2006 with a further condition that if he does not accept the offer, he will be debarred for promotion for a period of one year from the date of such refusal. On receipt of such an offer of promotion/posting, , the Applicant made a representation on 27.03.2006 to the Station Director of AIR at Cuttack (the Cadre Controlling Authority) seeking his posting in the existing vacancy at AIR at Puri on the ground of his mother's illness; which was duly forwarded (by the Assistant Engineer in charge of HPT/TV at Cuttack) on 27.03.2006. The said representation of the Applicant was rejected (on the ground that the post, lying vacant at AIR/Puri is earmarked for the candidates ^{who} come out successful in departmental examination) and in letter dated 29/30th March, 2006 at Annexure-



3 the Applicant was informed about the same. Again, through representation dated 03.04.2006, the applicant requested for his posting as against the vacancy going to occur following to retirement of Shri B.Gochhayat, Acctt. Of AIR at Cuttack w.e.f. 30.04.2006.

2. Station Director of AIR at Bhawanipatna, in his letter under Annexure-5 dated 18.04.2006, informed the Applicant as under:

“Vide reference to this office telegram/fax dated 07.04.2006, Shri Nandalal Bose, UDC, HPTV, Cuttack was instructed to join in the post of Sr. Store-keeper (on promotion) at AIR, Bhawanipatna latest by 17/4/2006.

But it is found that Shri Bose, UDC did not accept the promotion and not joined on the scheduled last date i.e. 17.04.2006 at AIR, Bhawanipatna.

Therefore, as per the terms and conditions of the offer of appointment conveyed to him vide this office communication No. BPN-1(5)/2006-5 dated 8/3/2006, Shri Bose, UDC, HPTV, Cuttack is hereby intimated that “he is debarred from promotion for a period of one year from 17.4.2006, the date of refusal of the promotion.”

3. On receipt of the aforesaid order under Annexure-5 dated 18.04.2006, through representation under Annexure-6 dated 24.4.2006, Applicant informed the Station Director of AIR at Cuttack that his representation dated 03.04.2006 (for his posting against the retirement vacancy to be caused on 01.05.2006) is still pending consideration by the Station Director, AIR, Cuttack and as per the rule joining time can be extended up-to 6 months and that, therefore, the order debarring him promotion during pendency of his representation is unwarranted.



4. There being no response to the grievances of Applicant, he has approached this Tribunal with the present Original Application filed U/s.19 of the A.T.Act, 1985 with prayers (a) to quash the impugned order under Annexure-5 dated 18.04.2006, (b) to quash the decision for filling up of the post of Head Clerk/Assistant of AIR at Puri by Departmental Examination candidate and (c) to direct the Respondents to post him in the grade of Head Clerk/Accountant/Senior Store Keeper at AIR/Cuttack.

5. Respondents, in the counter filed on 16th November, 2006, while denying the allegation of *mala fide*, have stated that the Applicant was specifically informed in the offer of appointment dated 8.3.06 to report for duty at AIR, Bhawanipatna not later than 31.03.2006 and that if he does not accept the offer, he will be debarred from promotion for a period of one year from the date of such refusal. According to the Respondents, to save from ban imposed by the Government of India (posts falling vacant for six months or more as on 31.10.2005 should not be filed) it was decided to earmark the vacancy (since 01.05.2005) in the Grade of Head Clerk/Assistant at All India Radio/Puri for the Departmental Examination Candidate, the action to fill up the aforesaid post has since been started in the year 2003. As regards the request of the posting of applicant against the vacancy at AIR/Cuttack it has been stated by the Respondents that as there are other staff in difficult stations having served more than their tenure and are at the verge of retirement and have applied for their transfer to Cuttack whereas the applicant is the longest staying UDC in

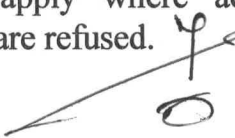


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Cuttack/Bhubaneswar. They have stated that extension of joining time was not automatic and that the authority has the power to extend the joining time maximum for a period of one or two months only in exceptional cases for cogent reasons. For the reasons stated above, the Respondents have opposed the prayers of the Applicant.

6. Learned Counsel appearing for the parties, on the basis of the averments made in the pleadings, made their submissions. Having heard them, we perused the materials placed on record including the rejoinder filed by Applicant and reply to the rejoinder filed by the Respondents.

7. Before proceeding further in the matter, it is worthwhile to extract the relevant portion of the Rules empowering the authority to take action in case of refusal of promotion which reads as under:

“17.12. When a Government employee does not want to accept a promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the Appointing Authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the Appointing Authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which the vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-à-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad-hoc promotion against short term vacancies are refused.

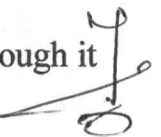


(In cases where the reasons adduced by the officer for his refusal for promotion are not acceptable to the Appointing Authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey his order)."

Vide GI,DP&AR OM No. 22034/3/81-Estt.(D) dated the 1st October, 1981.

8. It is not the case of the Respondents that the Applicant has ever refused to accept the Promotion rather, on receipt his order of promotion and posting at AIR/Bhawanipatna, he represented to the Cadre Controlling Authority (Station Director of AIR at Cuttack) seeking consideration of his posting at AIR/Puri for his mother's illness. On rejection of such grievance, he represented seeking his alternate posting at AIR/Cuttack on 03.04.2006.

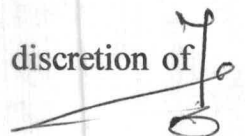
9. According to the Respondents the applicant was informed by the SD of AIR at Bhawanipatna through telegram/fax dated 07.04.2006 to report latest by 17.04.2006; but no copy of the same has been filed by them with the counter. However, it appears that while the second representation dated 03.04.2006 of Applicant was pending for consideration, the SD of AIR at Bhawanipatna informed the Applicant (through letter dated 18.04.2006) that he is debarred for promotion for a period of one year from 17.04.2006 i.e. the date of refusal of the promotion. No where in the Rules, such an unbridled power has been vested to debar an employee for promotion in case he/she is not reported to his promotional post. Undisputedly, the Applicant did not give any letter refusing to accept his promotion. On refusal to accept the promotion, one can be debarred for promotion for one year as provided in the rules. Although it



has been admitted by the Respondents that the authorities have the discretion to extend the joining time for one or two months, yet as to why such discretion was not utilized in favour of the Applicant is silent in the counter filed by the Respondents, equally no explanation is available as to why within a span of one and half months, while his second representation was pending consideration, the impugned order under annexure-5 was passed. If the authority did not accept his request to accommodate in either of one places, in absence of his refusal, he could have been relieved from Cuttack to join the new place of posting. It is also the case of the Respondents that the prayer of the Applicant to post him at Cuttack was awaiting consideration of the Committee. If that was so, then issuance of the impugned order under Annexure-5 dated 18.04.2006 was an arbitrary one. There has certainly been a mis-carriage of justice in the decision making process.

10. In view of the discussions made above, as there was miscarriage of justice in the decision making process, we hold that the impugned order under Annexure-5 dated 18.04.2006 is not sustainable in the touch stone of judicial scrutiny. Hence the order under Annexure-5 dated 18.04.2006 debarring the promotion of Applicant for one year, is annulled/quashed/set-aside.

11. Similarly, it is the settled law that the Courts/Tribunal cannot sit as an appellate authority over the decision of the administrator so far as transfer/posting of an employee. Therefore, without fettering the discretion of



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the authority in regard to posting of the Applicant in the promotional post, the Respondents are hereby impressed that in case vacancy still exists in any of the places i.e. AIR/Puri or AIR/Cuttack or at nearby places then posting of the Applicant in any one of the places, on his promotion, be considered sympathetically. However, the seniority in the promotional grade of the applicant would be reckoned in accordance with the rules governing his services.

12. The entire exercise should be completed by the Respondents within a period of 30 days from the date of receipt of a copy of this order.

13. In the result, with the aforesaid observations and directions, this OA stands allowed. There shall be no order as to costs.


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


(M.R. MOHANTY)
VICE-CHAIRMAN

KNM/PS.