

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.197 of 2007

Asita Kumar Nayak Applicant

Versus

Union of India & Others. Respondents

Order dated: 21st April, 2010

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THE HON'BLE MR.B.V.RAO, MEMBER (JUDICIAL)

And

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

Facts not in dispute are that the applicant was initially appointed in the Railway as Sr. Clerk on 21.01.2008 and joined at Jamalpur, under the Eastern Railway. On his own request, he was transferred to Khurda Road Division where he reported on 01.10.1990. In Khurda Road Division he was promoted to the post of OS Gr.II in the scale of pay of Rs.5,500-9,000/- w.e.f. 14-12-2002. While working as such in the office of the Assistant Signal and Telecom Engineer, Cuttack, the applicant was called for the suitability Test for the post of Office Superintendent Gr.I in the scale of pay of Rs.6500-10,500/- vide office order under Annexure-A/1 dated 24.12.2003. The suitability test was conducted on 7.1.2004 and the result of the test was published on 23.1.2004 in which the applicant was declared suitable followed by the order No.24/2004 dated 01.03.2004 promoting and posting him as OS Gr.I under the Sr. Divisional Signal Engineer, Khurda Road.

2. The Applicant's grievance is that although he was willing to go and join in his promotional post at Khurda Road, he was not relieved from the office where he was working. In the absence of any of his fault and without giving him any opportunity in compliance with the basic principle of natural justice, the Respondents in modification of earlier order of promotion, promoted him to the post of OS Gr. I vide order under Annexure-A/7 with

effect from 26.12.2005. His contention is that since there was gross injustice done to him without compliance of the principle of natural justice and that too without his fault, by submitting representation he sought rectification of the same but the authorities without due application of mind rejected the same and communicated the reason of rejection under Annexure-A/10. Hence by filing the present Original Application under section 19 of the A.T. Act, 1985, the Applicant prays for the following relief:

“ To quash the order dated 26.12.2005 passed by the Respondent No.3 under Annexure-A/10;

To direct the Respondents to antedate the date of promotion as OS Grade-I w.e.f. 01.03.2004 instead of 26.12.2005;

To direct the respondent No.3 to give seniority to the applicant w.e.f. 1.3.2004;

To direct the Respondents to give all financial and consequential benefits to the applicant.”

3. It is the contention of the Respondents in their counter that as meantime restructuring of Ministerial cadre had taken place in the Khurda Road Division, promotion order of the applicant was modified and fresh order of promotion was issued in favour of the applicant by which the applicant was promoted and posted as OS I at Cuttack under ASTE/Cuttack against a pin pointed post of OS I. In the event of availability of additional post of OS I on restructuring of cadre at Cuttack the promotion of the applicant to the post of OS I was effected only w.e.f. 26.12.2005 i.e. from the date of shouldering higher responsibility by him. Accordingly, while denying all other contentions of the Applicant, the Respondents have prayed for dismissal of this OA.

4. A rejoinder has also been filed by the Applicant more or less reiterating the stand taken by him in his Original Application. Having heard Learned Counsel for both sides perused the materials placed on record.

5. On scrutiny of records it is found from Annexure-A/1 that Respondents conducted the suitability test against the specific vacancy of OS

Gr.I available under Sr.DSTE/KUR. Pursuant to the notification under Annexure-A/1, applicant applied and appeared at the suitability test and came out successful in the said suitability test as revealed from the order under Annexure-A/2. Following the declaration of result under Annexure-A/2, Respondents under Annexure-A/3 dated 01.03.2004 passed the following order:

“Sub: Promotion to the post of Office Supdt. Gr.I in scale Rs.6500-10500/- (RERP) in S&T Department.

The following promotion and transfer order is issued with approval of the competent authority which would be implemented with immediate effect.

Having been found suitable for the post of Office Supdt. Gr.I in scale of Rs.6500-10500/- (RERP) vide this O.O.No.14/04 dated 21.1.04, Shri A.K.Nayak (ST), OS II in scale Rs.5500-9000/- (R&RP) is hereby promoted to the post of OS I and posted as such under Sr.DETE/KUR against existing vacancy.

Note:-

1. The above promotion order issued as per order of Sr.DETE/KUR on Note sheet dated 23.1.04;
2. The promotion of the above staff is subject to clearance of Spt/VIG/cases pending against him;
3. The staff is eligible for submitting option for fixation of pay in terms of Estt.SI.No.21/85 & 15/88;
4. The date of effect of the order may be intimated to this office for record.”

6. From the above it is clear that the order of promotion of the applicant was not a conditional one to the extent that the promotion of the applicant would be made effective from the date of his joining in the promotional post. He should have been relieved by the ASTE/CTC. But it is seen that instead of reliving him from his post, assigning administrative inconvenience in case of the relief of the applicant from Cuttack, the ASTE, Cuttack requested through letter under Annexure-A/4 dated 27.03.2004 either to post one clerk before the applicant is relieved or temporarily shift the post of OS Gr. I to Cuttack so as to allow the applicant to continue for smooth functioning of the office at Cuttack. As we find this letter under Annexure-A/4

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was followed by another letter under Annexure-A/6 dated 23.12.2004 with similar request. Thereafter the earlier order of promotion of the applicant was modified through order under Annexure-A/7 dated 26.12.2005 providing as under:

“Sub: Modification of promotion/posting order of Shri A.Nayak (ST) OS II under SLT (L)/CTC in S&T Department

Ref: This office order No.24/04 dated 01.03.04.

In supercession of this office order under reference the following order is issued to have immediate effect. Shri A.K.Nayak (ST), OS Gr.II in scale of Rs.5500-9000 (R&RP) **who has been promoted to the post of OS I** in scale Rs.6500-10500/- (R&RP) is posted against one pin pointing post of OS Gr.I under STE/CTC.

The above order has been approved by the competent authority (i.e. Sr.DSTE/KUR).

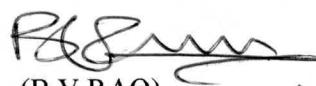
Note:-

1. The promotion of the above staff is subject to clearance of SPE/VIG/cases pending against him;
2. The staff is eligible for submitting option for fixation of pay in terms of Estt.Sl.No.21/85 and 15/88.
3. The date of effect of the order may be intimated to this office for record.”

7. In view of the above, we find that availability of vacancy in OS Gr.I on restructuring of cadre at Cuttack has nothing to do in regard to the promotion of the applicant as he was promoted through a positive act of selection against the vacancy of OS Gr.I available at KUR. Further as stated above, the order of promotion was not conditional to the effect that the promotion of applicant would be effective only after his joining. Be that as it may, it is seen that the applicant could not be relieved from Cuttack due to administrative interest for which he cannot be faulted. When applicant was promoted and consequently asked to be relieved by the competent authority, the authority subordinate to him ought not to have retained him or the authority to whom letter was addressed ought to have taken prompt action on the same. On the one hand no action was taken to relieve the applicant and on

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the other hand the earlier order of promotion of the applicant was modified without giving any opportunity to him. In our considered view this action of the Respondents is not sustainable in the eyes of law. Had the relieving of the applicant been deferred on his own request the matter would have been different. The Hon'ble Apex Court in the cases of **State of Orissa -v- Binapani Dei**, AIR 1967 SC 1269 and **K.I.Shephered and others -v- Union of India**, AIR 1988 SC 686 have held that it is true that the order is administrative in character, but even an administrative order which involves civil consequences, must be made consistent with rules of natural justice. In view of the above, it will be wholly unjust to penalize the promotee for the dilatory and lackadaisical attitude of the authorities. For the aforesaid reason, the order under Annexure-A/10 dated 26.12.2005 rejecting the representation of the applicant is hereby quashed. The Respondents are hereby directed to treat the applicant to have been promoted notionally to the post of OS Gr.I w.e.f. 01.03.2004 instead of 26.12.2005. The above direction shall be complied with within a period of thirty days from the date of receipt of this order. In the result, this OA is allowed to the extent stated above. There shall be no order as to costs.


(B.V.RAO)
MEMBER (JUDL.)


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