



**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 202 OF 2007
CUTTACK, THIS THE 19th DAY OF January, 2010

Shri Bhagaban Mallick.....Applicant

Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

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


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


(K.THANKAPPAN)
MEMBER (JUDL.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 202 OF 2007
CUTTACK, THIS THE 19th DAY OF January, 2010

CORAM :

HON'BLE MR. JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....
Shri Bhagaban Mallick, aged about 43 years, S/o. Bata Krushna Mallick, of Village-Jaitalang, PO-Baigani, Via-Balikuda, Dist.- Jagatsinghpur, at present working as Scientific Assistant, Meteorological Section (ATC), under the Deputy Director (Admn.), Aviation Research Centre, Charbatia, At/PO-Charbatia, Dist- Cuttack.

... Applicants

By the Advocates – M/s. B.S.Tripathy, M.K.Rath, J.Pati.

-Versus-

1. Union of India, represented through the Cabinet Secretary, Cabinet Secretariat Building, South block, New Delhi.
2. The Special Secretary, Aviation Research Centre (ARC), Head Quarters, East Block-V, R.K.Puram, New Delhi-110066.
3. The Deputy Director(A), Air Wing, Aviation Research Centre (ARC), Head Quarters, East Block-V, R.K.Puram, New Delhi-110066.
4. The Assistant Director(B), Air Wing, Aviation Research Centre (ARC), Head Quarters, New Delhi-110066.
5. The Deputy Director(A), Aviation Research Centre (ARC), Charbatia, At/PO-Charbatia, Dist-Cuttack-754028.
6. Shri N.C.Pant.
7. Smt. K. Vijayavani.

Respondent Nos. 6 and 7 are at present working as Scientific Assistant, Meteorological Section (ARC), Air Wing, Aviation Research Centre (ARC), Charbatia, Dist-Cuttack.

... Respondents

By the Advocates - Mr. D.K.Behera (A.S.C.),
M/s. C.Ananda Rao, A.K.Rath, S.K.Behera
(For Caveators)

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ORDER

SHRI JUSTICE K.THANKAPPAN, MEMBER(J):-

The applicant, while working as Sr. Observer in the Aviation Research Centre (ARC), Air Wing, in Meteorological Cadre, was promoted as Scientific Assistant on 14.1.1998, having acquired the requisite qualification and eligibility period of service for promotion to the said grade. However, at present, the applicant has been reverted from the post of Scientific Assistant to Sr. Observer as per the order dated 23.5.2007(Annexure-A/5). Aggrieved by the said order of reversion, the applicant has filed the present O.A. praying to quash the said order dated 23.5.2007 and for a direction to the authorities to promote him to the next higher post of Professional Assistant, which is lying vacant in ARC, Charbatia.

2. When the O.A. was filed before this Tribunal, as the applicant could not produce the copy of the impugned order, this Tribunal allowed the applicant to amend the O.A. for production of the impugned order through M.A. No. 440/07. When the application further came up for admission, this Tribunal admitted the O.A. and passed an interim order on 3.10.2007 as follows:

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“As an interim measure, the operation of the impugned order of reversion dated 23.5.2007 (Annexure-A/5) is stayed till disposal of the O.A. and the Respondents are directed to allow the applicant to continue as Scientific Assistant in ARC, Charbatia.”

3. While admitting the O.A. as this Tribunal found that there were applications under Section 148(A) of the Code of Civil Procedure filed by two individuals as caveators, notice was ordered to the Official Respondents on 03.10.2007 and to the caveators on 2.11.2007, who were shown as additional Respondent Nos. 6 and 7 respectively.

4. In pursuance of the notice ordered, counter affidavit has been filed for and on behalf of the official Respondents. The stand taken in the counter affidavit filed on behalf of the Official Respondents is that on 13.11.1996 a meeting of the Departmental Promotion Committee was held to fill up vacant posts of Scientific Assistant by way of promotion. At that time, 40 point roster was in existence. As per roster point, while one post was there for unreserved category, the other post came under SC category. Only three General Category candidates fulfilled the eligibility criteria as per Recruitment Rules and no SC candidate was eligible for promotion at that point of time. The DPC recommended for promotion of General Category candidates against the unreserved



post and so far as post reserved for SC candidate is concerned, the same was filled up subject to dereservation. However, subsequently, the applicant had made certain representations and in consideration of the representation and in consultation with the Cabinet Secretariat and the DoPT, the applicant was promoted as Scientific Assistant w.e.f. 14.01.1998. It is further stated in the counter that two officials, namely, the 6th and 7th Respondents also claimed promotion on the basis of their seniority and in order to accommodate them on the basis of seniority, the present order of reversion of the applicant has been made. It is further stated in the counter that the applicant himself had filed an O.A. earlier before this Tribunal as O.A. No. 676/05 for promoting him to the higher grade, namely, Professional Assistant, which post was lying vacant at that time in the ARC, Charbatia. However, this Tribunal dismissed the said O.A. as per the order dated 17.4.2007. The said order of this Tribunal has been already challenged by the applicant in Writ Petition (C) No. 7057/07 before the Hon'ble High Court of Orissa.

5. Private Respondent Nos. 6 and 7 have not filed any counter. The stand taken by Respondents 6 and 7 in the written notes filed by them is that there were only two vacancies in the post of Scientific Assistant available in 1996 and one post was

filled up by promotion of one A.K.Sukla, a general category candidate and the other vacancy remained unfilled. Without considering the seniority and claim of Respondents 6 and 7, the applicant was wrongly promoted to the post of Scientific Assistant w.e.f. 14.1.1998. Further, it is stated by Respondents 6 and 7 that if there were only two posts available, 40 point roster or reservation could be applied only in the 5th place. If so, the promotion given to the applicant on 14.1.1998 is irregular and illegal, which was corrected by the Review DPC held on 08.05.2007 and hence reversion of the applicant is sustainable in law.

6. A rejoinder has been filed for and on behalf of the applicant, in which it is stated that the applicant has completed all the training for the promotional post of Professional Assistant in November, 2000 conducted by the Indian Meteorological Department, New Delhi, which was necessary for promotion to the next higher grade, i.e., Professional Assistant. Further it is stated that the applicant has already completed more than 6 years in the post of Scientific Assistant from 14.1.1998 and if the reversion order is not quashed, it would affect his service career.

7. It is noted that when the O.A. came up for consideration on 28.10.2009, this Tribunal directed the Ld. Counsel appearing for the official Respondents to produce the

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promotion and recruitment rules and indicate the vacancy position that existed in the Department. Though a specific answer is not given regarding the vacancy position, the Ld. Counsel for the Respondents relies on paragraph 5 of the counter, in which it is stated that during 1996-97 two posts of Scientific Assistant fell vacant, out of which one was for unreserved category, and the other came under SC category as per the Roster Point. As there was no SC candidate qualified to be appointed, the said post was filled up by a General Candidate subject to de-reservation of the said post.

8. We have heard Mr. B.S.Tripathy, Ld. Counsel for the applicant and Mr. D.K.Behera, Ld. Additional Standing Counsel and Mr. C.A.Rao respectively appearing for Official Respondents and Private Respondents 6 and 7.

9. Ld. Counsel for the applicant submits that while the applicant was working as Sr. Observer in the Office of 5th Respondent in Charbatia, he was promoted to the post of Scientific Assistant w.e.f. 14.1.1998 as recommended by the Departmental Promotion Committee as per its recommendations dated 24.12.1997. While continuing as Scientific Assistant, the applicant completed his training conducted by the Indian Meteorological Department, New Delhi, a pre-requisite training for promotion to

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the next higher grade, viz., Professional Assistant. When he was not promoted to the said post, the applicant preferred a representation on 23.12.2003. However, the said representation had been rejected as per the order dated 24.2.2004. Aggrieved by the said rejection order, the applicant submitted a representation before the Special Secretary, the 2nd Respondent, to consider his case for promotion to the post of Professional Assistant. However, the said request having not been acceded to, the applicant filed O.A. No. 676/05 before this Tribunal. By order dated 17.4.2007, this Tribunal dismissed the same by observing that Respondents have fairly averred that the steps have been taken for revival of the post and, in the event of revival, the case of the applicant would receive due consideration. Being aggrieved by the order passed by this Tribunal, the applicant filed Writ Petition No. 7057/07 before the Hon'ble High Court of Orissa, which is now pending. While the matter stood thus, the Official Respondents passed the present impugned order dated 23.5.2007 reverting the applicant to the post of Sr. Observer. The Ld. Counsel submits that the said order of reversion is without any notice to the applicant and it is not sustainable as the order does not contain any reason for reversion of the applicant. Ld. Counsel for the applicant submits that the reversion of the applicant to the lower post is with ulterior motive

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and with malafide intention. To satisfy the legal claim of the applicant for promotion to the post of Professional Assistant, this Tribunal may interfere in the matter. Further the Ld. Counsel for the applicant submits that in the impugned order, while it is stated that the order is on the basis of review DPC, no reason for convening any such review DPC has been stated and the applicant has not been given any opportunity to defend his case. Apart from that, the Ld. Counsel for the applicant submits that the present reversion order is after a lapse of more than 7 years of promotion order dated 14.1.1998. The applicant being an SC candidate has been rightly promoted applying the roster point. If so, the promotion ordered on 14.1.1998 cannot be questioned or rather reviewed by the Respondents to the prejudice of the applicant without any reason and even without any notice to him.

10. To the above contentions of the Ld. Counsel, Mr. Behera, relying on the counter affidavit filed on behalf of the Official Respondents, submits that the impugned order of reversion is on the basis of recommendation made by another review DPC held on 08.05.2007. Further Ld. Counsel submits that the review is on the basis of the representation filed by Respondent Nos. 6 and 7 who claimed seniority over the applicant. Ld. Counsel further submits that representations filed by the 6th and 7th Respondents

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were already taken before the Cabinet Secretariat and thereafter reversion order has been passed as Annexure-R/1, a copy of which is already marked to the O.A. as Annexure-A/5. It is further submitted that since Mr. N.C.Pant, Sr. Observer/6th Respondent filed so many representations to promote him to the post of Scientific Assistant, the matter was referred to the Cabinet Secretariat for which the Cabinet Secretary advised as per his letter dated 25.10.2005 that revised roster point has to be applied against vacancy in which the applicant has been promoted and as the applicant has been promoted against an unreserved post, he has to be reverted and Mr. Pant has to be promoted. That is the reason for convening another Review DPC on 08.05.2007 based on which the order of reversion has been passed. Hence applying the revised roster, the applicant has to be reverted. Accordingly, the present order has been passed.

11. Mr. Rao, Ld. Counsel appearing for the Private Respondents 6 and 7, submits that since the applicant has been promoted against unreserved post and the applicant being junior to Respondents 6 and 7, should be reverted and Respondents 6 and 7 should be promoted. It is also the case of Mr. Rao that since this Tribunal observed in the order dated 17.4.2007 that the applicant is not entitled for promotion to the post of Professional Assistant as



there is no post vacant and the applicant is not having the requisite qualification for promotion to the above post, the present order has been passed. Hence, according to the Ld. Counsel appearing for the Respondents 6 and 7, Annexure-A/5 order of reversion has to be upheld by this Tribunal.

12. We have anxiously considered the submissions made by the Ld. Counsel for the parties in the light of the averments contained in the O.A., counter affidavit and other documents produced before this Tribunal.

13. Considering all these aspects, the question to be considered is whether the applicant is entitled to relief which he has claimed or not. The first prayer of the applicant is that the impugned order of reversion (Annexure-A/5) is not sustainable in law and it has to be quashed. The second prayer of the applicant is that Respondents may be directed to promote him to the post of Professional Assistant, the higher post of Scientific Assistant. With regard to the second prayer, we see that the same question has been considered by this Tribunal in O.A. No. 676/05 and in the light of the stand taken in the counter affidavit, this Court observed that the Respondents should consider the case of the applicant for promotion in the event of revival of the said post. However, being dissatisfied with the observation and the order passed by this

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Tribunal, the applicant has moved the Hon'ble High Court of Orissa in Writ Petition (C) No. 7057/07. If so, the second prayer of the applicant has to be left aside as the matter is subjudice before the Hon'ble High Court of Orissa.

14. With regard to the first prayer, we have to analyze the entire facts of the case. The case of the applicant is that he was appointed as Sr. Observer in the Department on 28.8.1992 and, while continuing as such, there occurred two vacancies in the post of Scientific Assistant during 1996-97. One of the posts was reserved for SC candidate as per the roster point in force at that time. Since there was no eligible reserved community official to be promoted to the said post, the first and second post were filled up by General candidates subject to dereservation of the second post. However, when the applicant had almost completed the required period of service, he filed a representation before the authorities to promote him as Scientific Assistant against the reserved post. When the said post, filled up by General Candidate subject to dereservation, fell vacant, that is to say when the reserved post could not be dereserved, a DPC meeting was held on 24.12.1997 and on the basis of the recommendations of the DPC, the applicant was promoted to the said post of Scientific Assistant w.e.f. 14.01.1998 and after completing more than 6 years, the applicant



filed representation for promotion to the next higher post, namely, Professional Assistant. The fact of applicant's promotion against the reserved post is not disputed by the Official Respondents. The fact that the vacancy in the said reserved post having been filled up on promotion by the applicant, applying the principle of roster point in vogue though was within the knowledge of Respondents 6 and 7, yet they had never challenged the same till 2007, for the reasons best known, which cannot be brushed aside. It is also admitted in the counter affidavit filed on behalf of the Official Respondents at paragraph 5 as follows:

"That on dated 13/11/96 a D.P.C. was held to fill up the vacant posts of Scientific Assistant by way of promotion. At that time 40 point roster was in existence. As per Roster point while one post was for unreserved category, the other post came under S.C. category and only three General Category candidates fulfilled the eligibility criteria as per Recruitment Rules. The DPC recommended for promotion of General category candidates against SC post subject to de-reservation (since no SC candidate was eligible for promotion at that point of time). In the meantime, the applicant was the only SC Candidate who was likely to complete the qualifying period of 5 years service in August, 1997. He represented against the recommendations of the DPC and requested to keep the SC post reserved for his promotion till he completes the qualifying period. Accordingly, Cab. Sectt was moved to give a ruling on the subject. Cab Sectt in consultation with DOP&T, conveyed its no objection to keep the post reserved for SC

candidate. Accordingly, a review DPC was held on 24/12/97 and the applicant was promoted against the post meant for SC Category in the grade of Scientific Assistant with effect from 14/01/1998."

In view of the above statement of the Official Respondents, it is to be inferred that dereservation of post of Scientific Assistant had not taken place in between 13.11.1996 i.e., the date on which the D.P.C. considered promotion of general category candidate against reserved vacancy subject to dereservation and till the date of promotion of the applicant to Scientific Assistant on 14.1.1998. In the circumstances, 40 point roster having been then in force, the applicant was rightly considered and promoted as Scientific Asssistant w.e.f. 14.01.1998 against SC vacancy, and therefore, the question of review of the promotion given to the applicant to the post of Scientific Assistant on 14.1.1998 does not arise.

15. The next question to be considered is with regard to the claim put forward by Respondents 6 and 7 by filing petitions under 148(A) of the Code of Civil Procedure before this Tribunal in the present O.A. The stand taken by them is that they are senior to the applicant in the cadre of Sr. Observer. We have anxiously considered this submission of Respondents 6 and 7. Admittedly,

Respondents 6 and 7, though senior, belong to general community candidates. It is only because the applicant, who belongs to SC community was not eligible for promotion to Scientific Assistant at the relevant point of time, the said SC vacancy was filled up by general category candidate subject to dereservation of the reserved vacancy. As noted earlier, there is no material on record to show that before 14.1.1998 dereservation had taken place. The Official Respondents have also made it clear that the Cabinet Secretariat has conveyed its no objection to keep the post reserved for SC, though according to them all the vacancies on or after 2.7.1997 should be filled up as per the revised roster dated 2.7.1997. Except making a bald submission that the vacancy against which the applicant had been promoted was meant for the unreserved category, the official Respondents have not produced any document showing as to how the SC vacancy against which the applicant had been so promoted fell under unreserved category as per the revised roster. Besides, Respondents 6 and 7 have not produced any authority showing that on the principle of seniority a general category candidate could be promoted against reserved vacancy. In other words, the Respondents 6 and 7 have not substantiated by producing any authority that despite they being general category candidates are entitled to promotion against the



vacancy meant for SC/ST or reserved category, as the case may be. This apart, it is to be noted that during the last about 10 years, from 14.1.1998, nobody has ever questioned the promotion of the applicant except filing some belated representations before the Cabinet Secretary. It is also to be noted that even as per the direction or the advice of the Cabinet Secretariat, the only objection stated by the Cabinet Secretary is that at the time of promotion of the applicant to the post of Scientific Assistant, the 40 point roster was not in existence and, if so, the applicant should not have been adjusted against the unreserved quota. But this Tribunal is not at one with the said proposition as it is admitted in the counter affidavit that during 1996-97, two posts of Scientific Assistant fell vacant, one unreserved and the other reserved/SC quota, but both the posts were filled up by General candidates subject to dereservation of the reserved post. In this context, it is also to be noted that though the counter affidavit filed on behalf of the Official Respondents would not show the exact number of posts that existed in the Department, the Official Respondents have categorically admitted that there occurred two vacancies during 1996-97 and as the applicant did not fulfill the qualifying period of 5 years, he was not promoted, instead the said reserved post was filled up by a general candidate. However, it is an admitted case

that subsequently on the representation made by the applicant, the said reserved post was filled up by the applicant's promotion as at that time the applicant had almost completed 5 years of service in the feeder category. If so, the case set up or the claim put forward by the Respondent Nos. 6 and 7 has no legal stand.

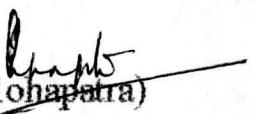
16. The next question to be considered by this Tribunal is that before Annexure-A/5 reversion order could be issued, no notice was issued to the applicant to have his say in the matter. In this view of the matter, we cannot but hold that the reversion order Annexure-A/5 suffers violation of principle of natural justice. Law is well settled that even if any mistake is corrected by an executive authority, which affects the rights of an employee, he should be given an opportunity before effecting such correction, failing which the said action is violative of principles of natural justice. On this score alone, the order of reversion has to be interfered with by this Tribunal.

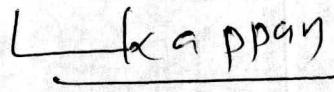
17. As regards the prayer of the applicant for promotion to the next higher grade, viz., Professional Assistant, as referred to earlier, the said matter is pending before the Hon'ble High Court of Orissa in Writ Petition No. (C) 7057/07 filed against the order in O.A. 676/05, and therefore, we refrain ourselves from expressing any opinion on this.



18. Having regard to the above discussions, we hold that the post of Scientific Assistant meant for SC category having not been dereserved until 14.1.1998 or at any point of time and the Official Respondents having not been able to substantiate that the post of Scientific Assistant against which the applicant had been promoted fell under general category as per the revised roster, the promotion of the applicant to that post was in order and according to the roster point then in force. In the circumstances, the impugned order at Annexure-A/S dated 23.5.2007 reverting the applicant to Sr. Observer is quashed. It is also directed that if the applicant, notwithstanding the stay order issued by this Tribunal, has been reverted to the post of Sr. Observer, he shall be given the financial and service benefits of the post of Scientific Assistant, as if he has been continuing as Scientific Assistant. The above exercise shall be completed within a period of 60 days from the date of receipt of this order.

19. In the result the O.A. is allowed to the extent indicated above. No costs.


(C.R. Mohapatra)
Member (Admn.)


(K. Thankappan)
Member (Judl.)