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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 412 of 2007
Cuttack, this the 18th day of March, 2011

Pradipta Kumar Kar Applicants

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(A.K. PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 412 of 2007
Cuttack, this the ~~18-11~~ day of March, 2011

CORAM:

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

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

1. Shri Pradipta Kumar Kar, aged about 54 years, S/o.Krushna Chandra Kar;
2. Shri Panchanan Das, aged about 59 years, S/o.Bharmar Das;
3. Shri Chandramani Sethi, aged about 58 years, S/o. Kasinath Sethi;
4. Shri Bhramarbar Tripathy, aged about 56 years, S/o.Mahadev Tripathy;
5. Shri Sahadev Moharana, aged about 50 years, S/o.Bharat Moharana;
6. Shri Abhimanyu Nayak, aged about 54 years, S/o.Manguli Nayak;
7. Shri Kumud Bandhu Pradhan, aged about 51 years, S/o.Mr.Pradhan;
8. Shri Dhirendra Kumar Behera, aged about 55 years, S/o.Hadibandhu Behera;
9. Shri Barnabas Nayak, aged about 55 years, S/o.Raman Nayak;
10. Shri Madhusudan Das, Aged about 52 years, S/o.Bihari Das;
11. Shri Danita Sabar, aged about 49 years, S/o.Kantina Sabar;
12. Shri Jairam Barik, aged about 54 years, S/o.Sarat Chandra Barik;
13. Shri Judhisthir Sahu, aged about 55 years, S/o.Dukhia Sahu;
14. Sri Sachidananda Pattanayak, aged about 55 years, S/o.Laxmidhar Mohanty;
15. Sri Kirtan Barik, aged about 53 years, S/o.Gayadhar Barik;
16. Sri Bhimesen Nayak, aged about 47 years, S/o.Arakhita Nayak;
17. Sri Daitary Sahoo, aged about 55 years, S/o.Digambar Sahoo;
18. Sri Prasanna Kumar Mohapatra, aged about 47 years, S/o.Kanduri Mohapatra;
19. Sri Brundaban Behera, aged about 49 years, S/o.Nilamani Behera;
20. Sri Satya Prakash Parida, aged about 43 years, S/o.Gopinath Parida.

[All are Technical Labourers, Semi Skilled, working in the O/O the Survey of India, Orissa Geospatial Data Centre, Survey Bhawan]

.....Applicants

By legal practitioner: M/s.Chitra Padhi, Monalisa Devi, Counsel

-Versus-

Union of India represented through-

1. Secretary, Government of India, Ministry of Science & Technology, New Delhi.
2. Surveyor General, Survey of India, Block No.B, Hati Barkala Estate, Dehrauam, Uttaranchal.
3. Director, Orissa Geo-Spatial Datta Centre, Survey of India, PO-R.R.Laboratory, Bhubaneswar-751 013.

....Respondents

By legal practitioner: Mr.P.R.J.Dash, ASC

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The Applicants joined the Service of South Eastern Circle of Survey of India, Bhubanesswar (now Orissa Geo-Spatial Data Centre) as Technical Labourers (unskilled). Subsequently they were promoted to the grade of Technical Labourer (Semi Skilled). The post of Technical Labourer falls under the category of Group D. The Service conditions of the Applicants governed by the provision of Circular No. 438 (Administrative) dated 2nd April, 1955 in which (at paragraph 2) it is provided that 30% of the posts in Class III Division II Service (Group C) should be filled up by technically qualified Group D personnel irrespective of their age and educational qualification. According to the Applicants, though they are holding the post of Gr. D but they are discharging the duties which ought to have been discharged by Class III (Group C) employees of the Department. In terms of the provision of the



Rules (paragraph 20), one Shri B.C.Raha who joined as Technical Labourer on 24.6.1983 in the Department was promoted to Class III Division II service w.e.f. 18.2.1999. Despite availability of vacancies and fulfilling the conditions by the Applicants, their grievance for promotion to Class II (Group C) have not been considered by the Respondents. They made successive representation seeking their promotion but there has been no response on the same. Hence by filing this OA, the Applicants seek direction to the Respondents to promote them to Class III Division II Service retrospectively w.e.f. 18.2.1999 i.e. the date on which their junior was promoted to that grade with all consequential benefits.

2. Respondents have filed their counter in which it has been stated by the Respondents that by filing this OA on 5th August, 2008, the applicants sought direction for their promotion w.e.f. 18.2.1999. Hence the grievance of the applicant is hit by the law of limitation. In this connection by relying on the decision of the Hon'ble Apex Court in the case of

Ratan Chandra Sammanta and others v Union of India and others, JT 1993 (3) SC 418 it was contended that a person who sleeps over his right not only loses his remedy but right as

well. Hence the Respondents have prayed for dismissal of this OA.

It is the contention of the Respondents that in case the relief prayed for by the Applicants is allowed then it would tantamount to unsettling a settled thing which is not permissible in the eyes of law. In this connection by relying on the decision of the Hon'ble Apex Court in the case of **State of Punjab and another v Balkran Singh**, (2007) 2 SCC (L&S) 645 (para 22) it was contended by the Respondents that it is trite law that a thing should not be unsettled after long lapse of time. The logic of forming such opinion by different courts is that no one in a service can sleep over his right and after long time come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Hence Respondents have prayed for dismissal of this OA.

Further contention of the Respondents is that the representations stated to have been submitted by the Applicants at Annexure-A/3 series are of the years 2003 followed by further representation after three years i.e. on 01-11-2006. It is trite law that mere making of representations cannot justify a belated

approach. In this connection by relying on the decision of the Hon'ble Apex Court in the case of **Karnataka Power Corporation Limited through its CMD and another v K.Thankgappan and another**, 2006 (3) SLJ 201 (SC), the Respondents have prayed for dismissal of this OA.

By referring to various events the Respondents have stated that the applicants cannot be said to be vigilant. They are indolent. Law does not help those who sit on fence and do not move within limitation. Applicants are those persons who are not entitled to any of the reliefs claimed in this OA. Hence by relying on the decision of the Hon'ble Apex Court in the case of **Nadia District Primary School Council and Anr v Sristidhar Biswas and others**, 2008 (1) SLJK 93 (SC) and **Chairman UP Jal Nigam and Anr v Jaswant Singh and Anr**, JT 2006 (10) 500, Respondents have prayed for dismissal of this OA on this count.

Next contention of the Respondents is that Applicants claim promotion retrospectively from the date their so called juniors were promoted. But neither the orders of promotion of their so called juniors have been challenged in this OA nor have they made party any such juniors to this OA.

According to the Respondents it is well established law that when seniority and promotion are challenged and persons who are claimed to be junior are not impleaded as parties, no relief can be given without giving an opportunity to such persons claimed to be juniors. In the aforesaid premises, by relying on the decision of the Hon'ble Apex Court in the cases of **Ranga Reddy v State of AP**, 1987 SCC (L&S) 271, **J.S.Dhillon v Union of India and others**, (1989) 11 ATC 499, and **Prabodh Verma and others v State of Uttar Pradesh and others**, AIR 1985, SC 167, the Respondents have prayed for dismissal of this OA.

By extracting Section 20 of the A.T. Act, 1985 (application not to be admitted unless other remedies exhausted), it was contended by Respondents that as none of the representations (Annexure-A/3 series and A/4 series) is against the promotion of their so called juniors, this OA is liable to be rejected.

In so far as merit of the matter, the contention of the Respondents is that the Applicants were employed in the field offices, Drawing Offices and Circle Office of the erstwhile South Eastern Circle and after re-organization they are working

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in the office of the Director, Orissa Geo Spatial Data Centre and are performing the jobs as are assigned to them. They have been given promotion to the post of Technical Labourer (Semi Skilled) depending upon the availability of vacancy after passing the requisite trade test. Also benefit of financial upgradation under ACP scheme has been extended to them whenever applicable. In so far as the promotion of Shri B.C.Raha is concerned it has been stated that Shri B.C.Raha Litho Machine Printer Grade II Gr. C Division II Reproduction Staff of Eastern Printing Group. Shri Raha was working as Technical Labourer (Unskilled) in the erstwhile South Eastern Circle along with the Applicants. However, after his transfer to erstwhile 102 (PLO) Printing Group (now Eastern Printing Group) Kolkata he was brought within the Technical Group D staff of the Printing Group and after appearing at the trade test he was promoted to the post of Technical Labourer (Semi Skilled) there. In all respect he was included in the Technical Group D strength of Eastern Printing Group, Kolkata and when vacancy occurred in Class III Division II, Reproduction Trade there, he appeared and passed the trade test against 30% quota and was promoted to the post of Litho Mechanic Printer, Grade

IV in the scale of pay of Rs. 3200-85-4900/- with effect from 18.2. 1999. Had the applicants been on the strength of Eastern Printing Group Kolkata, they would have availed of the same opportunity as availed by Shri Raha against 30% quota in the Printing Office. Since they are working in the office of the Director, Orissa, Geo spatial Data Centre, Survey of India, Bhubaneswar as office staff, they cannot claim the benefit available to the Technical Group D staff of a different Printing Office. However, the benefit of financial up-gradation under ACP scheme has been extended to some of them in the scale of pay of Rs.3200-85-4900/- after completion of 24 years of service.

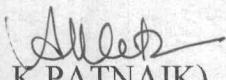
3. In term of sub para 2 of the Rules relied on by the Applicants the overall strength of Group C Division II in each Reproduction office should be taken into account separately for working out 30% vacancies. Therefore, before consideration of any case of promotion under 30% of the posts of Gr. C Division II, there must be existence of vacancy and the persons should be technically qualified. No material has been placed on record by the applicants to prove that any vacancy under 30% quota existed for them in the Directorate in which they are continuing

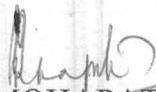
and that they were technically qualified. Since there was no sanctioned post of Class III Division II (reproduction trade) in the Directorate, question of computing 30% vacancies of such posts and considering the applicants against those posts does not arise. Hence, the Respondents have prayed that the OA being devoid of any merit is liable to be dismissed.

4. By filing MA No. 602 of 2009, Applicant sought to amend the OA by adding Shri B.C.Raha as party Respondent in this OA. While giving consideration to the merit of the matter we have also heard on the aforesaid MA and perused the materials placed on record. No rejoinder has been filed by the Applicants despite due opportunity granted to the Applicants.

5. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings. But neither in course of argument nor by filing rejoinder, have the Applicants met the points raised by the Respondents in their counter. It is trite law that none can sleep over his right and later on according to his sweet will wake up from the slumber and agitate that as promotion has been given to other he should be granted the same irrespective of the period meanwhile elapsed. Besides, it is the positive case of the Respondents that Shri Raha

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was promoted from a different seniority unit. No full proof material has been placed by the Applicants showing us existence of vacancy. No satisfactory explanation has also been given by the Applicants in regard to non-availing the opportunity by making representation when Shri Raha was promoted. Therefore, even if amendment is allowed, there would still be so many loopholes which remain unplugged. In view of the above, we find no merit in this OA. Hence this OA stands dismissed both on merit and on the ground of limitation and non-joinder/misjoinder of necessary party. MA No. 602 of 2009 is also accordingly disposed of. No costs.


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)