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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 49 of 2007
Cuttack, this the 17th day of May, 2010

Anadi Charan Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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

(M.R.MOHANTY)
VICE-CHAIRMAN

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.49 of 2007
Cuttack, this the 17th day of May, 2010

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)

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Shri Anadi Charan Behera, aged about 58 years, son of Late Jagabandhu Behera a permanent resident of Village Gajipur, Post-Paliabindha, District-Bhadrak residing in Qrs.No.III/5, Census Staff Quarters, Baramunda at present working as Statistical Assistant Grade II, Office of the Directorate of Census Orissa, Janpath, Unit-IX, Bhubaneswar, Dist. Khurda.

.....Applicant

Legal practitioner

:Mr. D.K. Mohanty, Counsel,

- Versus -

1. Union of India represented through its Secretary to Government of India, Ministry of Home Affair, Central Secretariat, North Block, New Delhi-110 001.
2. Registrar General of India, Ministry of Home Affairs, 21-A Mansingh Road, New Delhi-110 001.
3. Deputy Director of Census Operations, Orissa, Office of the Directorate of Census Janpath, Unit-IX, PO-Bhoinagar, Bhubaneswar, Dist. Khurda.
4. Shri B.Anjaiah, SI, Gr.I,
5. Shri K.Adinarayana, SI, Gr.I
6. Shri T.V.Govekar, SI, Gr.I;
7. mt. S.S.Raje, SI, Gr.I
8. Shri S.Ranganathan, SI, Gr.I
9. Shri N.Gananasekharan, SI, Gr.I
10. Shri G.Krishnamoorthy, SI, Gr.I
11. Smt. Tripta Kocher, SI, Gr.I.
12. Smt.Meenakshi Korane, SI, Gr.I;
13. Sri Rajendra Naik, SI, Gr.I
14. Sri Philamen Ambrose, SI, Gr.I;
15. Shri H.K.Endow, SI, Gr.I;
16. Sri S.S.Pandey, SI, Gr.I.

Notices be served on Respondents 4 to 16 through Registrar General, India, Government of India, Ministry of Home Affairs, 2/A, Mansingh Road, New Delhi-110 011.

....Respondents

Legal Practitioner

:Mr.U.B.Mohapatra, SSC.

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ORDER

MR. C.R.MOHAPATRA, MEMBER (A):-

The order under Annexure-A/8 dated 28.09.2006 promoting Respondent Nos.4 to 16 to the post of Statistical Investigator Grade-I from Statistical Investigator Gr.II has been challenged by the Applicant in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 with prayer to quash the said order of promotion and direct the Respondents to promote him to the said grade with effect from the date Respondents 4 to 16 being his juniors were promoted with all consequential service and financial benefits retrospectively.

2. Respondents' stand in the counter filed in this case is that the applicant was considered for promotion to the post of Statistical Investigator Gr.I on ad hoc basis w.e.f. 17.09.2002 vide order dated 17.09.2002. In the said order it was clearly mentioned that the promotion of the applicant was subject to the condition that the incumbents are free from vigilance angle. As disciplinary proceedings against the Applicant was pending by then, he was not allowed to join in the post of Statistical Investigator Gr.I in the Directorate of Census Operations, Bihar at Patna. Further case of the Respondents is that disciplinary proceedings against the applicant having been completed with award of punishment of withholding of two increments of pay without cumulative effect vide order No.30/19/2001-Vig. dated 11.08.2006, his case was considered for promotion to the post of Statistical Investigator Gr.I along with others in September, 2006. However, he could not be promoted during the currency of the penalty as per guidelines of DOP&T. The recommendations of the DPC have, therefore, been kept in a sealed cover and could be acted upon after the penalty period is over. The order of the Respondents giving promotion to Respondents Nos.4 to 16 along with others vide order dated 28.09.2006 is just and proper and does not require to be quashed by this Tribunal. Accordingly, Respondents have prayed for dismissal of this OA.

3. In the rejoinder the Applicant, besides reiterating some of the stand taken in his Original Application, by taking support of the decision of the Chandigarh Bench of the

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Tribunal in the case of Praveen Kumar Aggarwalla v Indian Council of Agricultural Research and others, 1988 (8) ATC 496 holding that withholding promotion during the currency of the minor penalty is bad in law, has tried to make out a case in his favour.

4. Heard Learned Counsel for both sides and perused the materials placed on record. It is seen from the record that during the pendency of this Original Application the applicant superannuated from service w.e.f. 29.02.2008 on reaching the age of retirement. It is also seen from the record that the order of punishment in question, had been challenged in this Tribunal in another Original Application No. 221 of 2007 and in order dated 04.03.2008, this Tribunal disposed of the said OA. Relevant portion of the order dated 04.03.2008 is extracted herein below:

“On a microscopic examination of the matter, it does not look that the Disciplinary Authority as also the Appellate Authority have looked to the matter closely and therefore, there are no option except to quash the order of the Disciplinary Authority dated 11.08.2006 (Annexure-A/4) as also the Appellate Authority dated 30.04.2007(Annexure-A/6) and remand the matter to the Disciplinary Authority for giving fresh consideration in the matter in accordance with Law/Rules. In the result, this Original Application stands allowed and the order of penalty under Annexure-A/4 dated 11.08.2006 and the Appellate Order under Annexure-A/6 dated 30.04.2007 are quashed. The matter is remanded back to the Disciplinary Authority. There shall however be no order as to costs.”

The Respondents challenged the aforesaid order of this Tribunal before the Hon'ble High Court of Orissa in WP (C) No.6672 of 2008 and the matter was disposed of by the Hon'ble High Court on 02.07.2009. Relevant portion of the order is extracted herein below:

“Having perused the reasons assigned by the Tribunal, we find no reason to interfere with the impugned order. Learned Additional Solicitor General submitted that the opposite party has already retired from service in the meantime. Since the opposite party has retired in the meantime, pendency of the disciplinary proceeding shall affect cause delay in payment retirement benefits.

We, therefore, while declining to interfere with the impugned order direct the department to conclude the disciplinary proceeding as early as possible preferably within a period of four months.”

5. In course of hearing, by producing copy of the order No.30/19/2001-Vig.

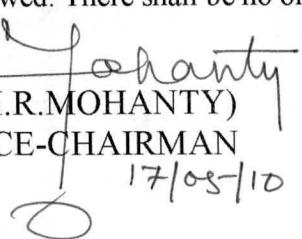
Dated 29.3.2010, Learned Counsel for the Applicant has brought to the notice of this

Tribunal that the Disciplinary Proceedings has ended without any punishment. Relevant portion of the order is quoted herein below:

"19. NOW THEREFORE, in exercise of powers conferred under Rule 12 of CCS (CRA), Rules 1965, the undersigned decide not to impose any penalty on Shri Anadi Charan Behera."

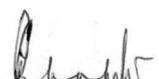
6. It is the positive stand of the Respondents that as the applicant was undergoing the penalty, his case was considered by the DPC but the recommendations of the DPC was kept in a sealed cover and the same would have been opened and acted upon soon after the penalty was over. The order of punishment having been set aside by the Appellate Authority, the Respondents are duty bound to open the sealed cover and act upon the recommendations of the DPC; which if not already done, shall be done by the Respondents within a period of 45 days from the date of receipt of this order. If the DPC's recommendations are positive, applicant shall be entitled to promotion retrospectively from the date his immediate juniors were promoted under Annexure-A/8 to the post of Statistical Assistant Gr.I, but in that event he would be entitled to only notional fixation of pay and consequential revision of pension and pensionary dues which the Respondents shall release within a period of 60 days thereafter.

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


(M.R.MOHANTY)

VICE-CHAIRMAN

17/08/10


(C.R.MOHAPATRA)

MEMBER (ADMN.)