90

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.560 of 2006
Dumuka Naik .... Applicant
-vrs-
Union of India & Ors. .... Respondents

Original Application No.55 of 2007
Smt.Bidyut Prava Moharana.... Applicant
-vrs-
Union of India & Ors. .... Respondents

Cuttack, this the 09th day of September, 2009

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?

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 560/2006 & 55/2007
Cuttack, this the 09th day of September, 2009

C O R A M:
THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

OA No. 560 of 2006

Dumuka Naik 49 years, son of Patta Naik, Balliasahi, Dalsora, Bahalda, Dist. Mayurbhanj at present UDC under the control of the Welfare and Cess Commissioner, Bhubaneswar.

....Applicant

By Advocate :M/s.J.Sengupta, D.K.Panda, G.Sinha, A.Mishra

-Vs.-

1. Union of India represented through Secretary to Government of India, Ministry of Labour and Employment, New Delhi.
2. Director General, Labour Welfare, Jaisalmer House Mansingh Road, New Delhi.
3. Welfare and Cess Commissioner, Plot No.449, Nageswartangi, Bhubaneswar.
4. Smt. B.P.Moharana, Head Clerk cum Accountant, Office of the Deputy Welfare Commissioner, Barbil, Keonjhar.

....Respondents

By Advocate :Mr.S.B.Jena, ASC
(For Respondents 1 to 3)
M/s.Umakanta Mishra, S.K.Sethi
(For Respondent No.4)

OA No. 55 of 2007

Smt. Bidyut Prava Moharana, aged about 50 years, W/o.Sarbeswar Moharana now working as Head Clerk cum Accountant, in the office of the Deputy Welfare Commissioner, Barbil, At/Po-Barbil, District-Keonjhar.

....Applicant

By Advocate :Mr. Sidheswar Mallick

-Vs.-

1. Union of India represented through Secretary to Government of India, Ministry of Labour and Employment, New Delhi.
2. Director General, Labour Welfare, Jaisalmer House Mansingh Road, New Delhi.

3. Welfare and Cess Commissioner, Plot No.449, Nageswartangi, Bhubaneswar.
4. Shri Dumuka Naik, aged about 49 years, S/o.Patta Naik, Baliasahi, Dalsora, Bahalda, Dist. Mayurbhanj at present working a UDC under the control of the Welfare and Cess Commissioner, Orissa, Bhubaneswar.

....Respondents

By Advocate :Mr.U.B.Mohapatra, SSC.

.....

O R D E R

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

OA No. 560/06 was filed by the Applicant challenging his non-promotion and promotion of Respondent No.5 to the post of Head Clerk-cum-Accountant vide order under Annexure-A/3 dated 28.12.2005 from the post of Upper Division Clerk in the Department of Welfare and Cess Commissioner functioning under the Ministry of Labour and Employment. By filing counter, the Respondents have brought to the notice of this Tribunal that meanwhile, in terms of the direction issued by the higher authority on the appeal preferred by the Applicant review DPC was convened and on the recommendation of the Review DPC, the applicant was promoted to the post of Head Clerk cum Accountant on reverting the Respondent No.4 to his former post. In enclosing copies of the order of promotion and joining report of the Applicant to the counter as Annexure-R/12 &

R/13, the official Respondents have prayed for dismissal of this OA being infructuous. No rejoinder has been filed by the Applicant. Respondent No.4 by filing a counter has also opposed the contention of the Applicant made in this OA. However, in course of hearing, it was submitted by Learned Counsel for the Applicant that he was entitled to be promoted from the date Respondent No.4 was promoted to the said post. This was opposed by the Learned Counsel for the Respondents by stating that promotion cannot be effected prior to the date one has reported to duty. As it was ordered by the competent authority that the promotion of the applicant would be effected from the date of his joining and admittedly she joined on 31.1.2007, she was not entitled to the claim of ante-dating his date of appointment.

2. Being aggrieved by the order of reversion upon promotion of the Applicant in OA No. 560/2006 in Annexure-R/12, the Applicant who was promoted to the post of Head Clerk Cum Accountant vide order dated 28th December, 2005 filed Original Application No.55 of 2007 on the ground that as the post in question was meant to be filled up on the basis of

selection and he being found suitable by the duly constituted DPC was promoted to the post on regular manner, his reversion is not sustainable especially because when before passing the order adversely affecting his interest no opportunity was allowed to him to have his say in the matter. By filing counter by official Respondents it was brought to the notice of this Tribunal that on the basis of the order passed on the appeal of Mr.D. Naik, Review DPC was convened and on the recommendation of the Review DPC Shri D.Naik was promoted by reverting the present Applicant to the former post. In enclosing copy of the gradation list the Respondents have also substantiated the stand that Shri D.Naik who belongs to ST community was senior to the present Applicant in the gradation list of UDC prepared and circulated amongst the employees. Accordingly, it has been stated by the Respondents that in order to rectify the mistake in the matter of promotion, provision of Review DPC has been provided and as it was found that there has been mistake while not recommending the case of Shri D.Naik, Review DPC was convened and as per the recommendation of the Review DPC

Shri Naik was promoted by reverting the Applicant to his former post; especially when there was no other vacancy. While disputing the contention of the applicant that there is another vacancy, it has been brought to the notice of this Tribunal by the Respondents that another post of Head Clerk cum Accountant will fall vacant only on and after 31.3.2008 in the event of retirement of Shri Rjendra Padhi but at that relevant time there was no other vacant post to accommodate the Applicant. Applicant by filing rejoinder more or less reiterated his stand taken in the OA.

3. Having given our thoughtful consideration to the submission made by way of reiteration of the stand taken in their respective parties, perused the documents placed on record.

4. From the submission and records there is no shadow on the question of seniority between Shri D.Naik, Respondent No.4 and the present Applicant and it is established on the basis of record that the Applicant is junior to Respondent No.4 in the grade of UDC as per the latest gradation list of UDC prepared and circulated to all concerned by the official

Respondents. It is also not in dispute that Respondent No.4 belongs to ST community. From the letters filed by the Respondents with counter as Annexure-R/11 & R/12 it is evident that there was some doubt in regard to applicability of reservation while filling up of the post in question. This was made clear by the Ministry to the extent quoted herein below:

> "Stand taken in para 1 at page 2 of office letter that as per the post based roster circulate vide DOPT's OM No.36012/2/96-Estt (Res) dated 2.7.97 such limited posts (promotion quota) do not come under purview of the reservation point "does not appear to be correct because in the aforesaid OM of DOPT even model roster for promotion for cadre strength of 13 posts has been prescribed. With regard to h is promotion to the post of HCA, the statement made in para 3 at page 2 of office letter that Shri Naik failed to be graded on Top of the panel as done by the DPC, the position is not clear. **As per instructions for promotion on selection cum seniority the bench mark is good and the promotion is to be made on the basis of seniority.**"

5. It is also clear from the record that the Respondent No.4 was found fit by the DPC but for the grading given by the DPC the applicant was placed above the Respondent No.4 and as there was only one post he was promoted. This was not the correct procedure adopted by the DPC or by the Respondents;

because as per the OM dated 8th February, 2002 of the DOP&T there would be no question of supersession while filling up of the post meant to be filled up on the basis of selection cum seniority. As such we find no irregularity or illegality in the action of the official Respondents in convening the Review DPC and thereafter acting upon the recommendation of the Review DPC in promoting Respondent No.4 thereby reverting the Applicant to his former post.

So far as the argument that the order of reversion is a nullity having been issued without complying with the principles of natural justice, we do not feel it necessary to deal with this issue in great detail as it has been held by the Hon'ble Apex Court in the case of **Punjab Natoinal Bank v. Manjeet Singh** [2007] 1 SCC (L&S) 16 that "the principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising there under is disputed and not

where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice." In the present case had the applicant in OA No. 55 of 2007 been given any opportunity, the result would have been the same. In view of the above we find no substance in any of the points made in this OA to annul the order of reversion of the Applicant. Hence this OA sans any merit and is accordingly dismissed.

6. But we find substantial force in the contention of the Learned Counsel for the Applicant in OA No. 560/2006 that the Applicant is entitled to be promoted from the date when Applicant in OA No. 55/2007 was promoted but without any back wages by application of the ratio of the decision rendered in the case of **Union of India v B.M.Jha**, 2008 (1) SLR 488.Respondents are directed to comply with the above direction within a period of thirty days from the date of receipt of this order.

7. In the result, while dismissing OA No. 55/07 being without any merit, we dispose of OA

99

No.560 of 2006 with the observation and direction indicated above. No costs.

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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