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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 79 of 2007
Cuttack, this the 21st day of January, 2011

Hemanta Kumar Sahoo Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

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

W.L.
(A.K.PATNAIK)
Member(Judl)

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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 79 of 2007
Cuttack, this the 21st day of January, 2011

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....

Hemanta Kumar Sahoo, aged about 47 years, Junior Accounts Officer, Office of the Director Accounts (Postal), Cuttack.

.....Applicant

By legal practitioner: M/s.D.P.Dhalsamanta,P.K.Behera, Counsel.

-Versus-

1. Union of India represented through its Director General, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda-751 001.
3. Director of Accounts (Postal), Mahanadi Vihar, Cuttack-753 004.
4. Shri K.C.Rout,
5. Shri S.K.Pattnaik,
6. Purna Ch. Pradhan,
7. Shri B.B.B.Kar,
8. Jayaram Nayak,
9. Binod Bihari Das
10. Dhaneswar amal

[All are Junior Accounts Officer, Office of the Director Accounts (Postal), Mahanadi Vihar, Cuttack-753 004].

....Respondents

By legal practitioner: Mr. U.B.Mohapatra, SSC.

O R D E R

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

The Applicant is, at present, working as Junior Accounts Office in the Office of the Director Accounts (Postal), Cuttack. In nutshell, his case is that on being recruited he joined at the Dhenkanal Division of the Postal Department on



23.7.1985 as Postal Assistant. He appeared at the Junior Accounts Officer Examination conducted by the Respondents' Department in the year 1992 and got qualified by securing sixth position in the merit list of the successful candidates published by the Respondents in Annexure-A/1 dated 06-01-1994. While the matter stood thus, Respondents' Department conducted IPO Examination in the year 1993. Applicant appeared at the said examination and declared selected on 22.4.1994. Consequently he was appointed as IPO on 10.9.1996. While he was continuing as Sub Divisional Inspector (Postal), he was asked to exercise his option either to continue in the cadre of IPO/IRM or JAO. According to the Applicant he exercised his option to continue in the JAO cadre. Thereafter, applicant was intimated by the Respondent No.2 that no option needs to be obtained from the applicant as he has regularly been absorbed in the IPO/IRM cadre meanwhile. Respondent No.3 issued memo dated 01-01-2002 containing the names of the employees who were to be promoted to JAO in which the name of the applicant and two other similarly situated employees did not find place. Being aggrieved, one of the employees namely Dhaneswar Samal, whose name did not figure along with the applicant in the list

dated 01-01-2002 approached this Tribunal in OA No. 128 of 2002. This Tribunal in order dated 6th August, 2004 while quashing the list dated 01-01-2002 directed the Respondents to consider the case of Dhaneswar Samal for promotion to JAO as and when his turn matures. Thereafter, applicant approached this Tribunal in OA NO. 838 of 2005 seeking direction to the Respondents to absorb him in the JAO cadre. During the pendency of the said OA applicant was appointed as JAO in the scale of pay of Rs.6,500-10,500/- vide Memo under Annexure-A/2 dated 17.2.2006. Consequently, applicant being relieved vide memo dated 20.3.2006 from his previous assignment reported to duty as JAO on 31.3.2006 after which the OA was disposed of by this Tribunal on 22.6.2006 as infructuous. Respondents published the gradation list of the JAO upto 31.3.2006 (Annexure-A/4) in which the name of the applicant was shown at Sl.No.11 i.e. below the name of the Respondents 4 to 11 although they had ranked below in the merit list of JAO examination held in the year 1992. Through Annexure-A/5 representation dated 5.5. 2005, applicant sought rectification of the mistake caused in the gradation list by placing his name above the names of Respondents 4 to 11. Since no action was

taken on his representation he approached this Tribunal in OA No.805 of 2006. This Tribunal disposed of the said OA No. 805 of 2006 on 28.11.2006, without expressing any opinion on the merit of the matter, at the admission stage directing the Respondent No.2 to dispose of the representation of the applicant dated 5.5.2006 within two months. Applicant carried the order of this Tribunal dated 28.11.2006 along with a fresh representation dated 12.12.2006. The representation of the Applicant was rejected and communicated to the applicant in Annexure-A/6 dated 13.2.2007. Hence by filing the present Original Application under section 19 of the A.T. Act, 1985, the Applicant prays for direction to the Respondents to fix his seniority above Respondent No.4 (K.C.Rout) in the gradation list under Annexure-A/4 and grant him all consequential benefits. The grounds set forth, by the Applicant, in this OA, in support of the aforesaid reliefs are as under:

- (i) as per the guidelines issued by the DGP&T vide letter No.17-1/77-SEA dated 6-5-77 and in accordance with Rule 7 of the JAOs service, Postal Wing Recruitment Rules, 1977 seniority of official who will be appointed as JAO should have been determined on the basis of the rank obtained in Part II examination on the Circle basis. As the applicant ranked senior in the merit list of the JAO examination conducted in the year 1992 showing the names of the persons ranked below in the merit

list, above in the gradation list being bad in law is liable to be set aside;

- (ii) Applicant is not responsible for his appointment/promotion as JAO when other successful candidates were appointed/promoted to the said grade despite his option. As such, for no fault of the applicant, showing others above the applicant in the gradation list is not sustainable in the eyes of law;
- (iii) As per the Rules and various judge made laws since applicant was ranked senior ought to have been shown above the names of the persons who were ranked below in the merit list of the JAO examination, 1992 irrespective of his date of appointment/promotion in the said gradation though inclusion of his name in the said grade belatedly was not attributable to him;
- (iv) Respondents rejected the representation of the applicant on the ground that the applicant had not exercised his option to be promoted/appointed as JAO before filing the earlier OA No.838 of 2005 before this Tribunal. Whereas the option exercised by applicant and others were duly forwarded by the Senior Accounts Officer o the Respondent No.2 vide Annexure-A/7 dated 2.7.2001. Hence the rejection of the representation of the applicant was without due application of mind;
- (v) Once the applicant exercised his option to remain in the JAO cadre pursuant to the option called for by the Respondent No.3 vide memo dated 2.5.2000 and 20.6.2000, there was no justification on the part of the Respondent No.2 to ask for the explanation vide memo dated 29.3.2001 as to why he is willing to work in JAO cadre instead of acting on the option exercised by the applicant. Hence delay in inclusion of his name in the cadre of JAO cannot deprive him of getting his place and position in the gradation list;
- (vi) Applicant submitted representation to the Respondent No.2 on 24.5.2003 and 26.5.2003. The said representation was rejected and communicated

to the Applicant in Annexure-A/8. As such the ground taken in the order of rejection that the applicant did not submit any representation after the appointment of other selected candidates shows the non application mind of the Respondent No.2;

(vii) Although Shri K.C.Rout, who was 8th in the merit list and joined as JAO on 20.12.2002 and Shri Sankar Pradhan, 5th in the merit list of JAO examination conducted in the year 1992 joined as JAO on 8.5.2003, Shri Pradhan was shown above Shi Rout whereas the applicant was discriminated.

2. Respondents vehemently opposed the stand of the Applicant mainly on the grounds that in terms of the provisions contained in para 17.10 of Chapter 54 to Swamy's Manual on Establishment & Administration for Central Government Offices, as a general principle promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion, whichever is later. As per para 6.4.4 of the said Manual ibid, where vacancies relate to earlier year(s), promotion from a consolidated list is always prospective. As the name of the applicant was deleted from the merit list he was not entitled to promotion to JAO cadre from a retrospective date. As the Applicant was subsequently promoted to JAO and joined on 31.3.2006 , his seniority can be counted only from the date of his joining in the cadre and not retrospectively with effect from the date his immediate junior as

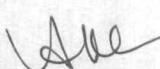
per the merit list, was promoted to JAO. As far as S/Shri Sankar Prasad Pradhan and K.C.Rout are concerned, the stand of the Respondents is that Sankar Prasad Pradhan ranked senior to Shri K.C.Rout. Shri Sankar Prasad Pradhan was promoted to the cadre of JAO vide Office Order No.Admn.1/1737 dated 04.09.2002 whereas Shri K.C.Rout was promoted to JAO vide order No.Admn.1/1769 dated 20.12.2002. However, due to delay in relieve, on administrative reason, from the old post, Shri Pradhan joined the post of JAO after the joining of Shri K.C.Rout. As the delay was not attributable to the concerned officer, he was allowed seniority on notional basis over his immediate junior. Further contention of the Respondents is that the applicant is not entitled to the relief as he claimed in this OA as he had worked for more than nine years in a promotional post of IPO till his posting as JAO. Hence the Respondents have prayed for dismissal of this OA.

3. Despite notice and adequate opportunity, Respondents 4 to 10 have neither appeared through any counsel nor filed counter. Similarly no rejoinder to the counter filed by Respondent Nos.1 to 3, has been filed by the Applicant. However, relying on the submissions made in the respective

pleadings, Learned Counsel appearing for the parties have reiterated the grounds in support of the respective stand. We have given our thoughtful consideration to various points raised by the parties and perused the materials placed on record. From the record it reveals that the applicant exercised his option to be promoted to the cadre of JAO instead of remaining in the IPO cadre. It also reveals that the said option of the applicant was duly forwarded by his immediate authority in letter under Annexure-A/7 dated 02.07.2001 for consideration. But as it appears, for one reason or the other the said option of the applicant was not taken into consideration and, subsequently, the Respondents promoted the applicant to the post of JAO cadre out of the merit list prepared by them. Once the option was accepted and the applicant was promoted to JAO cadre obviously he is entitled to due seniority; as law is well settled that seniority will have to be decided on the basis of the position in the merit list prepared in a selection. Non-acceptance of the option at the earliest opportunity is not attributable to the applicant, as such the applicant is entitled to the same relief as has admittedly been extended to Mr. Pradhan by the Respondents. Hence, we have no option but to hold that the

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applicant is entitled to have his seniority fixed in the gradation list of JAO above the name of Shri K.C.Rout who was placed below the name of the applicant in the merit list prepared by the Respondents for appointment/promotion to the post of JAO; which the Respondents shall do within a period of sixty days from the date of receipt of copy of this order. Consequently, the Applicant shall be entitled to all consequential service benefits except financial benefits, if any, granted to the juniors of the Applicant.

4. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


(A.K. PATNAIK)
MEMBER (JUDL)


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