

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.127 of 2008
Cuttack, this the ~~8~~th day of December, 2009

Smt. Subhasmita Acharya 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?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

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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)

Mrs. Subhasmita Acharya, aged about 39 years, W/o.Ajit Acharya,
Assistant Audit Officer, O/O. Accountant General,
At/Po.Bhubaneswar, Dist. Khurda.

.....Applicant
By Advocate : M/s. Chitra Padhi, M.Devi, Advocate.

- Versus -

1. Union of India represented through Comptroller & Auditor General of India, 10 Bahadur Shah Zafar Marg, New Delhi-2.
2. The Principal Accountant General (Civil Audit), Orissa, Bhubaneswar, Dist. Khurda.
3. The Senior Accountant General (Admn.), Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
4. Bansidhar Behera-1, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
5. Ch.Bijay Kumar Nanda, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
6. Gouranga Chandra Panda, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
7. Ashok Kumar Nanda, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
8. Pradipta Kumar Khatoi, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
9. Deepak Mohanty, Assistant Audit Officer, Offic of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
10. Shribasta Baliarsingh, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
11. Angad Nag, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit), Orissa, Bhubaneswar.
12. Nanda Kumar Bai, Assistant Audit Officer, Office of the Principal Accountant General (Civil Audit) Orissa, Bhubaneswar.

....Respondents

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

O R D E R

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

The case of the applicant in substance is that adverse entries in the CCR pertaining to the period from 01.04 2002 to 18.10.2002 was the

reason of supercession by her juniors vide order under Annexure-A/4 dated 28.12.2004 to the post of Assistant Audit Officer. The said adverse entries in her CCR were expunged vide order under Annexure-A/6 dated 24.11.2005. After the expunction of the CCR, as per the Rules, her case ought to have been considered/reconsidered by convening the Review DPC. But she was considered and promoted to the post of Assistant Audit Officer prospectively i.e. w.e.f. 02.01.2006 vide order under Annexure-A/7 dated 02.01.2006. By filing representation she sought ante-dating her date of promotion. The said representation was rejected by the authorities under Annexure-A/11 dated 26.07.2007. It is the contention of the Applicant that in terms of the DOP&T OM No. 22011/5/86-Estt.(D) dated 10th April, 1989 after expunction of the adverse remarks her case ought to have been reconsidered by holding a Review DPC for promotion from the date her juniors were promoted and the same having not been done, the action of the Respondents is not only arbitrary and contrary to the aforesaid instruction but also is in violation of the DOP&T instruction No.35034/7/97-Estt.dated 8th February, 2002 directing there should be no supersession in the matter of promotion. Hence this Original Application with the aforesaid prayers:

- “(i) Quashing of the order vide Memo dated 26.07.2007 (Annexure-A/11);
- (ii) Issuance of direction to the respondents to allow the applicant the benefit of promotion to the rank of Assistant Audit Officer retrospectively with effect from 03.01.2005 in accordance with the order of the DOP&T dated 10.04.1989;
- (iii) Any other order as deemed fit and proper in the facts and circumstances of the case.”

2. Respondents filed their counter supporting the order of rejection of the prayer of the applicant for antedating her date of promotion to the date when her juniors i.e. Respondents 4 to 12 were promoted. It is the stand of the Respondents that after expunction of the adverse CCR pertaining

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to the period from 01.04.2002 to 18.10.2002 was expunged, review DPC was convened on 07.07.2006 for considering the prayer for antedating her date of promotion to the grade of Assistant Audit Officer w.e.f. 03.01.2005. But the Review DPC did not find sufficient grounds to alter the decision taken by the earlier DPC for the panel year 2005. It has been stated that as after assessing/reassessing the records of the applicant, the Review DPC did not recommend the case of the applicant for promotion along with her juniors' w.e.f. 03.01.2005 or antedating her date of promotion, her request was rejected and communicated to her under Annexure-A/11. It has further been averred by the Respondents that one cannot claim promotion as a matter of right. Since the case of the applicant was duly considered by the review DPC and the review DPC did not recommend her case for antedating her date of promotion, she can hardly have any grievance on the same. Accordingly, Respondents have prayed for dismissal of this Original Application.

3. Learned Counsel appearing for both sides have reiterated their respective stand taken in the pleadings and having heard them at length perused the materials placed on record. No counter has been filed by any of the private Respondents possibly because no relief has been claimed by the Applicant against them except making them parties to this OA. Neither of the parties have produced the Rules regarding filling up of the post in question especially showing whether it is a selection or non-selection post and/or whether it was to be filled up by way of merit cum seniority or seniority cum merit, what is the bench mark, if any, and how many vacancies were there for which DPC was convened and recommended for promotion of persons whose names figured at Annexure-A/4. In the absence of records, we have been deprived of knowing what is the bench mark/grading required for recommendation for promotion to the post in question. Except bald allegation,

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no document has also been produced by the Applicant showing that she is senior to Respondents 4 to 12. In the absence of all the above, this Original Application cannot be said to be in order in all respects. It is seen from the records that the Respondents rejected the representation of the Applicant seeking ante-dating her date of promotion to 03.01.2005 without any reason and in the counter also the reason why the committee did not find '**sufficient grounds**' to alter the decision and as to whether '**sufficient**' ground is required for doing so.

4. Numerous decisions of the Hon'ble Apex court rendered in the past have laid down and reiterated the principles which the courts must apply while considering the question whether the failure to give reasons amounts to denial of justice "reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". This position was also highlighted in the case of Chairman and Managing Director, United Commercial Bank and others v P.C.Kakkar 2003 (4) SCC 364. It is trite law that even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. As stated above, since no reason has been ascribed in the order of rejection under Annexure-A/11 and even in the counter, the rejection amounts to violation of principles of natural justice. Hence, the letter of rejection under Annexure-A/11 is hereby quashed. The matter is remitted back to the Respondents to reconsider the case of the Applicant by convening a fresh Review DPC keeping in mind the Government of India order and our observations in paragraphs 3 & 4 above and pass a reasoned order within a period of 90(ninety) days from the date of receipt of this order.

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5. With the aforesaid observation and direction this OA stands allowed. There shall be no order as to costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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