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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 610 OF 2010
CUTTACK, THIS THE 8th DAY OF February, 2012

Chittaranjan Panda..... Applicant

Vs

Union of India & Others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes.

(A.K.PATNAIK)
MEMBER (JUDL.)

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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 610 OF 2010
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CORAM :

HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)
&
HON'BLE MR. A.K.PATNAIK, MEMBER(JUDL.)

Chittaranjan Panda, aged about 54 years, Son of Late Sudarsan Panda, a permanent resident of At-Kutilo, PO-Baghuni, Dist-Cuttack, presently serving as Additional Registrar, Railway Claims Tribunal, Bhubaneswar.

.....Applicant

Advocate(s) for the Applicant - M/s J.Sengupta, G.Sinha, A.Mitra

VERSUS

1. Union of India represented through the Secretary to Government of India, Ministry of Railways, Rail Bhawan, New Delhi.
2. Union Public Service Commission, represented through its Secretary, Dholpur House, New Delhi.
3. General Manager, East Coast Railways, ECOR Sadan, Samanta Vihar, Chandrasekharpur, Bhubaneswar, Orissa, PIN-751017.
4. Chief Personnel Officer, East Coast Railways, ECOR Sadan, Samanta Vihar, Chandrasekharpur, Bhubaneswar, Orissa, PIN-751017.
5. Durga Das, Deputy Chief Commercial Manager (TC), N.F.Railway, Maligaon, Guwahati-11, Assam, Pin-781011.
6. L.S.Verma, Deputy Chief Commercial Manager (FM), West Central Railways, General Manager's office, Jabalpur, (Opposite Indira Market), Madhya Pradesh, Pin-48201.
7. Rajiv Gupta, A.G.M(I.T), IRCTC Customer Care, State Entry Road, IRCA Building, (Behind New Delhi Reservation Centre) New Delhi-1, Pin-110001.
8. L.Veera Narayana, Deputy Chief Commercial Manager (Rates & FM) General Manager's Office, Southern Railway, Park Town, Chennai, Tamilnadu, Pin-600003.
9. Neeraj K.Mouriya, Joint Director (Rail Movement) Room No-182, Krish Bhawan, Department of Food Public Distribution, New Delhi, Pin-110001.
10. P.K.Sharma, Divisional Commercial Manager, Ratlam Division, Western Railway, Divisional Railway Manager's Office, Do-Batti, Ratlam, Pin-457001, Madhya Pradesh.

..... Respondent

Advocates for the Respondents - Mr. S.K.Ojha

ORDER

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

The undisputed facts of the case are that a DPC was held in the UPSC on 28 and 29 of May 2004 for recommending the names of eligible Group-B officers of the Railways for promotion to Indian Railway Traffic Service (hereinafter referred to as IRTS) Group-A, Jr. Scale against 27 vacancies for the year 2002-03 and 25 vacancies for the year 2003-04. It is also not in dispute that whereas Group-B cadre is controlled zonewise, the IRTS, Group-A cadre is controlled by the Ministry of Railways (Railway Board). A Group-B officer of a particular zone, who is eligible, is considered for promotion to the IRTS, Group-A against the vacancies available in that particular zone only. The applicant is a Group-B officer of the Railway, who was working in South Eastern Railways, and there were two each unreserved vacancies available in the IRTS, Group-A for the year 2002-03 and 2003-04. In the DPC, the Group-B officers in the South Eastern Railway senior to the applicant were empanelled. The applicant, though was in the consideration zone for 2002-03 vacancies as well as 2003-04 vacancies, he was not required to be assessed as the DPC had found his seniors to be fit against available vacancies.

2. The contention of the applicant is that the DPC had empanelled the four officers against the vacancies of 2002-03, who

retired on superannuation in the vacancy year 2003-04 and these vacancies were not taken into account by the DPC while recommending the panel for the vacancy year 2003-04, as a result of which, he was considered only in a supplementary DPC which was convened to fill up these four vacancies (3 General and 1 ST) for the vacancy year 2003-04. He claims that due to supplementary DPC and the decision to grant the promotion with retrospective effect, i.e. from 29.11.2005, he has been disadvantaged vis-à-vis others, who had got promotion against 2003-04 vacancies based on the recommendations of the original DPC held on 28 and 29 of May, 2004.

3. The contention of the Respondents is that the supplementary DPC which met on 21.11.2005 considered the vacancies for the year 2003-04 due to the empanelled officers having retired during the same year, i.e. vacancy year 2003-04.

These four officers are:

- (i) A.K.Sinha (CR)
- (ii) F.D.Cheng (ST) (NFR)
- (iii) K.G.V.Krishnaiah (SCR)
- (iv) P.P.Singh (WR)

Due to the stagnation prevailing in the South Eastern Railway and the Northern Railway, one vacancy each from Central Railway and North Frontier Railway were shifted to South Eastern

Railway and the Northern Railway respectively and other two vacancies were retained in the Railways to which they originally belonged. As far as South Eastern Railway was concerned, at the time when the original DPC met on 28 and 29 of May, 2004, the vacancy had not been shifted to South Eastern Railway and the applicant belonging to South Eastern Railway could not have claimed consideration against the vacancy available in Central Railway. It is against this fortuitous circumstance that the supplementary DPC had taken place.

4. Counter and rejoinder have been filed. We have heard the Ld. Counsel for the parties in extenso and perused the material available in record. Perusal of records and sequence of events would show that there was no case of misreporting or incorrect reporting of the vacancies by the Respondents to the DPC. We find that on the advice of the UPSC, the promotions to IRTS, Group-A, Jr. Scale, based on the recommendation of the supplementary DPC have been given effect to with prospective effect, i.e. 29.11.2005. So also is the case in respect of promotions given based on the recommendations of the original DPC.

5. The DPC guidelines issued by the Nodal Ministry of the Govt. of India, i.e. Ministry of Personnel and Training, have prescribed the criteria for determination of vacancies for the purpose of preparing the zone of consideration of eligible officers

for promotion to the next higher grade. Where a DPC has already been held in a year, further vacancies arise during the same year due to death, resignation, voluntary retirement, etc., or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, the following procedure should be followed:-

"(i) Vacancies due to death, voluntary retirement, new creations, etc., clearly belonging to the category which could not be foreseen at the time of placing facts and material before the DPC. In such case, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If, for any reason, the DPC cannot meet for the second time, the procedure of drawing up of yearwise panels may be followed when it meets next for preparing panels in respect of vacancies that arise in subsequent year(s).

(ii) In the second type of cases of non-reporting of vacancies due to error or omission (i.e., though the vacancies were there at the time of holding of DPC meeting they were not reported to it) results in injustice to the officers concerned by artificially restricting the zone of consideration. The wrong done cannot be rectified by holding second DPC or preparing a yearwise panel. In all such case a review DPC should be held keeping in mind the total vacancies of the year."

6. One of the factors which need to be reckoned is that a vacancy is caused either because of the death, superannuation or

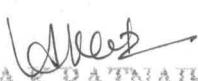
promotion of an incumbent to the next higher grade thereby releasing a post. In the present case, the whole controversy seems to have arisen due to the fact that DPC was held in May, 2004 to consider the eligible offices for two years together and yearwise panel has been recommended. While recommending the panel, it appears that the retirement of some of the offices in the panel somehow escaped notice of the DPC. As we are aware the recommendations of the DPC become effective only after the approval by the competent authority and orders are issued promoting the officers who are empanelled. We find that the orders of promotion of the empanelled offices by the original DPC were issued on 09.08.2004 and 12.08.2004. By this time, the four empanelled officers belonging to Central Railway, NF Railway, SC Railway and Western Railway had retired by the end of December, 2003. Hence, though empanelled, they did not get promoted as promotions are prospective. As such, to say that because of their retirement, four vacancies in the IRTS, Group-A occurred during 2003-04 will not be correct inasmuch as they have not physically released any post in the IRTS, Group-A, Jr. Scale. Possibly an extended panel by the original DPC could have avoided a situation like the one we are embroiled in.

7. Be that as it may, we refrain ourselves from opening a Pandora's box to interfere with the proceedings of the original

DPC as well as supplementary DPC at this stage, particularly when they have since long been implemented. As a matter of fact, the applicant has acquiesced in his position of promotion way back in 2005 and thereafter also has been promoted to the next higher grade, i.e., Jr. Administration Grade, in the IRTS without demur.

8. The matter regarding promotion of Group-B Railway officers to Jr. Time Scale of Indian Railway Traffic Service, Group-A has remained settled and any interference at this stage will unsettle the settled position not only in the South Eastern Railway but in all other zones of the Indian Railways where such promotions have taken place. It is not only the present applicant, who is involved in the promotion w.e.f. 29.11.2005, there are two others belonging to other zones of the Railways who are covered under the same promotion order dated 20.04.2006. We are, therefore, of the view that the applicant has not made out a strong case for getting any relief as claimed in this O.A.

9. In view of the above, the O.A. stands dismissed.
Parties to bear their own cost.


(A.K.PATNAIK)
MEMBER (JUDL.)


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