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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 761 of 2011
Cuttack, this the 10th day of September, 2014

Gangadhar Mishra Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 761 OF 2011
Cuttack, this the 10th day of September, 2014

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (Judl.)
HON'BLE MR. R.C. MISRA, MEMBER (Admn.)
.....

Gangadhar Mishra,
Aged about 49 years,
Son of Bipra Charan Mishra,
Permanent resident of At/PO- Mukunda Prasad (Baula Sahi),
PS/Dist- Khurda- 752057, Odisha,
At present working as Stenographer, Grade-II,
In the office of Regional Director (SER),
Central Ground Water Board, Division-X,
Bhujal Bhawan, Khandagiri Chhak, PS- Khandagiri,
Bhubaneswar-751030, Odisha.

.....Applicant

Advocate(s)..... M/s. K.C.Kanungo, C. Padhi, H.V.B.R.K.Dora

VERSUS

Central Ground Water Board, represented through

1. Chairman,
Central Ground Water Board,
Ministry of Water Resources (Govt. of India),
Bhujal Bhawan, N.H-IV,
Faridabad, Haryana.
2. Director (Admn),
Central Ground Water Board,
Ministry of Water Resources (Govt. of India),
Bhujal Bhawan, N.H-IV,
Faridabad, Haryana.
3. Regional Director (SER),
Central Ground Water Board,
Bhujal Bhawan, Khandagiri Chhak,
PS- Khandagiri, Dist : Khurda,
Bhubaneswar-751030, Odisha.

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4. Staff Selection Commission represented through;
 Regional Director,
 Ministry of Personnel, Public Grievances & Pensions,
 Department of Personnel & Training,
 Nizam Palace, 1st M.S.O. Building (8th Floor),
 234/4, A.J.C. Bose Road, Kolkata-700020, West Bengal.

5. Sadhasiva Acharya,
 Presently working as Stenograph Gr-II,
 Office of Regional Director (SER),
 Central Ground Water Board,
 Bhujal Bhawan, Khandagiri Chhak,
 PS- Khandagiri, Dist : Khurda,
 Bhubaneswar-751030, Odisha.

..... Respondents

Advocate(s)..... Mr. B.K.Mohapatra (ACGSC)

.....

O R D E R

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

The case of the Applicant, in brief, is that he along with Respondent No.5 (Shri Sada Shiva Acharya) was selected through Staff Selection Commission, Eastern Region, Kolkata for appointment to the post of Stenographer as intimated to him vide letter dated 25.05.1987. His name was sponsored for appointment to the office of the Post Master General Odisha Circle, Bhubaneswar. Similarly, the name of Respondent No.5 was sponsored for appointment to the office of the Regional Director (SER), Central Ground Water Board, Odisha, Bhubaneswar (Respondent No.3). Accordingly, Respondent No.5 joined as Stenographer Grade III on 21.08.1987 in the Office of the Respondent No.4. But due to ban order, the dossiers of the Applicant was returned to SSC who subsequently sponsored

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his name to the office of the Respondent No.3 as a result of which after receipt of the offer of appointment, the Applicant joined as Stenographer Gr.III, in the office of Respondent No.3 on 04.04.1988. Gradation List of Stenographer Grade III was published and circulated vide letter dated 19.03.1995 in which the name of the Applicant was shown just below the name of Respondent No.5. In the meantime, both the Applicant and Respondent No.5 were promoted to the post of Stenographer Grade II w.e.f. 05.09.2005 and 06.05.2005 respectively and seniority list as on 01.01.2010 was published and circulated in which the name of the Applicant was shown just below the name of Respondent No.5. Further case of the Applicant is that after ascertaining information under the RTI Act, 2005, he made representation on 01.08.2011 *inter alia* stating that as he stood above the Respondent No.5 in the merit list prepared by the SSC and delay in joining being not attributable to him as per the extant rules irrespective of his date of joining, he is entitled to be shown above Respondent No.5 in the gradation/seniority list but the Respondents, without taking into consideration the Rules in its proper perspective rejected the said representation vide letter dated 30.09. 2011. In the backdrop stated above, by filing the instant Original Application, the Applicant has prayed for the following reliefs:

“.....to quash Annexure-A/13 for the ends of justice.
And

.....to hold that the applicant is senior to Respondent No. 5 in the post of ‘Stenographer’ Grade-III and he is entitled to all consequential benefits such as seniority above the Respondent No.5 in the seniority list of ‘Stenographer’ Grade-III for the ends of justice.

And



.....to hold that the applicant is entitled to promotion to the post of 'Stenographer' Grade-II w.e.f. dt. 06.05.2005 (the date on which the Respondent No.5 was promoted as 'Stenographer' Grade-II) with all benefits for the ends of justice.

And

.....to direct the Respondent No.1 and 2 to modify the seniority list of 'Stenographer' Grade-III and 'Stenographer' Grade-II to the extent the applicant and Respondent No.5 are concerned for the ends of justice. "

2. Despite notice, no counter was filed by Respondent Nos. 4&5. However, Respondent Nos. 1 to 3 have filed counter resisting the claim of the Applicant both on the grounds of limitation as well as on merit. To state illustratively, as regards limitation, the Respondents have stated that as the Applicant raised his grievance on seniority after a lapse of 22 and half years from the date of his joining, as per Section 21 of the A.T. Act, 1985 this OA is liable to be dismissed. With regard to merit of the matter, it has been stated by the Respondents that the nomination dossier of Respondent No.5 for the post of Stenographer Grade III was received from the Respondent No.4 on 23.07.1987 whereas the dossier of the Applicant was received only on 03.03.1988. Accordingly, the Respondent No.5 joined the Department as Stenographer Grade III on 21.08.1987 for the Recruitment Year 1987-88 whereas the Applicant joined only on 04.04.1988, i.e. in the Recruitment Year 1988-89. In view of the date of joining, the name of Applicant was shown below the name of Respondent No.5 in the gradation list as per the provisions enumerated under Chapter 25 sub para (iii) of Para 1 relating to Seniority in the SwamyS' Annual Hand Book for the year 2011. In view of the above, the Respondents have stated that the action in fixing the seniority



of Respondent No.5 above the Applicant is not at all illegal and accordingly they have prayed for dismissal of this OA.

3. Applicant has filed rejoinder in which it has been stated that the Respondents are under misconception that this OA is hit by the law of limitation as the representation submitted by the applicant was rejected only on 30.09.2011 and the OA was filed on 07.11.2011 in which this Tribunal issued notice on 11.11.2011 and as such, there is no delay. In so far as the merit of the matter is concerned, more or less reiterating the stand taken in the OA the Applicant has tried to substantiate his case.

4. Mr.K.C.Kanungo, Learned Counsel for the Applicant by drawing our attention to GOI OM No. 20011/5/90-Estt (D) dated 04.11.1992 submitted that as both the Applicant and Respondent No.5 were selected in common competitive examination conducted by the Respondent No.4 and the applicant having ranked above the Respondent No.5 in the merit list and both having joined in one office, the Applicant ought to have been shown/placed above Respondent No.5 in the seniority list of Stenographer Grade III even though the applicant joined later than the Respondent No.5. He has further contended that had the name of the applicant been sponsored at the first instance to the office of the Respondent No.3 then as per the extant provision he would have joined and placed above the Respondent No.5 in the gradation list. The sponsoring of name of the selected candidates is within the exclusive domain of the Respondent No.4. No doubt the name of the applicant was sponsored to the office of the CPMG, Odisha Circle, Bhubaneswar who returned the dossier due to the ban order and thereafter, Respondent No.4 sent the dossier to the office of the Respondent No.3. As



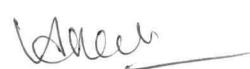
such delay in getting the appointment cannot wipe out the right accrued to the applicant in so far as his seniority is concerned. Therefore, it cannot be said that the order of rejection is justified. He has therefore, prayed for grant of the relief claimed in the OA.

5. Mr.B.K.Mohapatra, Learned Additional CGSC appearing for the Respondents 1 to 3, on the other hand, by invoking the provision of Section 21 of the A.T. Act, 1985 opposed the very maintainability of the Original Application being grossly barred by limitation as the applicant has, for the first time, agitated his grievance in 2011 i.e. after a lapse of 22 and half years from the date of his joining. In so far as merit of the matter is concerned it has been stated by him that it is no more res integra that date(s) of joining in a particular post should be the determining factor of seniority as admittedly the applicant joined in the RY 1988-89 much after the joining of the Respondent No.5 in the RY 1987-88 and, therefore, by no stretch of imagination it can be said that there was any illegality committed in showing the name of the applicant below Respondent No.5. Non challenge of the seniority list has also been taken as one of the grounds in the course of argument. Accordingly he has prayed for dismissal of this OA.

6. Having given our anxious thoughts to various contentions advanced by the Learned Counsel appearing for respective parties, we have perused the material placed on record including extant provisions relied on in support thereof. We find that the factual aspects, stated above, are not in dispute. We find that the applicant for the first time submitted his representation on 01.08.2011 praying for re-fixation of his position in the gradation list both for Stenographer Grade III and Stenographer Grade II



which was rejected in letter dated 30.09.2011 and seniority list of Stenographer Grade III was published on 29th March, 1995 in which the name of the applicant was just below the Respondent No.5. He filed this OA on 09.11.2011 and this Tribunal vide order dated 11.11.2011, keeping the limitation open, issued notice to the Respondents. But no separate application seeking condonation of delay has been filed by the Applicant. In this OA he has also not prayed for quashing of the seniority lists of Stenographer Grade III or Grade II and has merely prayed for a declaration that he is senior to Respondent No.5 and as such is entitled to all consequential benefits such as seniority above the Respondent No.5 in the seniority list of Stenographer Grade III for the ends of justice. Applicant's stand is that his representation was rejected on 30.09. 2011, he has filed this OA on 09.11.2011 and therefore, this OA is within the limitation. But this plea is not sustainable as we find that the applicant joined the service on 04.04.1988, seniority list in the grade of Stenographer Grade III was published on 29.03.1995 and Respondent No.5 was promoted to Stenographer Grade II prior to him in the year 2005 but at no point of time he has agitated his grievance, as per rules, before any of the authorities, if according to him, there was anomaly in fixation of seniority. He slept over the matter and woke up from the slumber for the first time on 07.08.2011 praying for unsettling the seniority which has been settled long back. Once the seniority had been fixed and it remains in existence for a reasonable period for 3 to 4 years unchallenged should not be disturbed. The plea of the applicant that the letter of rejection dated 30.09.2011 has given rise fresh cause of action and therefore this OA is



within the limitation is not sustainable in view of the law laid down by the Hon'ble Apex Court in the case of State of Tripura vs Arabinda Chakraborty, (2014) 6 SCC 460, relevant portion of which is quoted herein below:

“The suit was hopelessly barred by law of limitation. Simply by making a representation when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. The period of limitation commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent went on making representations which were all rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. The courts below erred in considering the date of rejection of the last representation as the date on which the cause of action had arisen.”

7. For the discussions made above, this OA stands dismissed.

There shall be no order as to costs.


(R.C.Misra)
Member(Admn.)


(A.K.Patnaik)
Member (Judicial)

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