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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.343 of 2009

Cuttack, this the 28th day of March, 2012

Shri Bana Bihari Das & Anr. Applicants
Versus
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? ☒


(A.K. PATNAIK)
Member(Judl)


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

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

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1. Shri Bana Bihari Das, aged about 58 years, Son of Late Maheswar Das, a permanent resident of Village-Tihuda, Balisahi, Post. Naugaon, Dist. Jagatsinghpur at present working as Assistant Post Master, Bhubaneswar GPO, Bhubaneswar.
 2. Shri Gobinda Chandra Sahoo, aged about 57 years, Son of Late Agadhu Sahoo, a permanent resident of Village and Post-Basudevapur, PS-Purisadar, Dist. Puri.
 3. Shri Prabhat Kumar Patnaik, Aged about 56 years, Son of Late Chakradhar Patnaik a permanent resident of Village-Kuahara, Post-Jagannathprasad, PS-Fategarh, Dist. Nayagarh at present working as Assistant Post Master, Bhubaneswar GPO, Bhubaneswar-751 001.
 4. Syed Md. Ali, Aged about 55 years, Son of Late Syed Mozammil Ali, At- Dilarpur, PO/PS/Dist. Kendrapara working as Postmaster Salipur MDG, Cuttack.

.....Applicants

By legal Practitioner-M/s.G.Rath,DKMohanty, Counsel

-Versus-

1. Union of India represented through its Director General of Posts, Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist. Khurda, PIN 751 001,
3. The Director of Postal Services, Office of the CPMG, Orissa Circle, Bhubaneswar.

.....Respondents

By Legal Practitioner - Mr.U.B.Mohapatra,SSC

4. Rama Chandra Behera, aged about 43 years, S/o.Brahmananda Behera, Deputy Post Master, Athagarh HPO, Athagarh, Dist. Cuttack.

.....Intervener

By legal practitioner : Mr.S.Patra, Counsel

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ORDER

C.R.MOHAPATRA, MEMBMER (ADMN.):

The main issue agitated by the Applicants in this OA is that under the instruction of the Director General of Posts, 20% of the number of time scale posts in a Circle/Division/Unit was to be converted so as to determine the actual number of vacancies in the LSG cadre to give the notional promotion to the existing TBOP beneficiaries. This decision to increase 20% posts continued till 1983 where after it was reduced to 15% and 10%. According to the applicants had this instruction of the DG Posts been properly adhered to or followed, the Applicants would have been promoted to LSG notionally obviating their supersession in the matter of further promotion to HSG II. Hence the applicants have prayed the following reliefs:

- (i) To direct the Respondents more particularly Respondent No.2 to calculate the norm based post of plus vacancies in LSG in compliance of the direction of the DG Posts, New Delhi dated 9th February, 2009 under Annexure-A/8;
- (ii) To promote/ante date the date of promotion of the Applicants to LSG notionally on the process even prior to 1984 in compliance of the order of the DG Posts, New Delhi under Annexure-A/2 dated 12.11.2002 and Annexure-A/4 dated 20.11.2006;
- (iii) To consider the case of the Applicants for antedating their date of promotions by convening the DPC in the manner as directed



by the DG Posts, New Delhi in letter under Annexure-A/5 dated 22.5.2007;

- (iv) To direct the Respondents to grant the Applicants all their consequential service and financial benefits retrospectively;
- (v) To direct the Respondents to process the case of the Applicants for their further promotion in the event of antedating their date of promotion to LSG retrospectively;
- (vi) To pass any other order/orders as deemed fit and proper."

2. In paragraph 15 of the counter, the Respondents have stated as under:

"It is humbly submitted that as per the instruction contained in Directorate letter dated 15.6.1974, 20% posts on the sanctioned strength were increased in upgraded LSG posts correctly keeping in view the formula given in the said letter. The Applicants have raised the points that there have been many more LSG upgraded posts on 20% vacancies against which they could have been promoted notionally. The calculation of upgraded LSG posts have been made on the basis of guidelines issued from time to time **and less or more posts have not been calculated.** The applicants have not mentioned the numerical figures to prove their arguments and the deficiencies noticed by them. The directions issued vide Directorate letter dated 9.2.09 (Annexed as Annexure-R/7) have been carried out by the Respondent No.2 strictly and promotion orders have been issued accordingly."

On the above grounds the Respondents have prayed for dismissal of this OA.

3. Mr. Rath, Learned Senior Counsel appearing for the Applicants submitted that had the instruction under

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Annexure-A/8 dated 09.02.2009 followed in letter and spirit there would not have been insistence from the higher authority from time to time as in Annexure-A/10 & A/11. The letter under Annexure-A/8 was issued after the report submitted by the team deputed by the Directorate to verify whether there has been proper implementation of the earlier instruction issued on the subject. The verification was done by the team on 30.9.2008. As such the promotion shown to have been allowed being contrary to the instructions of the DGPT, the applicants are entitled to the relief claimed in this OA.

4. It is the positive contention of the Applicants' Counsel in their rejoinder that pursuant to the letter under Annexure-A/8, the CPMG, Orissa Circle, Bhubaneswar wrote letter to the Directorate stating therein as under:

(i)	Sanctioned norm based LSG posts as on 1983	268
(ii)	20% LSG posts as on 30.11.1983 created in accordance with the letter under Annexure-R/2;	416
(iii)	Deduction of 5% operative and 15% supervisory posts due to introduction of TBOP under Annexure-R/1	150
(iv)	15% of 20% LSG posts	416=62
(v)	5% posts already deducted treating it as operative post	21
(vi)	Additional posts to be reduced for giving notional promotion in respect of 20% LSG posts [62-21]	41
(vii)	5% posts to be deducted in supervisory cadre for introduction of BCR with effect from 01-01-1991 [416-62= 354]	18
(viii)	The number of 20% LSG posts after deduction due to introduction of BCR scheme [354-18]	336

(ix)	1% posts already abolished treating it as operative staff earlier [1% of 354]	04
(x)	Additional posts to be abolished due to giving notional promotion in respect of 20% LSG posts	14

5. It was contended that necessary approval, for giving notional promotion in respect of 20% LSG posts 336 posts to be declared supervisory and 41+4=45 PA posts to be abolished, has been communicated by the Directorate.

6. Applicants' Counsel contends that creation of 20% posts vide letter dated 15.6.1974 vis-à-vis the letter dated 9th February, 2009 clearly envisage that notional promotion should be based on the counting^{of} norm based post existing plus 20% created post by the above orders. Not only that in letter dated 22nd May, 2007~~n~~ it was directed that notional promotion to norm based posts as advised in letter dated 22.11.2002 was not supposed to be one time exercise but was to be carried out notionally from year to year with effect from the year promotions had not been carried out. The aim and object of issuing such direction was also carried in the letter by stating that the notional promotions have been given to the eligible officials to the LSG cadre so that only those officials figure in the gradation list of PA/SA at circle level who could not be promoted notionally for want of total LSG vacancies. But for the reasons best known to the Respondent No.2 without complying

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with the aforesaid instruction in letter and spirit promoted the applicants by way of demotion to the post of LSG prospectively which is illegal, arbitrary and not sustainable in the eyes of law. In this connection by drawing our attention to Annexure-A/12 it was contended that the Respondents have excluded 20% LSG posts and only filled up norm based LSG Posts. In view of the above it was contended that since the order of the DGPT under Annexure-A/8 has not been complied with in letter and spirit the applicants are entitled to the reliefs claimed in this OA.

7. The letter under Annexure -A/8 dated 9th February, 2009 reads as under:

"I am directed to refer to your letter No.ST/26-20/2007 dated 5.12.2008 on the above mentioned subject and to say that:

- (i) The instructions contained in Dte letter No. 31-19/74-PE.I dated 15.6.1974 provided to increase LSG posts to the extent of 20% of the number of time scale posts in a Circle/District/Unit by conversion of the then existing time scale posts from time to time;
 - (ii) On introduction of the TBOP scheme vide Dte letter No. 31-26/83-PE.I, dated 17.12.1983, the scheme of converting 20% posts as LSG was withdrawn after 30.11.83. It was clearly mentioned in para 10 of the said instruction that supervisory posts, which included posts which were in existence prior to implementation of 20% formula and those created
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as per the said formula will be reduced by 15% on Division Basis;


- (iii) Similarly, on introduction of BCR scheme vide Dte letter No. 22-1/89-PEI dated 11.10.1991 from 1.10.199, 5% cut on supervisory cadre is envisaged.

2. Therefore, the Orissa Circle may take action to arrive at the sanctioned strength in LSG accordingly as on 1.1.1984. They may also take into consideration the 5% cut in LSG on introduction of BCR scheme while computing the sanctioned strength in LSG after 1.10.1991 and any other orders issued increasing or decreasing the strength;

3. In the light of the Directorate's instructions contained in letter No.4-16/2002-SPB.II, dated 12.11.2002 the Circle may grant notional promotions against the sanctioned strength so arrived at in LSG to those who were not promoted earlier to LSG since the year 1983/1984 i.e. the year since when the promotions had not been made to the grade, by keeping in view the provisions contained in the Recruitment Rules. Similar exercise may be carried out simultaneously for grant of notional promotion to HSG II and HSG I to eligible officials against the sanctioned strength on year to year basis till 6.2.2002 as per the relevant Recruitment Rules in force at the particular point of time.

4. After such exercise is undertaken, the vacancies that were available from 7.2.2002 to 17.5.2006 in LSG and HSG II may be filled up as per the revised Recruitment Rules, 2002 notified on 7.2.2002 and to HSG I as per the existing Recruitment Rules.

5. After carrying out the above mentioned exercise, the vacancies in LSG and HSG II that were available from 18.5.2006 may be filled up by promotion as per the latest revised Recruitment Rules, 2006 from amongst the eligible officials as per the Circle Gradation list of Pas/SAs and LSG respectively. The vacancies in HSG I may continue

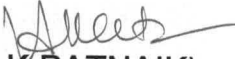



to be filled up as per the provisions contained in the existing Recruitment Rules."

8. Though by reiterating the stand taken in the counter, Mr. Mohapatra, Learned SSC refuted the arguments advanced by Learned Senior Counsel appearing for the Respondents nothing has been brought on record to satisfy that the arguments advanced was in any manner contrary to record. This being purely a matter of calculation of vacancies/posts in the manner indicated in Annexure-A/8 and it is the positive case of the Applicants that the matter was enquired into by a team who had submitted the report to the Respondent No.1 this Original Application is disposed of with direction to the Respondent No.1 to examine the grievance of the applicant with reference to the Letter under Annexure-A/8 and report, if any, of the team submitted after verification as stated by the Applicants. On examination, if the result would be in affirmative, issue appropriate instructions to the concerned authority for granting the benefits which the applicants are entitled to. In any event the decision to be taken by the Respondent No.1 pursuant to the direction made above shall be communicated to each of the applicants in a well reasoned order. The entire exercise shall be completed within a period of 120 days from the date of receipt of copy of this order.

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9. In the result, with the observation and direction made above this OA stands disposed of by leaving the parties to bear their own costs.


(A.K. PATNAIK)
Member (Judicial)


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

