

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

26
Original Application No. 260/00176 of 2014
Cuttack, this the 20th day of May, 2016

Suresh Kumar 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?


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



CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00176 OF 2014
Cuttack, this the 20th day of May, 2016

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)

.....
Suresh Kumar Mishra,
aged about 55+ years,
S/O Late Pathani Mishra,
At/P.O-Jadunathpur, Via-Khandaparagarh,
P.S.-Fategarh, Dist-Nayagarh,
presently working as
Assistant Superintendent of Posts(OD),
O/o the Sr. Superintendent of Railway Mails,
RMS 'N' Division, Cuttack.

.....Applicant

By the Advocate(s)-M/s. A.K. Mohanty(A), R.K. Behera, R.C. Pradhan

-Versus-

Union of India, represented through

1. Director General,
Department of Posts,
Govt. of India, Dak Bhawan,
New Delhi.

2. Chief Post Master General,
Odisha Circle,
Bhubaneswar, G.P.O.,
Bhubaneswar, Dist-Khurda.

.....Respondents

By the Advocate(s)- S.K. Patra

.....
O R D E R

A.K.PATNAIK, MEMBER (J):

The applicant, Sri Suresh Kumar Mishra, aged about 55+ years and working as Assistant Superintendent of Posts (OD), Office of Sr. Superintendent of Railway Mails, RMS 'N' Division, Cuttack has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"(i) The Original Application be allowed.

2

(ii) Quash the order No. 9-1/2011-SPG dated 22.11.2012.

(iii) Allow the Applicant to retain his seniority in the Select List of PSS Group 'B' Officers issued vide DG Posts Memo No. 9-1/2011-SPG dated 17.11.2011 and allow him promotion from 17.11.2011.

(iv) The order for re-allotment of the applicant to Odisha Circle as some of his juniors have already been re-allotted to Odisha Circle.

(v) To partly quash the order No. 9-33/2013-SPG dated 30.10.2013 issued by the Respondent No.1 in which the applicant was allotted to North East Circle.

(vi) And pass any other order(s)....."

2. It is the case of the applicant that he was appointed as Postal Clerk in Puri Postal Division on 06.06.1978. He was promoted to the grade of Inspector of Posts and consequently joined in Cuttack City Division, Cuttack on 16.06.1989. Thereafter, on 16.12.2013, he was promoted as Assistant Superintendent of Posts. On 17.11.2011 he was nominated for promotion to the cadre of Postal Superintendent Service, Group 'B' and allotted to PTC, Darbhanga in Bihar Circle. By making representation dated 21.11.2011 he requested Respondent No.1 to allot him to Odisha Circle. By making another representation dated 16.12.2011 besides seeking retention in Odisha Circle he also prayed six months' time to join in promotional post. Respondent No.2 vide a letter dated 24.2.2012 directed to allow him to continue in his present post of Assistant Superintendent. Respondent No.1 vide memo dated 22.11.2012 ordered that as the applicant and four others did not join their promotional post, the promotion was cancelled and they would be debarred for promotion for PSS Group 'B' cadre for one more year.

Wale

Against the said order, applicant submitted representation dated 03.12.2012 requesting for reconsideration of his case for allotment to Odisha Circle. He was again given promotion to PSS Group 'B' cadre in the year 2013 posting him to Shilong.

3. Mr. A.K.Mohanty (A), Ld. Counsel for the applicant, placing reliance on the aforesaid facts has submitted that moving out of station in case of promotion to PSS Group 'B' is not mandatory. Many officers, who are similarly situated like that of the applicant have been retained in their own circle but the applicant was discriminated. The order dated 22.11.2012 of Respondent No.1 cancelling his promotion and debarring him for one more year is bad in law as the applicant was not relieved from his present post and hence he could not join in his promotional post and place. Though, the Respondent No.1 communicated the order declining the request of allotment to Odisha circle to Sri Ashok Kumar Dey and Sri H.C.Joshi, no such order was ever communicated to the applicant. Non-joining of the applicant in his promotional post and place is not attributable to the applicant rather the department is fully responsible for which the applicant ought not to have been made to suffer. All the representations of the applicant are pending. Showing the applicant to have been promoted to PSS Group 'B' in the select list of 2013 prejudice the applicant as he has been deprived of his seniority. In view of the above, he has reiterated his prayer made in the O.A.

4. On the other hand, Respondents have filed their counter opposing the stand taken in the O.A. as well as prayer made therein. In

the counter it has been stated that the applicant, an IPO/IRM Line officer of the Odisha Postal Circle, was promoted to PS Group-B cadre for the year 2011 vide Postal Directorate memo dated 17.11.2011 (at Sl. No. 122) and allowed to PTC, Darbhanga, Bihar Circle. He was ordered to be relieved within 7 days of promotion vide CPMG, Odisha Circle, memo dated 30.11.2011. The applicant represented to Director on 21.11.2011 and 16.12.2011 requesting for reallocation to Odisha Circle. He had also requested to allow him 6 months time to accept promotion or to treat the representation as declination of promotion. The representation of the applicant was forwarded to Postal Directorate on 13.01.2012 for consideration. Thereafter, as in terms of the condition stipulated in the order of promotion and posting dated 17.11.2011 and DPC guidelines, an order of deemed declination of 5 persons including the applicant was issued on 22.11.2012 debarring them for further promotion for a period of one year from the date of issue of the order, which was communicated to the applicant vide letter dated 03.12.2012. However, his case for promotion to PS, Group-B cadre was also forwarded to the Directorate for the vacancy year 2012 along with other cases of the Circle with the information that the officer was proceeded under Rule 16 of the CCS (CCA) Rules, 1965 vide CPMG memo dated 29.08.2012. Hence, the applicant could not be promoted to PS, Group-B cadre in the year 2012. The disciplinary proceeding was completed vide memo dated 24.05.2013 on imposition of punishment of reduction of pay for one stage for a period of one year, which was subsequently modified to a period of 9 months. The applicant was given promotion to PS Group-B cadre vide

order dated 10.10.2013 and was allotted to Assam Cadre, which was subsequently modified allotting him to North East Circle. As the order of punishment was in force till 24.02.2014, the order of promotion dated 10.10.2013 could not be given effect to in between and, after expiry of punishment period, he was directed to be relieved vide memo dated 11.03.2014 to join in PS Group-B cadre. Being aggrieved, he has filed this O.A., which is not at all maintainable and as such is liable to be dismissed.

5. Mr. S.K.Patra, Ld. ACGSC appearing for the Respondents, placing reliance on the above submissions has contended that no reallocation request will be considered within a period of one year was a condition stipulated in the order itself and, therefore, in view of the representation submitted by the applicant his promotion as per the rules was treated to be a declination and, accordingly, he was retained in his place of posting. While denying the allegation of the applicant that he was not at fault and he could not join in his promotional post as he was not relieved, Mr. Patra submitted that applicant was ordered to be relieved within 7 days of his promotion vide CPMG memo dated 30.11.2011 and his controlling officer had also issued converging order for his relieve dated 08.12.2011 but instead of getting relieved the applicant submitted representation again requesting for his reallocation to Odisha Circle on promotion. The applicant is unnecessarily trying to mislead this Tribunal in order to get the relief claimed in this O.A. The officers transferred/reallotted to Odisha Circle vide order dated 03.10.2013 got promoted to regular PS Group-B cadre through Limited

Vale

Departmental Competitive Examination, 2011 and DPC for the year 2012-13. Applicant could not be considered as he was not a regular PS Group-B officer as on 03.10.2013. The promotion order of the applicant to regular PS Group 'B' cadre was issued by the Directorate on 10.10.2013. The other officers allotted to Odisha Circle vide order dated 03.10.2013 are all senior to him. As such, the allegation of the applicant that his juniors have been reallocated to the Odisha Circle is not at all correct. In view of the above, Mr. Patra has reiterated the stand taken by Respondents in the reply and submitted that this O.A. being devoid of merit is liable to be dismissed.

6. I have carefully considered the contentions of the respective parties and perused the record.

7. On perusal of the order dated 30.11.2011, it makes abundantly clear that the officer so promoted were specifically made aware that no reallocation request will be considered within a period of one year. It was further made known to them that in case an officer is not willing to accept his promotion his declination letter in writing should be received in Directorate within 30 days failing which it will be presumed that he has declined the promotion. In the representation dated 16.12.2011, which the applicant had submitted in pursuance to the first order of promotion to PS Group-B cadre dated 17.11.2011, the applicant requested Respondent No.1 **that if it is not possible to consider his case for allotment to Odisha Circle, his representation to be treated as declination of promotion.** As per the DGPT Circular, an employee has right to forgo his promotion but, if the public interest does not demand

27

so, the authorities is to accept such request for declination of promotion to one year. Therefore, treating the representation to be a declination to his promotion and debarring him for consideration for one year for promotion cannot be found fault with.

8. The stand of the applicant that as he was not relieved in pursuance of the order of promotion, he ought not to have been deprived of his right to join the promotional post and place, cannot be accepted as he has specifically given in writing in his representation that in case it is not possible to accede to his request for his allotment to Odisha Circle, his representation to be treated as declination to promotion. No material has been placed before me showing that applicant has requested to be relieved in pursuance of the order of promotion. Had it been so, then I would have appreciated that the applicant was diligent on his part to be relieved so as to join his promotional post and he was deprived of doing so by the authorities.

9. In view of the above, I do not find fault on the decision of the Respondent-authorities warranting interference in the matter. Accordingly, the O.A. is dismissed.


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