

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

19/96

(OA)

(OA)

(OA)

Kandermani Bahera
VERSUS

APPLICANT(S)

Govt. of Assam

RESPONDENT(S)

G.K. Bhattacharya, Advocate for the applicant.

Govt. of Assam

A.K. Choudhury, Advocate for the Respondents.

Adv. C.G.S.C.
AC Das, S. Datta & P.C. Dey on R.no. 4.

Office Notes

Court's Orders

application is in
and within time
of Rs. 50/-
dated with

346/24

24.5.96

by post

4748

u/t

①

5.7.96

Mr G.N.Das for the applicant. Mr A.K.Choudhury, Addl.C.G.S.C for the respondents.

Mr Das moves this application on behalf of the applicant. Heard counsel of both sides for admission. Perused the contents of the application and the reliefs sought. Application is admitted. Issue notice on the respondents by registered post. Written statement within six weeks.

List on 19.8.96 for written statement and further orders.

76

Notice issued to the
parties vide O.No.
2022 dt. 12.7.96.

69
Member

pg

19-8-96

Mr.G.N.Das counsel for the applicant. Mr.A.K.Choudhury Addl.C.G.S.C. for the respondent. Written statement has not been submitted. Mr.Choudhury seeks further six weeks time to submit written statement. Allowed.

List for written statement and further order on 30-9-96.

8.96
Notice of appearance
by Mr. A.K. Choudhury

8.8.96

Notice duly served
or Report No. 4.

19/8

lm

19/8

69
Member

30-9-96

Learned Addl.C.G.S.C, Mr. A.K. Choudhury for the respondents seeks two weeks time for filing written statement. Similar is requested of Mr. S. Dutta for respondent No.4.

List for written statement and further order on 18-10-96.

6 Member

lm

23/10

18.10.96

Mr. A.K.Choudhury, Addl.C.G.S.C. for the respondents.

Mr. S. Dutta for private respondent No. 5.

Written statement by the official respondents as well as respondent No.4 have been submitted. Let copy of the written statement be served on the counsel of the applicant.

List for hearing on 6.12.1996.

6 Member

trd

23/10

23.10.96 13.5.97

The learned counsel for the parties submit that the case is otherwise ready for hearing. List it on 4.7.97 for hearing.

6 Member

Vice-Chairman

nkm

14/5

4.7.97

Mr. G.N.Das, learned counsel appearing on behalf of the applicant prays that the written statement has been received today, therefore he needs some time to go through the same. Learned counsel for the other side has no objection. Accordingly we adjourn the case till 21.7.97.

6 Member

Vice-Chairman

07/11/96

3

21-7-97 There is no representation.

List on 16-8-97.

By order.

14-8-97

Division Bench is not sitting.

Let this case be listed for hearing
on 5-11-97.

BY ORDER

5-11-97

On the prayer of counsel for
the parties case is adjourned till
23-1-98.

By
Member

Vice-Chairman

lm
27/11

23-1-98

There is no representation on
behalf of the parties. Case is ready for
hearing.

List on 27-4-98 for hearing.

By
Member

Signature
Vice-Chairman

lm
3/2

27.4.98

The case is ready for hearing.

List it for hearing on 20.7.98.

By
Member

Signature
Vice-Chairman

nkm

By
28/1

20.7.98 Adjourn to 11-8-98

By order
By

*w/s has been filed on
20.7.98*

11 (u) O.A. No. 119 of 1996

11.8.98 On the prayer of Mr. G.K.Bhattacharyya, learned counsel appearing on behalf of the applicant this case is adjourned till 4.9.98.

List on 4.9.1998.

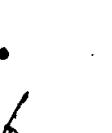

Member


Vice-Chairman

trd

25/9
1998

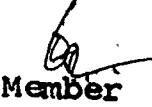
W/S hs sum filed. 8.9.98 There is no Division Bench. Adjourned to 25.9.98.

By order


25-9-98

Division Bench is not available.

List on 13-11-98 for hearing.


Member

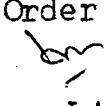
lm
25/9

13.11.98 Division Bench is not available.
List for hearing on 18.12.98.

22-12-98

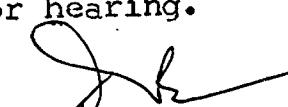
There was a 4 Bench
at - Agitude on 18.12.98.
Hence placed on order

trd

By Order


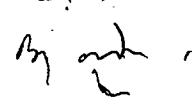
1-1-99

Case is ready for hearing. List for hearing on 7-1-99 for hearing.

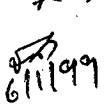

Vice-Chairman

7/1/99

7/1/99 Adjourned to 11-1-99.

By order


Written statement -
hs sum filed on
2-Nov 1-4.


6/11/99

Notes of the Registry

Date

Order of the Tribunal

9/2/99
 Copies of the Judgment
 have been sent to the
 D/Sec. for issuing the
 same to the parties
 through Regd. with A/c
 issued vide Despatch
 No. 452 to 455 dt. 10.2.99

 10/2/99
 26.3.99

11.1.99

Heard the learned counsel for the parties. Hearing concluded. Judgment delivered in open court, kept in separate sheets. The application is disposed of. No order as to costs.

b/s
Member

nkm


 Vice-Chairman

Notes of the Registry	Date	Order of the Tribunal

10
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::::GUWAHATI-5.

O.A.No. 119 of 1996

DATE OF DECISION.....11.1.1999.....

Shri C.M. Behera

(PETITIONER(S))

Mr G.K. Bhattacharyya and Mr G.N. Das

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C. and

Mr S. Dutta for respondent No.4.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.119 of 1996

Date of decision: This the 11th day of January 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri C.M. Behera,
Aerodrome Assistant,
Air Traffic Control, A.R.C.(Air Wing),
Doomdooma.

.....Applicant

By Advocates Mr G.K. Bhattacharyya and
Mr G.N. Das.

- versus -

1. The Union of India, represented by the
Cabinet Secretary, Cabinet Secretariate,
New Delhi.

2. The Director,
Aviation Research Centre,
Cabinet Secretariate,
New Delhi.

3. The Deputy Director (Admn), ARC,
Doomdooma,
Tinsukia.

4. Shri R.N. Panda,
Asstt. Aerodrome Officer,
A.R.C. Charbatia,
District Cuttack,
Orissa.

.....Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.
and Mr S. Dutta for respondent No.4.

.....

O R D E R

BARUAH.J. (V.C.)

This application has been filed by the applicant
challenging the Annexure X order dated 15.5.1995 promoting
the respondent No.4 to the post of Assistant Aerodrome
Officer with effect from the date he took over charge.

2. Facts for the purpose of disposal of this
application are:

The applicant initially joined as Aerodrome Operator

X B

Grade I and he was confirmed in the said post with effect from 15.3.1977. In 1979 the applicant underwent the Departmental Air Traffic Controller Course held at Charbatia. Thereafter by Annexure II order dated 19.12.1989 the applicant alongwith another employee was promoted to the post of Aerodrome Assistant and posted at Charbatia. Accordingly the applicant took over charge at Charbatia on promotion.

3. The 4th respondent had filed an original application (O.A.No.406/1988) before the Cuttack Bench of this Tribunal challenging the gradation list wherein the present applicant was shown senior to the 4th respondent. The Cuttack Bench disposed of the said original application by order dated 13.7.1990 holding that the 4th respondent was senior as he was appointed earlier to the applicant. The Cuttack Bench also directed the respondents to consider the promotion of the 4th respondent. The applicant, however, made a submission before the authority that he being a member of the Schedule Caste Community and the vacancy being a 3rd point the said post should have gone to the applicant. However, nothing was done. Being aggrieved the applicant submitted Annexure XI representation dated 14.6.1995, but the representation has not yet been disposed of. Hence the present application.

4. We have heard Mr G.K. Bhattacharyya, learned counsel for the applicant and Mr A. Deb Roy, learned Sr. C.G.S.C. appearing on behalf of respondent Nos.1, 2 and 3 and Mr S. Dutta, learned counsel for the respondent No.4. Mr Bhattacharyya submits that as per rule the applicant is entitled to get the promotion and as he was given the promotion the applicant submitted a representation before the respondents. According to Mr Bhattacharyya the respondents ought to have disposed of the representation.

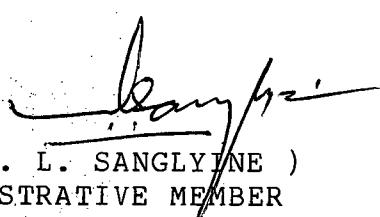
2

Mr Deb Roy and Mr S. Dutta, on the other hand, support the action of the respondents and submit that it is the 4th respondent who should get the promotion.

5. On hearing the learned counsel for the parties, we feel that in order to know the reason behind the action taken by the respondents it will be expedient to direct the respondent No.1, Cabinet Secretary, Cabinet Secretariate, to dispose of the Annexure XI representation of the applicant which was forwarded by the department as will appear from Annexures XV and XVI letters dated 16.9.1995 and 28.10.1995 respectively.

6. In view of the above we dispose of this application with direction to the respondent No.1 to dispose of the Annexure XI representation of the applicant by a speaking order as early as possible at any rate within a period of three months from the date of receipt of this order. If the applicant is still aggrieved he may approach the appropriate authority.

7. No order as to costs.


(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D. N. BARUAH)
VICE-CHAIRMAN

2
Filed by:
G.N. Das
Advocate
2/7/96.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:GUWAHATI BENCH :



GUWAHATI

O.A. NO. 119/96.

Chandramani Behera ... Applicant.

-Versus-

Union of India and ... Respondents.
others.

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Received copy
H.H. Chowdhury
4/7/96

Filed by :-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::

GUWAHATI

O.A. NO. 119 /96.

Shri C.M. Behera .. APPLICANT.

-Versus-

Union of India and .. RESPONDENTS.

others .

1. PARTICULARS OF THE APPLICANTS:-

Shri C.M. Behera

Son of Late Balkrishna Behera,

Aerodrome Assistant,

Air Traffic Control, A.R.C. (Air Wing)

Doomdooma.

2. PARTICULARS OF THE RESPONDENTS:

1. Union of India,

Represented by the Cabinet Secretary ,

Cabinet Secretariate, New Delhi.

2. Director,

Aviation Research Center,

Cabinet Secretariate, Block-V,

R.K. Puram, New Delhi-110066.

3. Dy. Director (Admn), ARC,

Doomdooma, P.O. Sukreting,

Tinsukia, Pin-786159.

Contd...

2.

*W.C. com
S. Dulle
for R-1*

4. R.N. Pandey,

Asstt. Aerodrome Officer,

A.R.C. Charbatia,

District Cuttuck, Orissa,

Pin- 754028.

is

3. THE APPLICATION AGAINST THE FOLLOWING ORDER:-

i) Order No. ARC/AW-155/95-2027 dt. 15.5.95 passed by the Respondent No. 2 promoting Respondent No. 4 to the rank of Asstt. Aerodrome Officer in violation of the instructions of the Govt. of India regarding reservation as per 40-point roster.

ii) Violation of the provisions of the instructions in the Brochure on reservation for S.C. /S.T. in service.

iii) Appeal/representation dt. 14.6.95 filed by the applicant and subsequent reminders which have not been disposed of till date, though the applicant, by letter 28.10.95, was informed that the representation had been forwarded to the Cabinet Secretary by A.R.C., Head quarters and that the decision would be communicated as and when received the same.

4. The applicant declares that the subject matters of the orders are within the jurisdiction of this Tribunal.

5. The applicant further declares that the application is within the limitation prescribed under section 21 of the Administrative Tribunals Act, 1985.

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Chandramani Behera

6: FACTS OF THE CASE:

1) That the applicant belongs to the S.C. community and he is entitled to get all benefits given to the said community by the Govt. of India in the matter of his service. The applicant belongs to Orissa and he comes from the backward, "Dewar" community which had been included in the list of Scheduled Caste in Appendix-XX of Brochure on reservation for Scheduled Caste and Scheduled Tribes in services.

2) That the applicant initially joined service under the respondent Department as an Aerodrome Operator, Grade-I and he was confirmed in the said post w.e.f. 15.3.77. During 1979 the applicant underwent the Departmental Air Traffic Controller Course, held at Charbatia and he completed the course successfully along with another.

A copy of the certificate issued by the course incharge is annexed herewith and marked as
Annexure-I.

3) That, in consideration of his service record and seniority, the applicant, alongwith another, was, by office order No.VII/192/89-VOI.4-24117 dt. 19.12.89, promoted to the rank of Aerodrome Asstt. in the pay scale of Rs.1600/- to Rs.2660/- w.e.f. 20.12.89 and the applicant was posted to A.R.C., Charbatia and he duly reported in his duties on 20.12.89. The Respondent No.4 had filed an application before the Central Administrative Tribunal (CAT), Cuttuck Bench challenging the gradation list wherein the

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Chandramani Behera

applicant was shown senior to the Respondent No.4 and the Hon'ble Cuttuck Bench, in O.A. 406/1988, held that any promotion made would be provisional. In pursuance to the aforesaid order, the Respondent No.3, vide his office order No.VII/192/89-VOL.4-1245 dt. 25.1.90, added the following to office order dt. 19.12.89. "The promotion in respect of Shri T.C. Barkotoki and C.M. Behera ,Aerodrome Operators to the post of Aerodrome Asstt. is purely provosional and subject to the result of the case , filed by Shri R.M. Pandey ".

Subsequently, the Respondent No.3 , by his office order No.ARC/AW-970 /89-3968 dt.8.12.92 ordered that the provosional promotion of the applicant and another were made on regular basis with immediate effect.

Copies of order dt.19.12.89, 27.12.89, 25.1.90 and 8.12.92 are annexed herewith and marked as Annexure-II,III and IV respectively.

4) That the Respondent No.4 originally joined service as Aerodrome Operator, Grade-I, on 9.11.71 and because of a pending proceeding, he was not confirmed and though the present applicant was confirmed w.e.f. 15.3.77, the Respondent No.4 was confirmed only w.e.f. 1.8.84 . Because of the said confirmation of the Respondent No.4, in the seniority list of Aerodrome Operator,Grade-I published in 1988, the Respondent No.4 was shown junior to this applicant. The Respondent No.4 then filed an application before the Central Administrative Tribunal at Cuttuck which was

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Chandramani Behera

numbered as O.A. 406/88 challenging the gradation list and the Hon'ble Central Administrative Tribunal, Cuttuck, by judgement dt.13.7.90, held that since the Respondent No.4 was appointed earlier, he was senior to the applicant as Aerodrome Operator, Grade-I and directed that the case of Respondent No.4 to be considered for promotion. In pursuance to the said judgement, the Respondent No.3, by his office order No.ARC/AW.606/88-1262 dt.24.4.92 promoted Respondent No.4 to the post of Aerodrome Assistant in the scale of Rs.1600/- to 2260/- w.e.f. 20.4.92.

A copy of the said order is annexed herewith and marked as Annexure-VI.

5) That the applicant begs to state that the next promotional post is that of Assistant Aerodrome Officer in the pay scale of Rs.2000/- to 3500/- and as per the existing rules, an Aerodrome Operator, Grade-I, after completing 8 years' of service and on successful completion of ~~Central Administrative Training Institute~~ ^{SL CATC} course, were eligible for being promoted as Asstt.Aerodrome Officer. The Aerodrome Assistant who had passed the departmental examination and had completed 5 years' of service were also eligible for being promoted to the post of Assistant Aerodrome Officer. The applicant had passed the Departmental examination in 1979 and he was promoted to the rank of Aerodrome Assistant w.e.f. 20.12.89 and as such the

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Chandramani Behera

became eligible for being promoted in the rank of Assistant Aerodrome Officer on 20.12.94.

A copy of letter dt. 31.5.91 issued by Respondent No.3 to support the above contentions is annexed herewith and marked as Annexure-VII.

6. That, as stated above, the Hon'ble Central Administrative Tribunal, Cuttuck had held that Respondent No.4 was senior to this applicant as Aerodrome Operator and in pursuance to the judgement, the Respondent, ^{ARC} vide memorandum No. ~~KOR~~ /AW-604/88-147 dt. 8.1.91, circulated a revised seniority list of Aerodrome Operators and in the said list the name of Respondent No.4 was shown at Sl.No.3 above this applicant. Though the applicant was aggrieved by the judgement of the Hon'ble Cuttuck Bench and also the revised seniority list, he did not have the necessary resources to pursue his remedies in the Supreme Court and accepted the same as otherwise he was entitled to be promoted as per reservation policy to the post of Assistant Aerodrome Officer.

A copy of the revised seniority list alongwith the forwarding letter is annexed herewith and marked as Annexure-VIII.

7. That there are three posts of Assistant Aerodrome Officer and as per the existing rules, the applicant became eligible to be promoted to the said post after 20.12.94, It would be relevant to mention here that as per the 40-point

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Chandramani Behera

roster regarding reservation for S.C./S.T. in service the first post is reserved for S.C. When the first vacancy arose in 1988, the applicant was not eligible and as such Shri P.K. Rath was promoted from the General Category on 11.8.88 . Similarly the 2nd vacancy had also to be filed up by a General Officer, namely, Shri T.C. Borkotaky . When the 3rd vacancy arose and was existing, the applicant was eligible to be promoted and he was anticipating that he would be considered and promoted against the reserved vacancy.

8. That the applicant begs to state that the Aerodrome Assistants and others are given training in different studies beginning with the ab-initio course and thereafter, they had been sent for the CATC course. The applicant, without being sent to the ab-initio course which is the primary course, was directly sent for the higher C.A.T.C. course knowing fully well that without completing the primary course, it was not possible to pass the higher C.A.T.C. course. However, the applicant had passed the departmental qualifying examination in 1979 and since he was promoted to the post of Aerodrome Assistant w.e.f. 20.12.89, he had completed 5 years' of service in that grade and was eligible for being promoted to the post of Assistant Aerodrome Officer after 20.12.94.

9. That, though the applicant was eligible for promotion to the post of Assistant Aerodrome Officer after 20.12.94 and he was entitled for consideration on the basis of the 40-point roster on reservation, the applicant came

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Chandramani Behera

to know that the authorities were considering the case of the Respondent No.4 for being promoted. As such the applicant, on 29.12.94, submitted a detailed representation to the Respondent No.1 stating the entire facts and as to how he was entitled to be promoted under the reserved quota made for S.C. and prayed that since he was the only Scheduled Caste eligible candidate available for promotion, his case be considered.

A copy of the said representation dt. 29.12.94 is annexed herewith and marked as Annexure-IX.

10. That the authorities, in violation of the reservation policy and completely ignoring the case of the applicant, by the impugned order No.ARC/AW-155/95-2027 dt. 15.5.95, promoted Respondent No.4 to the rank of Assistant Aerodrome Officer w.e.f. the date he takes over charge of the post of A.R.C. Charbatia.

A copy of the said order dt. 15.5.95 is annexed herewith and marked as Annexure-X.

11. That the applicant, immediately on 14.6.95, submitted the representation to the Respondent No.1 stating the above facts and as to how he was deprived from being promoted against the reserved post, though he was the only eligible Scheduled Caste candidate and prayed that the promotion of Respondent No.4 be set aside and his case for promotion be considered. The aforesaid representation was duly forwarded. Since there was no response, the applicant

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Chandramani Behera

on 28.8.95, submitted a reminder representation in response to which the applicant, by letter dt. 16.9.95, was informed that his representation had been forwarded to the Cabinet Secretariate with parawise comments and that the decision was yet to be received and the same was communicated to the applicant on 28.10.95 but again, though ~~more~~ more than six months have elapsed, the applicant has not received any response to the representation.

Copies of representations dt. 14.6.95 and correspondance are annexed herewith and marked as Annexure-XI to XVI.

11. That the applicant filed the representation as far back as on 14.6.95 and the authorities as far back as in October, 1995, informed the applicant that the matter was under consideration of the Cabinet Secretariate and though more than 6 months have elapsed, the applicant has not been forwarded with a reply and the applicant apprehends that no useful purpose will be served by waiting any longer and as such he is approaching ~~the~~ this Hon'ble Tribunal for relief, due to him.

7. DETAILS OF REMEDIES EXHAUSTED:

The applicant has submitted a representation against the impugned order of 14.6.95 (Annexure-XI) and the same had been duly forwarded to the Respondent No.1. The applicant, by letter dt. 28.10.95 (Annexure-XVI), was informed

Contd...

Chandramani Behera

10.

that his representations had been forwarded and that the decision would be communicated to him but till date he had not received any information.

8. The applicant further declares that he had not previously filed any application /Writ application or suit regarding the matter, in respect of which this application has been made, before any Court of law or any other bench of this Hon'ble Tribunal and no such application /Writ application or suit is pending.

9. RELIEF SOUGHT AND GROUND :-

i) For that the impugned order of the authorities in not considering the case of the applicant for promotion is against the promotion policy initiated by the Central Govt. for the benefit of the members of the Scheduled Caste and Scheduled Tribe as well as other related Govt. instructions in this behalf and as such the impugned action of the authorities is bad in law and is liable to be set aside.

ii) For that, on the basis of the 40-point roster, the first vacancy is reserved for Scheduled Caste but since there were no suitable eligible Scheduled Caste candidate, the first 2 posts were filled up from general candidates. When the 3rd vacancy arose, the applicant was the only eligible Scheduled Caste Officer and the applicant ought to have been

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Chandramani Behera

considered for promotion against the clear reserved ~~vacancy~~ vacancy and that not having been done, the impugned action of the authorities is bad in law and is liable to be set aside.

iii) For that, admittedly, the applicant was the only eligible candidate belonging to the Scheduled Caste and the applicant could not have been ignored inasmuch as the first vacancy was made for Scheduled Caste and as such the action of the authorities in ignoring the applicant's claim is bad in law and is liable to be set aside.

iv) For that the applicant, being the only eligible Officer belonging to the Scheduled Caste community, should have been promoted to the higher post of Assistant Aerodrome Officer and the respondents committed a serious error and illegality in not doing so and as such the impugned order, promoting Respondent No.4, is bad in law and is liable to be set aside.

v) For that immediately before and after the impugned order promoting Respondent No.4 was passed, the applicant submitted appeal/representation to the Respondent No.1 clearly mentioning violation of the reservation policy and the same has been duly forwarded to the Respondent No.1 and the Respondent No.1, by not disposing of the representation, has failed to exercise jurisdiction

Contd...

Chandramani Behra

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vested in
~~granted to~~ it and as such this is a fit case where this Hon'ble Tribunal would exercise jurisdiction and grant relief to the applicant.

vi) For that in any view of the matter, the impugned action of the authorities is completely ignoring the reservation policy and denying promotion, otherwise due to the applicant and promoting Respondent No.4, is bad in law and liable to be set aside.

It is, therefore, prayed that your Lordships would be pleased to admit this application call for the entire records of the case, ask the opposite parties to show cause as to why a direction should not be issued to consider the case of the applicant for being promoted to the rank of Assistant Aerodrome Officer as per the reservation policy and also as to why the impugned order dt. 15.5.95 (Annexure-X) should not be set aside and quashed and after perusal of the causes shown, if any, and hearing the parties, issue necessary directions as prayed, and set aside the impugned order dt. 15.5.95 (Annexure-X) and direct that the applicant be promoted with all consequential benefits and/or pass any other/order/orders as your Lordships deem fit and proper so ~~as~~ to grant relief to the applicant.

And for which act, the applicant, as in duty bound. shall ever pray.

contd..

Chandramani Behera

13.

10. Interim order :- NIL.

11. Does not arise.

12. Postal order No. 09.346124

dt.. 24.5.86
for Rs. 50/-

issued by the post office at Guwahati.

Chandramani Behera

VERIFICATION

I, Shri Chandramani Behera, son of Late Balkrishna Behera, aged about 53 years of present working as Aerodrome Assistant, at Air Traffic Control, A.R.C. (Air Wing), Doomdooma state that I am the applicant in the case and I verify that the contents of paragraphs ...^{1, 7, 8, 12} are true to my ~~personal~~ knowledge and those made in paragraphs No. ^{2, 3, 4, 5, 6, 9, 10, 11} are believed to be true on legal advice and that I have not suppressed any material fact.

And I sign this verification on 2nd day of July, 1996 at Guwahati.

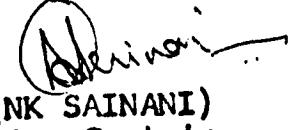
Chandramani Behera
(Chandramani Behera).

S/Shri R.K.Bose Roychoudhury and C.M.Behera under went Airtraffic controller course held at Charbatia in the year 1979.

S/Shri R.K.Bose Roychoudhury and C.M.Behera sucessfully completed the course . The following are the marks obtained by them.

Name	Subject	Total marks	Marks obtained	%
S/Shri 1.R.K.Bose Roychoudhary	ATC services Procedure	75	60	80%
2.C.M.Behera	-do-	"	62	83%
1.RK Bose Roychoudhury	Air Naviga.	50	45	90%
2.CM Behera	-do-	"	41	82%
1.RK Bose Roychoudhury	Meterology	25	17½	70%
2.C.M.Behera	-do-	"	18½	74%
1.RK Bose Roychoudhury	Communication	25	23	92%
2.CM Behera	-do-	"	21	84%

Throughout the course the trainees showed keen interest in their subjects and did well in the written test.


(NK SAINANI)
Sr. Captain
Course in-Charge

Attested
S. K. Sainani
A. G. S.

OFFICE ORDER NO. A: 192/89

The following two Aerodrome Operators Grade-I are promoted to the posts of Aerodrome Assistants in the pay scale of Rs.1600-50-2300-EB-60-2660/- with effect from the forenoon of the 20-12-89 and posted to places mentioned against each.

- 1) Shri T.C.Borkotoky, Aerodrome Operator Gr.I ... ARC, DOOM DOOMA
- 2) Shri C.M.Bhera, -do ... ARC, CHARBATIA

(AUTHORITY :- ARC Hqrs., New Delhi Memo No. ARC/AW-251/87-59/2 dt. 3-11-89.)

(R.R.MOHANTY)
DEPUTY DIRECTOR(ADMN)

No. VII/192/89-Vol.4 24/12
Aviation Research Centre,
Government of India,
PO: Charbatia(PIN-754023),
Cuttack District(Orissa).
-.-

Dated the, 19-12-89

Copy to :-

- 1) .. Director of Accounts, Cabinet Sectt.,
... R.K.Puram, New Delhi.
- 2) .. DD(A), Airwing, ARC Hqrs., New Delhi.
- 3) .. The ACM, ARC, Charbatia. The joining report
of Shri Bhera may please be sent early.
- 4) .. Asst. Director(A), ARC Doom Dooma.
- 5) .. Accounts Officer, ARC, Charbatia (2 copies).
- 6) .. Divm - VI (2 copies), VII (O.O.File), NGO(C.C.Roll),
- 7) .. person concerned (2 copies).
(T) O.I/C, ... ATC, ARC Charbatia and AD(Admn),
... ARC, Doom Dooma.

Attested
S. K. S.
A. S. S.

(17)

ANNEXURE - III

OFFICE ORDER NO. A-117/89

Consequent on his promotion to the post of Aerodrome Assistant in the pay scale of Rs.1600-
50-2300-80-60-2660/- vide this office Order No.
A-112/89, dated 19-12-89 Shri Chandramani Behera,
Aerodrome Operator Gr.I reported for duty to the
post of Aerodrome Assistant in the forenoon of
20-12-1989 at ARC, Charbatia.

[Signature]
(B. C. SWAIN)
ASSISTANT DIRECTOR (AFIN)

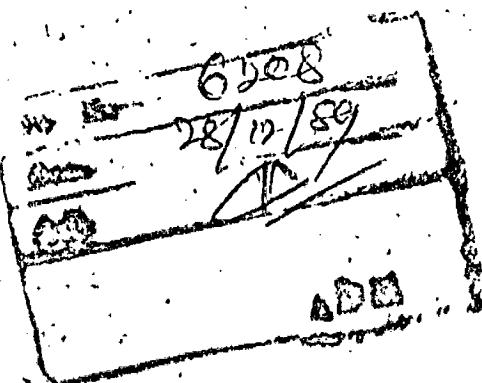
NO. VII/192/89-VOL.4 24754
Aviation Research Centre,
Government of India,
PO : Charbatia (PIN-754028),
Cuttack District (Orissa).

Dated the, 27/12/89

Copy to :-

- 1).. Director of Accounts, Cabinet Sectt.,
A.K.Pucan, New Delhi.
- 2).. Dy. Director (Admin) (Airwing), ARC HQRS.,
New Delhi.
- 3).. The ADM, ARC, Charbatia.
- 4).. Accounts Officer, ARC Charbatia (2 copies).
- 5).. Divn - VI, VII (Office Order File),
NGO (C.C. no 11).
- 6).. Person concerned
(T) O.I/C ATC, ARC Charbatia.

Attested
S. K. Patnaik



5/6
30/12/89

ATC

407
95/1190

ESTD
ADM

18

ANNEXURE

IV

OFFICER ORDER

The following may be added in the office
order No. A-112/89 dt. 19-12-89.

Quote

The promotion in respect of S/Shri T.C. Berkotky & C.M. Dehera, Aerodrome Operators to the post of Aerodrome Assistant is purely provisional & subject to the result of the case filed by Shri R.N. Panda, Aerodrome Operator in CAT, Cuttack vide No. OA-406/1988.

Unquote

Mohanty
(R.R. MOHANTY)
DEPUTY DIRECTOR (ADMN)

NO. VII/192/89-Vol.4- 1245
Aviation Research Centre,
Government of India,
PO : Charbati (PIN 754028),
Cuttack District (Orissa).

Dated the, 25-1-90

Copy to :-

- 1) .. Director of Accounts, Cabinet Secrt., H.K. Puran, New Delhi.
- 2) .. DD(A), Airwing, ARC, New Delhi.
- 3) .. ADM, ARC Charbati.
- 4) .. Asst. Director(A), ARC, Dhem Doma.
- 5) .. Accounts Officer, ARC Charbati (2 copies).
- 6) .. Divn - VI (2 copies), VII (0,0,File), NGO (C.C. ROLL).
- 7) .. Person concerned, ATC (G) AOM
- 8) .. NCC (LEGAL Cell), w.r.t. their No. ARC/04/406/1988-1136 dated 31-12-89.

Attested
S.M.
ADM

016
27/1/90

(19)

5399 ANNEXURE - V
Dt. 18.12.92

Office Order No. Part 103/92

With reference to Order No. A 112/89 dated 19.12.89 and No. VII/192/89-Vol.4/1238 dated 23.1.90 of Deputy Director (Adm.) ARC, Charbatia and in terms of CAT, Cuttack judgement order No.3 dated 1.11.91 in C.P.No.20/91 arising out of OA/ 406/88 on the petition of Shri R.N. Panda, Aerodrome Operator Gr.I the provisional promotion of the following Aerodrome Operator Gr.I to the post of Aero Asst. are made on regular basis with immediate effect.

1. Shri T.C.Borkataky, Aero Optr. Gr.I
2. Shri C.M.Behera, Aerodrome Operator Gr.I.

This has the approval of Director ARC.

SD/-
(G.C.TRIPATHI)
DEPUTY DIRECTOR (ADM) AW

No. ARC/AW-970/89-3968
AVIATION RESEARCH CENTRE
DIRECTORATE GENERAL OF SECURITY
OFFICE OF THE DIRECTOR ARC
(CABINET SECRETARIAT)

New Delhi the 18 December '92.

Attested
SD/-
ADM
Copy to:

1. DACS, New Delhi.
2. DD(A), ARC, CHARBATIA with reference to his msg. No.VII/192/91-Vol.3-1477 dated 3.11.92.
3. DD(A), ARC, Deon Deoma.
4. Office Order Book.
5. Office Copy.

No.VII/192/91 Vol.5-22881
Aviation Research Centre,
Government of India,
P.O. Charbatia(754028)
Dist. Cuttack (Orissa)

Dated the, 17.12.92

Copy forwarded to:- 1) Accounts Officer, ARC, Charbatia.
2) Shri C.M.Behera, Aerodrome Asst.
(T) Commander A/Wing, ARC, Charbatia.
3) Division VIII VI
4) Legal Cell.

SD/- 17.12.92
(B.K.SARANGI)
SECTION OFFICER

(20)

ANNEXURE

(V)

32

OFFICE ORDER

Shri R.N.Panda, Aerodrome Operator, Gr.I is promoted to the post of Aerodrome Assistant in the pay scale of Rs.1600+50+2300=Rs.2660 with effect from the forenoon of 20.4.92 and posted at ARC Deom Deoma.

Sd/-

(G.C.Tripathi)
DEPUTY DIRECTOR (ADMIN) AW

NO. ARC/AW/606/88-1262
Aviation Research Centre
Directorate General of Security
Office of the Director ARC
(Cabinet Secretariat)
East Block-V, R.K.Puram,
New Delhi-110066.

Dated the 24 April 92

Attested
S.D.L
Ass

1. Director of Accounts.
2. DD(A), ARC, Deom Deoma.
3. DD (A), ARC, Charbaghia.
4. Shri R.N.Panda,
5. Commander, ARC, Deom Deoma.
6. Commander, ARC, Charbaghia.
7. C.S.O., ARC, Palam.

No. ARC/102/10/PS-12-4249

30 Apr' 92

ARC (Airwing),
Charbaghia.

Copy to :-

O.I/C, ATC,
ARC (Airwing),
Charbaghia for information and
necessary action.

Sd/-
(K.K.LAZAR)

J.R.O.

ADJUTANT

for COMMANDER.

No. ARC/AW/-970/89-2277
 Aviation Research Centre,
 Dte. General of Security,
 Cabinet Secretariate,
 East Block-V, R.K.Puram,
 Now Delhi- 110066.

31 May 91.

MEMORANDUM

SUB: Representation of Sh. C.M.Behera, Aero.Asst.

Reference is made to his application dtd. 20.5.91 regarding promotion to the post of Asst. Aero. Officer.

The Rectt. rules for filling up the post of Asstt. Aerodrome Officers stipulates that aero.operators gr.I after completion of 8 years of service in the grade and on a successful completion of CAC course are eligible for the promotion to the post of Asst. Aero. Officer. Aero. Assts. after completion of 5 years of service in the grade and passing departmental exam. are also eligible for promotion to the post of Asst. Aero. Officer. Since Shri Behera has not fulfilled any of the above two, is not eligible for promotion as per Rectt. Rules.

The reservation posts are filled in by the candidates who fulfills all the conditions prescribed in the Rectt. rules.

Sd/- (S.N.KACKER)
 FOR. DY. DIRECTOR(A) AW.

SHRI C.M.BEHERA: AERO ASST.
 (T) AD(A):ARC:CBT.

Copy to:- Commissioner, SC/ST, First Floor, Wing No.7 west block-1, R.K.Buram, New Delhi w.r.t. the application cited above.

No.VII/192/91/Vol-5/10988
 A.R.C., Charbatia.

Dated the 26.6.91.

Attested
Shri
AD
 Copy to Shri C.M.Behera, Aerodrome Asstt.
 (Th) Commander (A/W) ARC, Charbatia for information.

SD/- (B.K.SARANGI) SECTION
 OFFICER.

NO.ARC/~~XXX~~ 102/10/PS(11)-4982

ARC(Airwing)
 Charbatia.

28 June 91.

Copy to:-
 O.I/C, ATC, ARC(Airwing), Charbatia for information.
 Please inform the concerned individual accordingly.

SD/- (K.K.LAZAR) J.R.O.
 ADJUTANT:
 FOR: COMMANDER:AW: CHARBATIA.

No.ATC/ARC/EST/1/PP/91-363
 Air Traffic Control,
 A.R.C., Charbatia.

* * *

Dated the 02 July, 1991.

Copy to Sri C.M.Behera, Aerodrome Asst. For information.

Shri
 (S.N.SRIVASTAVA) J.R.O.
 OFFICER IN CHARGE
 A.T.C.
 CHARBATIA.

No. ARC/AW-604/88-1
 Aviation Research Centre
 Dte. General of Security
 Cabinet Secretariat
 East Block-V, R.K.Puram
 New Delhi-110066

8 Jan ' 91.

34

MEMORANDUM

In view of the verdict of the CAT, Cuttack in case Nos. 406 of 1988 and 90 of 1987, the seniority list of all the Aerodrome Operators have been revised, which is enclosed herewith. The revised seniority list may please be shown to all the officials and descrepency, if any, may be pointed out within 15 days from the receipt of this memo.

Sd/-
 (S.N.Kacker)
 Sr. Capt.
 For Dy. Director (A)-AW

Encl: a/a

Dy. Director (A)
ARC CBT

Dy Director (A)
 ARC, DDMA.

No. VIII/16/70-1454
 ARC, Charbatia.

Dated the 25.1.91

Attested
 Sd/-
 AD

Copy forwarded to :-

1. O I/C, ATC, ARC, Charbatia- for information & necessary action please. The seniority list may please be shown to the concerned staff working under you and their signature obtain in token of having seen the seniority list and the same returned for record.
2. L/A for information & necessary action please.

Sd/- 25.1.91.
 (X) B.K.SARANGI
 SECTION OFFICER

REVISE SENIORITY LIST OF AERODROME OPERATOR

SL. NO.	NAME	DATE OF BIRTH	EDUCATIONAL QUALIFICATION	DATE OF ENTRY INTO SERVICE	DATE OF JOINING DG(S)	DATE OF CONTINUOUS APPT. TO THE GRADE	DATE OF RANK IN WHICH CONFIRMED	PLACE OF POSTING	REMARKS
1	2	3	4	5	6	7	8	9	10
S/Shri									
1.	P.K.Ratha.*	12.5.49	B.A.	8.9.71	8.9.71	08.9.71	15.3.77	DDMA	Promoted as AAO w.e.f. 11.8.88
2.	I.C.Borkataky.	1.4.42	B.Com.	5.8.71	5.8.71	5.8.71	15.3.77	"	
3.	R.N.Panda.*	12.5.46	SSC	9.11.71	9.11.71	9.11.71	1.8.84	"	
4.	C.M.Bhera.	9.1.63	P.U.	24.4.67	24.4.67 (L.D.C.)	2.7.73	15.3.77	"	
5.	R.K.Bose Roy Choudhary.	24.9.48	B.A.	1.8.72	1.8.72	1.2.75	15.3.77	CBT	

* Note:- Seniority revised in accordance with decision of CAT in case.

- i) 90/87 dt. 21.4.88 of Cuttack Branch.
- ii) 46/88 dt. 13.7.90 of Cuttack Branch.

Attested
S. M.
A.D.

To

24

The Cabinet Secretary,
Government of India,
Cabinet Secretariat,
New Delhi.

(Through Proper Channel)

Sub:- Request for promotion to the post of Assistant Aerodrome Officer, in the matter of supersession in promotion against reserved quota.

Respected Sir,

Kindly refer to my representations dated 12.4.89, 26.5.89, 9.8.89, 26.4.90, 15.4.91, 28.6.91, 3.7.91 and 10.3.93 on the subject cited above.

That sir, the applicant joined to the post of Aerodrome Operator Gr.I on 2nd July 1973 and completed 8 years of service in the year 1981. The applicant confirmed in the post of Aerodrome Operator Gr.I with effect from 15.3.77 and passed the Departmental Qualifying Examination in the year 1979. The applicant has been promoted to the post of Aerodrome Assistant with effect from 20.12.89 and completed 5 years of service i.e. on 20.12.94.

That sir, it is regretted to point out here that the applicant's authority intends to fill up the reserved post of Assistant Aerodrome Officer by the general caste category of candidate for which the applicant has been harassed in many cases, such as by sending the higher training course direct to "Eligibility Course" and adverse remark in ACR.

Moreover the CATC Course training is comprising of different studies begining from Abinitio Course thereafter Eligibility Course etc. The candidates after successful completion in Abinitio course are only eligible for Eligibility Course. Even though my honourable authority has not yet been deputed any one of the general caste category candidates for Eligibility Course. The applicant has been sent for training direct to Eligibility Course leaving aside the Abinitio Course which is primary to Eligibility Course.

That sir, I may kindly be allowed to mention here that Sri R.N.Panda, Aerodrome Assistant is junior to me in the grade of Aerodrome Assistant, but the said Sri R.N.Panda, Aero.Ast, has not yet passed the Eligibility Course and also he has not yet completed 5 years of service in the grade of Aerodrome Assistant. Moreover Sri R.N.Panda Ae.ro. Assistant, has been confirmed in the post of Aerodrome Operator Gr.I with effect from 1.4.84, due to adverse remarks in his service and he has been promoted to the post of Aerodrome Assistant with effect from 20.4.92.

That sir, it is also ascertained that the honourable authorities are going to consider the promotion of Sri R.N.Panda to the post of Assistant Aerodrome Officer ignoring the applicant's genuine claim for the said promotion to the post of Assistant Aerodrome Officer in view of applicant's seniority and claim for promotion as reservation point as scheduled caste candidates.

Attested
S. N.
A.O.

That sir, as per revised recruitment rules the Aerodrome Assistants have to pass Departmental Qualifying Examination and thereafter completing 5 years service in the cadre of Aerodrome Assistant will be eligible for promotion to the post of Assistant Aerodrome Officer. In this connection ARC Headquarters letter No. ARC/AW/870/88-2277 dated 31.5.91 communicated to me by the Assistant Director (A), ARC, Charbagh vide letter No. VII/192/91/Vol.5/10988 Dt. 26.6.91 may kindly be referred to. (Copy enclosed).

A Memo. has also issued to me vide ARC Headquarters No. ARC/AW-56/83-874 Dt. 15.2.88 informing me that no further training is required for promotion to the post of Assistant Aerodrome Officer (Copy enclosed).

That sir, as per rules embodied in the scheduled caste brochure in force 40 point roster is to be maintained in the matter of confirmation and fixation of seniority for promotion of scheduled caste candidates.

That sir, the detailed instructions of the Government of India regarding reservation in confirmation have been incorporated in paragraph 17.2 of the brochure on reservation for SC/ST in service.

That sir, a separate 40/100 point roster should be maintained for ensuring reservation for the confirmation in respect of direct recruits as per the standing instructions of the Government of India in force.

That sir, according to Government orders, the claim for promotion of the members of scheduled caste should be drawn up separately to fill up reserved vacancies. Officers belonging to those classes should be adjudged separately and not alongwith other officers. They should also be included in the separate list irrespective their merit as compared to other officers.

That sir, according to Model Roster, the post at point No. I is reserved for promotion of the candidates belonging to scheduled caste category.

That sir, the applicant's honourable authority has already been filled up two posts of Assistant Aerodrome Officer by the candidates of general caste category. That sir, while filling up the post of Assistant Aerodrome Officer the claim for promotion of the Petitioner as a scheduled caste candidate has not been taken into consideration either in a separate zone exclusively for scheduled caste candidates or alongwith the non-scheduled caste candidates in a common zone.

In view of the above facts and circumstances the applicant's case for promotion to the rank of Assistant Aerodrome Officer may kindly be considered. Since I am a scheduled caste eligible candidate is available for promotion to the rank of Assistant Aerodrome Officer and question of promotion of any other junior general caste candidate by dereservation of the post of Assistant Aerodrome Officer does not arise and the question of dereservation of the post of Assistant Aerodrome Officer may kindly be dropped.

The Petitioner therefore request that your honours may kindly be perused by going through the papers for promotion to the post of Assistant Aerodrome Officer and for this act of kindness the applicant will remain ever grateful to you.

With regards.

Dt. 29/12/94

Yours faithfully,


29/12/94

(C.M. Behra)
Aerodrome Assistant
ATC, ARC, Doon Dooms.

(1) Copy forwarded in advance to the Cabinet Secretary, Government of India, Cabinet Secretariat, South Block, New Delhi for kind consideration.

(ii) Copy in advance submitted to the Commissioner, Scheduled Caste/Scheduled Tribe, First Floor, Wing No.7, West Block-I, R.K.Puram, New Delhi for necessary action.

It is requested that the case may kindly be expedited.

Attested
Sdl
AGR

SD/-
(C.M. Behora)
Aerodrome Assistant
ATC, ARC, Doon Dooma.

ORDER

39

Sri R.N.Panda, Aerodrome Assistant is promoted as Assistant Aerodrome Officer in the pay scale of Rs.2000-60-2300-EB-3200-100-3500 with effect from from the date he takes over the charge of the post at ARC, Charbatia.

Sd/-

S.Gopal
Director, ARC

*Attested
S. Gopal
ASO*

No. ARC/AW-155/95-2027
Aviation Research Centre,
Directorate General of Security
Cabinet Secretariat,
R.K.Puram,
New Delhi.

Dt. 15.5.95.

Copy to :

1. Director of Accounts
New Delhi
2. Deputy Director(A), ARC, Charbatia,
the charge of taking over report
may be sent this Headquarters early.
3. Sri R.N.Panda, Aero. Asst. ARC, CBT.
4. General File.

To

The Cabinet Secretary,
Government of India,
Cabinet Secretariat,
New Delhi.

(Through Proper Channel)

Sub:- Request for promotion to the post of Assistant Aerodrome Officer, in the matter of supersession in promotion against reserved quota.

...

Respected Sir,

That sir, the applicant joined to the post of Aerodrome Operator Gr.I on 2nd July 1973 and completed 8 years of service in the year 1981. The applicant confirmed in the post of Aerodrome Operator Gr.I with effect from 15.3.77, and passed the Departmental Qualifying Examination in the 1979. The applicant has been promoted to the post of Aerodrome Assistant with effect from 20.12.89 and completed 5 years of service i.e. on 20.12.94.

That sir, as per revised recruitment rules the Aerodrome Assistant have to pass Departmental Qualifying Examination and thereafter completing 3 years service in the cadre of Aerodrome Assistant will be eligible for promotion to the post of Assistant Aerodrome Officer. In this connection ARC Headquarters letter No.ARC/AW/970/89-2277 dated 31.5.91 communicated to me by the Assistant Director(A), ARC, Charbagh vide letter No.VII/192/91/Vol.5/10988 Dt. 26.6.91 may kindly be referred to (Copy enclosed).

A Memo. has also issued to me vide ARC Headquarters No.ARC/AW-36/83-874 Dt. 15.2.88 informing me that no further training is required for promotion to the post of Assistant Aerodrome Officer (Copy enclosed).

That sir, as per rules embodied in the scheduled caste brochure in force 40 point roster is to be maintained in the matter of confirmation and fixation of seniority for promotion of scheduled caste candidates.

That sir, the detailed instructions of the Government of India regarding reservation in confirmation have been incorporated in paragraph 17.2 of the brochure on reservation for SC/ST in service.

That sir, a separate 40/100 point roster should be maintained for ensuring reservation for the confirmation in respect of direct recruits as per the standing instructions of the Government of India in force.

That sir, according to Government orders, the claim for promotion of the members of scheduled caste should be drawn up separately to fill up reserved vacancies. Officers belonging to those classes should be adjudged separately and not alongwith other officers. They should also included in the separate list irrespective their merit as compared to other officers.

That sir, according to Model Roster, the post at point No.1 is reserved for promotion of the candidates belonging to scheduled caste category.

That sir, in the applicant's Department there are three posts of Assistant Aerodrome Officer and as per Roster the first post goes to a scheduled caste candidate. However as there were no eligible scheduled caste officers, the first two vacancies were filled by general candidates and the third post now is reserved for scheduled caste candidate.

Cont.....2.

Attested
S. I. M.
A.D.

That I possess the requisite eligibility criteria for being promoted to the said post and being a scheduled caste candidate I was entitled to be considered for promotion against the same post which is reserved vacancy. The authorities without considering my case, in gross violation of the reservation rules has promoted Sri R.N.Panda, Aerodrome Assistant against the reserved post of Assistant Aerodrome Officer depriving me of my legitimate claim for being promoted against the reserved vacancy.

I, therefore, pray before your honour to kindly admit my appeal, call for the records relating to the promotion of Assistant Aerodrome Officer and after perusal thereof set aside the promotion of Sri R.N.Panda, Assistant Aerodrome Officer and direct I be considered for promotion against the vacancy meant for scheduled caste candidate.

Thanking you sir,

Yours faithfully,

Dated the 14th June 95

Chhota
14/6/95
(C.M.Bhera)
Aerodrome Assistant
ATC, ARC, Doon Dooma.

Attested
S. Dill
ASR

Copy forwarded in advance to the Cabinet Secretary, Government of India, Cabinet Secretariat, South Block, New Delhi for kind consideration.

(ii) Copy in advance submitted to the Commissioner, Scheduled Caste/Scheduled Tribe, First Floor, Wing No.7, West Block-I, R.K.Puram, New Delhi for necessary action.

It is requested that the case may kindly be expedited.

sd/-
(C.M.Bhera)
Aerodrome Assistant
ATC, ARC, Doon Dooma.

Most Dommert

ARC (Airwing)
Doom Dooma
(Assam)

No. 1/33/AW.D/95- 6118(1)

17 Jun/95

Assistant Director (Admn),
ARC, Doom Dooma

Subject : Request for Promotion to the rank of AAO
in the matter of supersession in Promotion
against reserved quota : Shri CM Behara,
Aerodrome Assistant

Enclosed please find another representation on promotion of Shri CM Behara, Aerodrome Assistant to the post of Assistant Aerodrome Officer. No decision has yet been communicated to Shri CM Behara on his previous representation forwarded vide your letter No. 109/Estt/DDM/93-137 dated 09/01/95. Kindly refer our Message No. 1/33/AW.D/95 dated 16 Jun/95 to DD(Admn) Airwing, ARC Hqrs in this regard.

The application of Shri CM Behara, Aerodrome Asstt. is forwarded herewith in triplicate for further necessary action.

Attested
Bill
AGH

Enclo : As above.

urina
(GS Sharma) Sr Capt
Commander: Airwing
ARC Doom Dooma.

Copy to:-

✓ Shri CM Behara, Aerodrome Assistant (Through) AAO,
ATC, ARC, Doom Dooma with reference to No. GP-01/ATC/ARC/DDM-
95-50 dated 14/6/95 for information.

urina
(GS Sharma) Sr Capt
Commander: Airwing
ARC Doom Dooma.

seen
17/6/95

....

(31)

Re. 1/33/AW.D/95- 6173

26 Jun/95

43

✓ Assistant Aerodrome Officer,
ATC (ARC) Doom Dooma.

Subject : Representation of Shri CM Behara, Aerodrome Asstt.
in the matter of supersession in promotions against
Reserve Quota.

Ref : GP-01/ATC/DDM/95-50 dated 14/6/95

The representation of Shri CM Behara, Aerodrome Assistant,
had been forwarded by DD(Admin), ARC, Doom Dooma to DD(A), Airwing
ARC Hqrs. New Delhi vide No. 109/Estt/DDM/5878 dated 22/6/95
quoting the reference of his earlier application
dated 29/12/94. Shri Behara may please be informed accordingly.

Attested
Sikhs
A.D.O.

Jain Singh
(Joginder Singh) JAO
Admin Officer
for Commander : Airwing
प्रशासनिक प्रतिकारी
Admin. Officer
एयरविंग फ्लॉडो कॉम
Airwing A.R.C.
डुम डुमा
Doom Dooma

(32)

To

The Cabinet Secretary,
Government of India,
Cabinet Secretariat,
New Delhi.

(Through Proper Channel)

Sub:- Request for promotion to the post of Assistant Aerodrome Officer, in the matter of supersession in promotion against reserved quota.

....

Hon'ble Sir,

A kind reference may please be invited to my earlier representation dated 14.6.95 regarding the above mentioned subject.

Sir, although a period of two months have since elapsed no reply has been received by me regarding my promotion to the post of Assistant Aerodrome Officer out of reserved post for scheduled caste category of candidates.

I therefore pray before your kind honour to review of papers and necessary orders may please be passed from your goodness for my promotion against the reserved post of Assistant Aerodrome Officer under DG(5) for scheduled caste category of candidates and this act of your kindness I shall be grateful to you.

An early action is requested.

Attested
S. M. Behera

Dated 28th August 95

Yours faithfully

28/8/95
S. M. Behera

(C.M.Behera)
Aerodrome Assistant
ATC, ARC,
Doom Dooma.

- (i) An advance copy submitted to the Cabinet Secretary, Government of India, Cabinet Secretariat, New Delhi for kind consideration.
- (ii) Copy in advance submitted to the Commissioner, SC/ST, First Floor, Wing No.7, West Block-I, R.K.Puram, New Delhi for early necessary action.

Further it is requested that the case may may please be expedited.

28/8/95
S. M. Behera

(C.M.Behera)
Aerodrome Ass't.
ATC, ARC, Doom Dooma.

33

ARC (Airwing)
Deen Deen

16 Sept 95

u4

No.1/33/AW.D/95- 6356

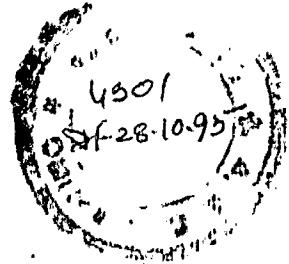
Assistant Aerodrome
Officer, ARC, ATC
Deen Deen.Sub: Request for promotion to the post of Assistant
Aerodrome Officer, in the matter of supersession
in promotion against reserved quota.Reference is made to your letter No.GP01/ATC/ARC/DDM-
95-98 dated 28.8.95 on the above subject.

The decision of ARC Hqrs is produced below:

" The representation of the official have already
been forwarded to Cab.Sectt. with parawise comments (.) The
decision is yet to be received from Cab.Secft" (.)It is requested that the individual may please be
informed accordingly.*Blanks*(Jaginder Singh)
Jr. Arat. Officer
Admin Officer
for Commander Airwing.*Attested
S. D.
AD.**H. S. C.*

No. 109/ESTT/DDM/93- 11260 u/s
 C/O the Deputy Director (ADMN)
 Aviation Research Centre
 Government of India
 Post : Doom Dooma : 786 151
 Dist : Tinsukia : (Assam)

Dated the, 28/10/95



MEMORANDUM

Sub : Request for promotion to the post of Assistant Aerodrome Officer, in the matter of supersession in promotion against reserved quota.

Shri C.M. Behera, Aerodrome Assistant is hereby informed that his representations dated 29/12/94, 1/6/95 and 28/8/95 on the above subject have been forwarded to Cab. Sectt. by ARC Hqrs. and the decision in this regard will be communicated as and when the same is received by us.

R.K. SARIN
 (R.K. SARIN)
 ASSISTANT DIRECTOR (ADMN)

To

Shri C.M. Behera,
 Aerodrome Assistant,
 (T) Commander, Airwing,
 A.R.C., Doom Dooma.

Copy to:-

Attested
 Sd/-
 ADX
 28-10-95

- 1) The Deputy Director (A)-AW, ARC Hqrs., New Delhi w.r.t. L.C. No. ARC/AW-970/89(pt-II)-4108 dated 6/10/95.
- 2) The Commander, Airwing, ARC, Doom Dooma.

ASSISTANT DIRECTOR (ADMN)

/uma/

C.W. B.C. 10/10/95

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Filed in Court
on 18.10.1996

Chandramani
Court Master
18/10

GUWAHATI BENCH
Central Administrative Tribunal
and its Tribunals

23 OCT 1996

Guwahati Bench
in the matter of :
General Welfare

O.A. No. 119/96

Sri Chandramani Behera

-versus-

Union of India & Ors.

-And-

In the matter of :

Written Statement on behalf of
the Respondent Nos. 1, 2 and 3.

I, Sri R.K. Mahajan, Deputy Director (Admn.)
Aviation Research Centre, Government of India, Doon
Dooma, Respondent No. 3 in the present application
do hereby solemnly affirm and declare as follows :

1. That a copy of the Original Application
alongwith an order dated 5.7.96 passed by this
Hon'ble Tribunal have been served up the respondents
and myself being the Respondent No. 3 and being duly
authorised, I file this written statement on behalf
of the other 2 respondents. That I am fully conversant
with the facts of the case after perusal of the records
concerning the same and assert categorically that save
and except what is admitted in the Written Statement,

Contd.. P/2

Received copy:

QMB 17/97

(G.N. Das)

Advocate

the rest of the allegation on the part of the applicant may be treated as totally denied by all the respondents. Before I make parawise comments I may be permitted to give a brief history of the case, which will constitute part and parcel of the written statement as follows :

BRIEF HISTORY OF THE CASE

The applicant was initially recruited to the post of LDC and subsequently promoted to the rank of U.D.C. He applied for the post of Aerodrome Operator Gr. I, which was considered by the Department and he was appointed as Aerodrome Operator Gr. I with effect from 2.7.1973. Subsequently, he was promoted as Aerodrome Assistant with effect from 20.12.1989 in response to his application dated 8.9.89. As per records, the applicant, belongs to Scheduled Caste Community. One of his colleagues namely Shri R.N.Panda, who joined as Aerodrome Operator Gr. I with effect from 9.11.1971, filed an Original Application before the Central Administrative Tribunal, Cuttack Bench vide O.A. No. 406/88 for restoration of his seniority over the present applicant, Shri C.M.Bhera & Ors. The Hon'ble Tribunal vide their judgement dated 13.7.90 directed that Shri R N Panda will be senior to the present applicant, as he was appointed earlier to applicant in the present grade. Besides, Hon'ble Tribunal also issued directive, if Shri R.N.Panda fulfills all the conditions for promotion to the rank of Asstt. Aerodrome Officer in Recruitment Rules of 1977 i.e. prior to the amendment in 1977, the

promotion to the rank of Assistant Aerodrome Officer may be considered, provided that the post is available. In obedience to the said order, the Department issued the revised seniority list and restored the seniority of Shri R.N.Panda and figured in ~~in~~ the seniority list at serial No. 3, Annexure-VIII to the present OA filed by the applicant.

As per Recruitment Rules, the post of Assistant Aerodrome Officer can be filled up by the following methods :-

a) Aerodrome Operator Gr. I.

After completion of 8 years of service in the grade and on successful completion of CATC course.

b) Aerodrome Assistant.

After completion of 5 years of service in the grade and after passing a Departmental test.

Shri C.M. Behera, the applicant, completed 8 years of service in the grade of Aerodrome Operator Gr. I, but could not complete the course CATC at Allahabad. For this, Department after incurred an amount of Rs. 25,000/- and deputed him for CATC course at Allahabad, but ~~Shri~~ applicant ~~Max~~ failed miserably. The applicant was further requested to appear in the performance improvement examination, but the applicant not only violated the instructions of the Department, but also filed another application before the Central Administrative Tribunal, Cuttack Bench through M.A. No. 193/92. The Hon'ble Tribunal vide their Order dated 27.4.92 passed an order that the petitioner (C.M. Behera) need not be sent for training as

desired by him, but this should be completely at his risk without prejudice to the contention of both sides in regard to merits of the case forming subject matter of O.A. 171/91.

There exists total 3 posts of Assistant Aerodrome Officer in the Aviation Research Centre in the Department. It could be seen from Annexure-VIII to the OA i.e. seniority list of Aerodrome Operators issued by the Department that Shri P.K. Ratha was at Serial No. 1, Shri T.C. Borkotaky at Sl. No. 2, Shri R. N. Panda at Sl. No. 3 and Shri C.M. Behra, the applicant at Sl. No. 4 of the list. Serial No.1, Shri P.K. Ratha was promoted as Asstt. Aerodrome Officer with effect from 5.9.88. In 1991, DPC held for filling up two posts of Asstt. Aerodrome Officer. DPC recommended promotion of S/Shri T.C. Borkotaky and R.N.Panda. Since one post out of two is meant for SC candidate as per 40 point Roster. Shri Panda could not be promoted. The post meant for SC category was kept vacant for a long time for the applicant with the intention that the said could be provided to the applicant subject to fulfilment of all the conditions of the Recruitment Rules. The applicant was also deputed to CATC course at Allahabad, but he failed miserably. The applicant was further nominated for the Improvement Examination for 3 weeks course with effect from 16.5.94. The applicant was relieved on 7th May 94 to undergo the course at Allahabad, but he did not attend the course rather avoided. Thus, all reasonable opportunities were provided to the applicant. He continued

on long leave unauthorisedly with a plea of his sickness that such sickness was not recommended by the Medical authorities. Besides, ~~that~~ the applicant was found to be reprimanded for unbecoming of a Government servant and conducting himself in an indisciplined manner by the competent authority. The disciplinary case was contemplated against the applicant and the disciplinary awarded him punishment of withholding the increment for 2 years vide Memo No. VII/Disc/41/92-93 dated 28.7.93. On the other hand Shri R.N.Panda, who fulfilled all the requisites for promotion to the post of Assistant Aerodrome Officer also filed petition before the Central Administrative Tribunal, Cuttack Bench for his promotion. He also obtained decree from Central Administrative Tribunal, Cuttack Bench in his favour. The DPC held for the purpose also recommended for his promotion but since he was a General candidate, he could not be promoted without proper de-reservation of the authority. The case was moved to higher authorities i.e. DP & T through Cabinet Sectt. Ultimately it was decided that the post meant for reserve category be got de-reserve Accordingly, de-reservation order was obtained from the competent authority and Shri Panda was promoted in May '1995.

The post of Asstt. Aerodrome Officer in the Aviation Research Centre, DG(S), Cabinet Sectt., is an operational post and very much essential in the interest of air-operation. The post of Asstt. Aerodrome Officer is to act as Air Traffic Controller in the interest of

conducting special flying air-operations. As the applicant, the applicant could not fulfil the requisites of Recruitment Rules, the Department had no other option but to request Govt. to fill up the vacant post from the feeder grade by the General candidate obtaining the vacancy de-reserved from the competent authority. After obtaining the de-reservation order, the Department issued the promotion ~~of~~ respect of Shri R.N.Panda vide Order ARC/AW/155/95-2027 dated 15.5.95. Hence no arbitrary action as mentioned by the applicant in O.A. has ever been committed by the respondents rather all attempts to provide reasonable opportunities to fulfil the requisites of Recruitment Rules have been provided to the applicant, but the applicant not only failed miserably in the ACTA, Allahabad, but also avoided to attend Improvement Examination Test. He was also awarded punishment for his misdeeds. The O.A. is mis-conceived and devoid of merits as such the O.A. is liable to be dismissed.

PARAWISE COMMENTS

2. That with regard to the contents made in paragraphs 1 & 2 of the application, the respondents beg to state these are formal and the respondents have no comment.
3. That with regard to the contents made in paragraph 3 of the application, the respondents beg to state that the Order No. ARC/AW.155/95-2027 dated 15.5.95 (Annexure-VI) to the O.A.) was issued by the Department

promoting Respondent No. 4 i.e. Shri R.N.Panda as Asstt. Aerodrome Officer after obtaining proper de-reservation order of the competent authority. The reason for obtaining such dereservation is that the applicant though belongs to SC community, had failed miserably in CATC course at Allahabad vide result-sheet and also did not proceed at all for the improvement course and examination taking one plea or the other though the Department deputed him at an expenditure to the tune of Rs. 25,000/- & Rs. 4,200/- respectively. Apart from the above, he was awarded punishment by his disciplinary authority for unbecoming of a Public Servant and reduced his two stages withholding his increments for 2 years. Thus, the Department has not violated any instruction of the Govt. of India regarding reservation of posts in 40 Point Roster. Due concurrence of Government was taken in the matter and the de-reservation order was issued vide Cabinet Sectt. Order No. 31/28/89-EA-III-1797 dated 20.4.95. Thus the averment made by the applicant is misrepresentation of facts and is not correct.

Annexure-R₁ is the Memorandum dated 28.7.93.

ii) The brochure on reservation for SC/ST candidate stipulates that the Deptt. may seek de-reservation of a post when no suitable candidate is found from SC/ST category to fill up such post and as such no violation of provisions has been committed in the instant case. The post has been filled up by an eligible departmental candidate of un-reserved category only after obtaining

de-reservation from the Government. The allegation lodged by the applicant is not correct.

iii) The applicant's representation dated 14.6.95 for his promotion was addressed to the Cabinet Secretary with a copy to the Commissioner SC/ST, in advance. The Deptt. forwarded their comments to the Government. However no reply was received and the applicant was informed accordingly. Incidentally it may be stated that the application in question, who similar to his earlier applications and the applicant has been informed of the decision on a number of occasions.

Reply of the representation of the applicant submitted on 3.7.91 is annexed hereto and the same is marked as Annexure-R₂.

- 4 That with regard to the contents made in 4& paragraphs/5 of the application, the respondents have no comments on them.
- 5. That with regard to the contents made in paragraph 6.1 of the application, the respondents beg to state that it is on record that the applicant belongs to SC community and the Department has given due recognition.
- 6. That with regard to the contents made in paragraph 6.2 of the application the respondents beg to state that the applicant was initially appointed as LDC with effect from 24.4.1967 and was subsequently promoted as U.D.C. Thereafter, he changed his cadre

and was appointed as Asstt. Aerodrome Operator Gr. I with effect from 2.7.73. It is a fact that the Department had conducted a departmental course in 1979 and the applicant also attended. However, the said departmental course is a preliminary course meant for Aerodrome Operator Gr. I to familiarise with the kind of equipments, he is required to handle and understand the work force assigned to the post.

7. That with regard to the contents made in paragraph 6.3 of the application the respondents beg to state that the respondent No. 4, Assistant Aerodrome Operator Gr. I filed an Original Application before the Central Administrative Tribunal, Cuttack Bench which was registered as O.A. No. 406 of 1988 for restoration of his seniority over the applicant and others and Hon'ble Tribunal vide their judgement dated 13.7.90 held that respondent No. 4 will be senior to the applicant and other and accordingly seniority list was revised and circulated where the applicant was figured at sl. no. 4 vide Annexure-VIII to the present O.A. the promotion order was issued to the applicant as Aerodrome Assistant against SC quota provisionally, which was subsequently regularised. The applicant also filed an Original Application before the Hon'ble Cuttack Bench which was registered as O.A. No. 171/1991 for restoration of his seniority over the respondent No. 4. The Hon'ble Tribunal vide their judgement dated 17.2.1994 dismissed the application finding no merits in that original application.

A copy of the judgement dated 17.2.94 passed in O.A. No. 171/91 is annexed hereto and the same is marked as Annexure R₃.

8. That with regard to the contents made in paragraph 6.4 of the application, the respondents beg to state that this is the repetition of the brief history of the case. The judgement dated 13.7.90 passed by the Hon'ble Central Administrative Tribunal Cuttack Bench in O.A. No. 406 of 1988 filed by the respondent No. 4 and judgement dated 17.2.94 passed by the CAT, Cuttack Bench in O.A. No. 171 of 1994. The Department has acted as per the directives of the Hon'ble Tribunal and determined the inter-se-seniority of Aerodrome Operator Gr. I. Not only the applicant but also all others (S/Shri P.K. Ratha, T.C. Borkataky and R.N.Panda etc) had undergone the departmental familiarisation course and subsequently all of them were detailed to undergo the CATC course at Allahabad to cope up with the operational necessity of the organisation and make them eligible for promotion to the post of Asstt. Aerodrome Officer which is a responsible post. The applicant was given ample opportunities and deputed twice at a colossal expenditure of Govt. but he could not complete the course at CATC Allahabad. ~~THAN~~

9. That with regard to the contents made in paragraph 6.5 of the application the respondents beg to state that though the applicant completed 8 years service as Aerodrome Operator Gr. I - he was not eligible for promotion to the grade of Asstt. Aerodrome Officer as he could not complete the CATC course at Allahabad. On the other hand, even though he had undergone departmental course, he completed 5 years service as Aerodrom

Assistant only on 20.12.1994. The post of Asstt. Aerodrome Officer being operational in nature, the Department could not afford to keep the post vacant for a long time jeopardising the operational interest of the organisation. The Hon'ble CAT, Cuttack Bench in O.A. No. 406/88 was pleased to pass an order to consider the promotion of the respondent No. 4 while rejecting the petition of the present applicant for promotion filed in O.A. No. 171/91. The applicant had not completed 5 years as Aerodrome Assistant and therefore could not fulfil the second provision in Recruitment Rules. The applicant who also implicated in a departmental proceedings for his unbecoming of a Govt. servant and the disciplinary authority awarded him punishment for reduction of increment for 2 years. The order was passed vide No. VII/Disc/41/92-93 dated 28.7.93. The Department had therefore no other option than to conduct a DPC and consider promotion of respondent No. 4 (unreserved candidate) as directed the Hon'ble Tribunal in O.A. and C.P. 6/1991. The respondent No. 4 was a highly suitable departmental candidate who fulfilled all conditions for promotion to the post of Asstt. Aerodrome Officer and the DPC recommended for his promotion subject to de-reservation of the post.

A copy of the Order. No. VII/Disc/41/92-93 dated 28.7.93 is annexed hereto and the same is marked as Annexure-B₄.

10. That with regard to the contents made in paragraph 6.6 of the application the respondents beg

to state that the applicant had also filed an application vide O.A. No. 171/91 for his promotion to the post of Asstt. Aerodrome Officer which was dismissed by the Hon'ble Tribunal vide their judgement dated 17.2.94. Thus, the averment made by the applicant is totally false and suppression of facts.

11. That with regard to the statements/contents made in paragraph 6.7 of the application the respondents beg to state that it is correct that there exists only 3 posts to the grade of Asstt. Aerodrome Officer, two posts in Charbatia (Orissa) and one at Doom Dooma in Assam. Since these posts carry responsibilities with specialisation in the field of Air Traffic Control system which is vital for our air-operations, these three posts were initially filled by IAF personnel on deputation basis. Consequent on vacation of one such post in June '85- the lone post was filled by a general candidate as a single vacancy and hence de-reservation was not necessary as per provisions of Govt. However, out of two other posts, one was meant for SC candidate and therefore the same was kept for the applicant as he belongs to SC category. All possible steps were taken to safeguard the interest of the applicant and he was given ample opportunities to elevate his career prospects further, but he himself cut his throat. He was initially deputed at a cost of Rs. 25,000/- to CATC course at Allahabad, but he failed miserably. He was again detailed for performance improvement examination in 1994 at Govt. costs to the tune of Rs. 4,200/-, but he did not attend the same. He also conducted himself irresponsible and his

Disciplinary Authority awarded punishment to him for his mis-conduct. Since he could not fulfil the conditions laid down in Recruitments Rules for promotion, the lone post meant for SC candidate was filled up in the operational interest of the organisation by obtaining de-reservation from the competent authority.

12. That with regard to the contents made in paragraph 6.8 of the application the respondents beg to state that Ab-initio course is done by the candidates, who are directly recruited against feeder grades to get themselves acquainted with the job. But those who are already "on the Job" and on the verge of promotion, they are not deputed for the ab-initio course. The applicant was deputed to CATC course at Allahabad which was essential for his promotion as stipulated in the Recruitment Rules. Therefore, sending him for ab-initio course at this juncture (when he is required to complete the eligibility CATC course for promotion) will not suffice and yield any fruitful result. As already stated he had not completed 5 years service as Aerodrome Assistant as on the date of DPC and hence he was ineligible for promotion.

13. That with regard to the contents made in paragraph 6.9 of the application, the respondents beg to state that the applicant was proceeded against the charge of insubordination and misconduct and was awarded with the punishment of withholding the annual increments for period of two years vide Memo No. VII/Disc(41)92-93 dated 28.7.93. The applicant was given enough opportunities to fulfil the QRS of the Recruitment Rules, but he could not succeed. The post of

49 59

Asstt. Aerodrome Officer is a operational post and it was very much essential from operational point of view to fill up the post. The Department had no other alternative than to fill up the post by another eligible candidate to who the CAT, Cuttack Bench had already given clearance for promotion in O.A. No. 406/88, M.A. No. 444/89, MA No. 104/91 and Contempt Petition No. 6/91. Merely because the applicant was a lone candidate from SC category, it was not possible to promote him ignoring the provisions made in Recruitment Rules. This is against the norms prescribed for the purpose. The circumstances under which the applicant was not considered for promotion has already been explained to him on a number of occasions earlier and the application in question was identical.

14. That with regard to the contents made in paragraph 6.11 of the application, the respondents beg to state that the petition was addressed to the Cabinet Secretary and copy to the Commissioner of SC/ST. The applicant has also submitted advance copies of such applications to the above mentioned addresses. The application, which was submitted through proper channel has been forwarded to the Office of Cabinet Sectt. for necessary action and the same has been informed to the applicant. As already stated, the application in question was identical to his earlier applications and there was no fresh points. The circumstances under which he could not be considered for promotion has already been informed to the applicant on a number of occasions earlier.

15. That with regard to the contents made in paragraph 7 ~~inxixing~~ of the application the respondents beg to state that as already stated in earlier paragraphs the official has been replied on a number of times in the past and the application in question was similar to his earlier applications. Since the application was a repetition and addressed to Cabinet Secretary the top most functionary in the Govt. machinery, his application was forwarded to Cabinet Secretariat and appropriately the official was informed.

16. That with regard to the contents made in paragraph 8 of the application the respondents beg to state that the statement of the applicant is not correct. He had raised this issue earlier in his O.A. No. 171/91 filed before the Hon'ble Central Administrative Tribunal, Cuttack Bench. The judgement was delivered on 17.2.1994 rejecting the appeal of the applicant for promotion to the rank of Asstt. Aerodrome Officer.

17. That with regard to the contents made in paragraph 9 of the relief column in the application the respondents beg to state that

i. The order of promotion of respondent No. 1 was issued after obtaining de-reservation order of the competent authority and hence the same action is not bad in alw. Merely becoming a member of the reserved category, one cannot claim for a promotional post, but the applicant has to become eligible for the post.

- ii. The single vacancy is not a reserved vacancy, Point No. 1 is the reserved vacancy as per 40 Point roster. The single vacancy that arose in a year cannot be treated as a reserved vacancy, while holding the DPC.
- iii. The applicant, no doubt belongs to reserve category (SC) candidate but he has to fulfil the requisites prescribed in Recruitment Rules for the post. The applicant has never been ignored rather all opportunities have been provided to him to become eligible for the post but he failed in the CATC examination miserably and also avoided to appear performance test/examination subsequently.
- iv. The Department kept no stone unturned to get the applicant through for promotion against the reserved post being a SC candidate, but the applicant did not avail the opportunities given to him instead acted in a manner unbecoming of a Govt. servant for which he was awarded with a punishment.
- v. De-reservation of posts are being accorded by Govt. in consultation with various Deptts. like Cabinet Sectt., Deptt. & Personnel & Training etc. and SC/ST Commissioner etc. Besides, the procedure of obtaining de-reservation is a process where all the points as are mentioned in SC/ST brochure, are fully examined by all including the office of the Commissioner of SC/ST also. Hence no arbitrary actions have ever been taken by the offi respondents.

ARC is a security organisation under Directorate General of Security in Cabinet Secretariat, New Delhi. The Deptt. has been assigned with highly sensitive operational task of national security. The operational interest of the organisation bears prime importance. While due care has been taken to follow all rules/instructions of the Govt., the organisation has also to see that suitable incumbent are posted/promoted and established against operational posts. Preference has been given to fill up the post by promotion not only to provide career prospects to the departmental candidates, but also to establish experienced and efficient candidates, who can discharge the duties allotted to the post to the best advantage of Govt. The post of Asstt. Aerodrome Officer in the Deptt. carries high responsibility which caters the safety of air operations. Due importance was given to reserve the right of only SC candidate available in the feeder grade for promotion to the post. An expenditure of Rs. 25,000/- was incurred to get the applicant trained in CATC Allahabad, but he failed miserably. Arguments were also made for his improvement examination at a cost of Rs. 4,200/- to be borne by the Govt. The applicant was detailed and relieved for the purpose on 7.5.1995 but he escaped on his way to Allahabad and remained on long leave unauthorisedly with the plea of his sickness. Further, he was reprimanded for unbecoming of a Govt. servant and conducted himself in an indisciplined way for which Departmental proceedings were drawn up and punishment of reduction of increment was awarded for two years from July 1993 by his Disciplinary Authority.

18. That the present application is not at all maintainable in view of the grounds advanced in the O.A. are not sustainable and are devoid of merits. It is therefore prayed that any of the reliefs is entitled to by the applicant as such the same is liable to be dismissed.
19. That there being no any cause of action the present application is liable to be dismissed.
20. That the present application is ill-conceived in law and mis-conceived on facts as such the same is liable to be dismissed summarily.
21. That the respondents crave leave of this Hon'ble Tribunal for filing any additional written statement, if this Hon'ble so ~~desire~~ directs.
22. That this written statement is filed bonafide and in the interest of justice.
23. That in view of the above submissions the present application deserves to be dismissed with costs.

VERIFICATION

I, Sri R.K. Mahajan son of Late Gopal Ram Mahajan aged about 56 years working as ~~Deputy~~ Director (Admn.) Aviation Research Centre, Govt. of India, Doon Dooma do hereby solemnly affirm and declare that the contents of paragraphs 1 to 23 are true to my knowledge and those made from paragraph 1 to 12 including the Brief History of the case incorporated in this written statement are derived from records which I believe to be true and those made from paragraph 13 to 23 are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 11/5 day of Sep '96 at

DEPONENT
D.D. (Admn.)
विमान अनुसंधान केंद्र
Aviation Research Centre,
डुम डोमा
Doon Dooma

Annexe

R-I & IV

No. U.K. 1946. 1013/1
Ravalat Research Centre
Government of India
Post CHARAKTA VANS T 54027
Gurugram District (Haryana)

20

Dated the 28/7/1943

28

MEMORANDUM

Shri Col. Bhatia, Aeronautics Association, was directed which on a charge of misconduct in action and disobe-
lition of the provisions of C.R.C. (Com-
munity Regulation) No. 111, Rule 42/1923, dated
dated 19.3.1923. The allegation against the Charged Officer
was that he was directed the operational duties on
12.2.23. 1923 and 14.2.23 by his superior in charge of ATC
instead of carrying out which the instructions of the
Charged Officer Shri Col. Bhatia were
to carry out the aforesaid commands from time to time
operations duties.

The Charged Officer submitted his explanation dated 27.7.1943. In the explanation Shri Col. Bhatia has explained that he remained absent from operational duties
after due instructions to his supervisory officer
he states that he was under command of the same
officer in charge and therefore he was of the view that
persons undergoing mental agony should not perform
hours of operational duties because of flying. He has also drawn attention to his explanation dated
29.3.1923.

Documents cited by the Charged Officer and other
evidences on record have been taken into consideration
by me. The undesignated has also carefully con-
sidered representations and other suggested
scords.

It is observed that Charged Officer is found
to perform duties of commanding officer in ATC
without which would paralyse operational duties
of ATC. He also refused to perform the duties
on the ATC which is also on the ground of
payment of ATC which is also on the ground of
absolutely indispensable and suggested that
provisions of the staff in ATC are important
on the surface of competency of officer which
is the case may be. The on the other hand
all officers in a rank of ATC which may be
rank of ATC which may be rank of ATC
be possessed by some operational duties. The
in regard to mental agony created by the
work by officers in charge is unacceptable
described. The officer in charge of ATC is willing
to receive instructions or advice or was not the
case may be to his subordinates depending upon
service and the operational needs. It is therefore
agreed to the Charged Officer, he should do
duties properly not involving such action by him as
violates officer. In case he was mentally so disturbed

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he should have taken leave in order to take rest & all such
time he regained health & mental peace to resume duty.
His explanation appears to be afterthought and unscientific
explained by him that he submitted a duty
duty is not sufficient to exempt him from
the fault of insubordination and disobedience of orders.

It appears it seems
Officer refused
order issued to
from operational
pleasure merely
perform duty on
convincing and acceptable

Considering the evidence as a whole I find the
allegations charges proved. The Charged Officer adversely
affected the operational convenience by conducting himself
in a irresponsible and indisciplined manner. Considering
the scale for very severe punishment. Moreover considering
the fact that he has committed adverse effects to the effect
of his honest view of facts and he is awarded punishment
of withdrawal of the increment for a period of three months
without effect on future increments and pension.

C/o C.A.K. MOHANTY
DEPUTY DIRECTOR, C.D.M.

To:

Shri. C.M. Bahadur
Headquarters AAC, Charbagh
C/P O & Co, ATC
AAC, C, B, A, S, B, B, B, B

Copy, for information and necessary action. DoS
To - The Commander, AAC Agriwing, Charbagh
To - The Account Officer, AAC Charbagh
Do - DCO, AAC, AAC Service Books Section
Do - DCO, AAC, AAC Service Books Section

C/o C.A.K. MOHANTY
DEPUTY DIRECTOR, C.D.M.

Plotted
AB Chanda
A.C. Central Govt
Planning Commttee

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R-2
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Amneuse

R-II

No. ARC/AW/910/38-2787
Aeronauton Research Centre
Directorate General of Secur
Office of the Director ARC
(Cabinet Secretariat)
Haze Lock-V, Pekhupuram,
New Delhi-110066

Dated the 03 July 91

MEMORANDUM

Reference is made to the representation dated 20.5.91 of
Sh : C.M. Dohora, Aerodrome Asstt for promotion to the post of
Asstt. Aerodrome Officer. His earlier representation on this
subject addressed to the Cabinet Secretary has received proper
attention. Arrangements are being made to depute him for the
training at CAC, Allahabad. He should keep himself ready for
the same.

C/C (G.O.C. TIRUMALI)
DEPUTY DIRECTOR (ADMIN) AW

Attested
A.K. Chaudhary

21.6.91
C.O.C. TIRUMALI
DEPUTY DIRECTOR (ADMIN) AW

Sh C.M. Dohora,
Asstt. Asstt.

21.6.91
C.O.C. TIRUMALI

CUTTACK BENCH: CUTTACK

232

Original Application No. 171 of 1991

Date of decision: February 17, 1994

Chandramani Behera

Amberia R-III ⁹ Applicant
versus

Union of India & Others

Respondents

For the Applicant : M/s Devanand Misra, Deepak Misra,
R.N.Naik, A.Deo, B.S.Tripathy,
P.Panda, Advocates.

For the Respondents : Mr. Ashok Misra, Senior Standing
Counsel (Central).

COURT:

THE HONOURABLE MR. K. P. Acharya, VICE CHAIRMAN

A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMIN.)

JUDGEMENT

In this application under section 19 of the
Administrative Tribunals Act, 1985, the Petitioner prays
for a direction to the Opposite Parties to promote the
Petitioner to the cadre of Assistant Aerodrome Officer
with effect from the date on which his juniors were
promoted. It is further more prayed by the Petitioner
that he should be made senior to Opposite Party No. 1.

It is shortly stated the case of the petitioner is
that he is now working as Aerodrome Assistant posted
at Dibrugarh after he was transferred from Charibati.
He is senior to Opposite Party No. 4 Shri Rabindranath
Panda and for the Post of Assistant Aerodrome Officer
his case should be considered prior to consider No.

of the case of Rabindranath Panda and the case
the petitioner not having been considered, a clear
illegality has been committed by the concerned
authority which should be struck down and a direction
should be issued to give promotion to the petitioner
to the cadre of Assistant Aerodrome Officer in
preference to the promotion given to Shri Babu
Nath Panda, Opposite Party No.4.

3. In their counter, the Opposite Parties maintained
that the seniority of the petitioner vis-a-vis of
Party No.4 has already been fixed by the Central
Administrative Tribunal in its judgment passed in
Original Application No.406 of 1988 disposed of on
13th July, 1990 and therefore, this issue should not
be agitated any further. In addition to the above,
it is further submitted by the Opposite Parties
in their counter that it was incumbent on the part
of the petitioner to undergo training in Civil Aviation
Training Centres at Allahabad. Since the petitioner
had not undergone the training, he was found to be
unfit for the post in question. Hence in a crux it is
submitted by the Opposite Parties that the case being devoid
of merit is liable to be dismissed.

4. We have heard learned counsel for the petitioner
and Mr. Ashok Misra learned Senior Standing Counsel
appearing for the Opposite Parties.

25

5. Question of seniority between the petitioner and Opposite Party No.4 stands concluded by virtue of the judgment passed by this Bench in Original Application No.406 of 1988 disposed of on 13th July, 1990. Section 11 of the Code of Civil Procedure (res judicata) will operate against the petitioner and, therefore, we are not prepared to entertain this argument advanced by the learned Counsel appearing for the petitioner. So far as training in Allahabad is concerned, from the records we find that the petitioner had once been deputed and did not complete the training and therefore, he was found to be ineligible.

6. In view of the fact that the petitioner was ineligible to be considered for the post in question, we find no merit in this application which stands dismissed. No costs.

H. Rajendra Prasad
Member (Administrative)

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17
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
17th February, 1994.

Attested
H. Rajendra Prasad
Member (Administrative)
Central Administrative Tribunal
Cuttack Bench, Cuttack/K. Mohanty/
17th February, 1994.

TRUE COPY

Secretary
Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
17th February, 1994.

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Central Administrative Tribunal संघ व्यापारिक बिधायक
23 OCT 1996
Guwahati Bench गुवाहाटी बैठकी

Filed in Court
on 18-10-96

(Handwritten)
Court Master
18/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

• • •

Filed By:
Sneagopal
Advocate
18.10.96

In the matter of:-

O.A. No. 119/96

Sri Chandramani Behera

- versus -

Union of India & ors.

- And -

In the matter of:-

Written statement on behalf
of the Respondent No.4.

I, Shri R.N.Panda, Assistant Aerodrom Officer,
Aviation Research Centre, Govt.of India, Charbatia, District
Cuttack, Orissa, Respondent No.4, herein do hereby solemnly
affirm and say as follows:-

1. That I am the respondent No.4 in the instant original application and have been served with the copy of the original application as I have been impleaded a party therein and thus while answering I do categorically assert that save and except what is admitted in the written statement, the averment made in the original application shall be deemed to have been denied.

Received copy
File 17/97
(G. N. Das)
Advocate

...contd...

2. That with regard to the statement made in paragraph 6.1 of the application, the answering respondent begs to state that this being matter of record are admitted to the extent borne out by records.
3. That with regard to the statements made in paragraphs 6.2 and 6.3 of the application, the answering respondent begs to state that he joined as Aerodrome Operator Grade-I w.e.f. 9.11.71 whereas the applicant joined as such w.e.f. 2.7.73. In 1988, a seniority list of Aerodrome Operator Grade-I was published wherein the applicant was illegally shown senior to the respondent No.4 who thereupon preferred O.A.No.406/88 before the Cuttack Bench of the Central Administrative Tribunal praying for restoration of his seniority and promotion to the post of Asstt.Aerodrome Officer. During the pendency of the aforesaid application the applicant was promoted as Aerodrome Asstt. provisionally and subject to the result of the above case vide order dated 19.12.89 and 25.1.90 (Anx. II & IV to the application).
4. That with regard to the statements made in paragraph 6.4 of the application, the answering respondent begs to state that the Cuttack Bench of the Hon'ble Tribunal vide judgement and order dated 13.7.90 held that the present respondent No.4 was senior to the present applicant and on that ground quashed the seniority list of 1988. The Hon'ble Tribunal further issued a direction to the respondents to

consider the case of promotion of Sri R.N.Panda to the rank of Asstt. Aerodrome Officer if he satisfied all the conditions for promotion in the Rules of 1977 prior to amendment. After the said judgement a revised seniority list was published on 8.1.91 in which Sri R.N.Panda was made senior to Sri C.M.Behera. In that year itself D.P.C. was held for filling up the two posts of Asstt.Aerodrome Officer and the D.P.C. recommended the name of Sri T.C.Barkakoty and Sri R.N.Panda. But Sri R.N.Panda could not be promoted as one post was meant for SC candidate as per 40 point Roster and the said post was kept vacant for a long time to enable to applicant to fulfill all the conditions of recruitment rules. In the meantime, Sri C.M.Behera filed O.A. NO.171/91 challenging the seniority list of 8.1.91 and claiming promotion to the cadre of Asstt.Aerodrome Officer. This application was admitted on 6.6.91 with the observation that any appointment made would be subject to the result of the case.

A copy of the judgement and order dated 13.7.90 is annexed herewith and marked as Annexure-I.

5. That with regard to the statements made in paragraph 6.5 of the application, the answering respondent begs to state that in accordance with the recruitment rules of 1977, the promotional post of Aerodrome Operator Grade-I was Asstt. Aerodrome officer and the qualification necessary

...contd...

is 8 years of service as Aerodrome Operator Grade-I and successful completion of training in Aircraft control at Civil Aviation Training Centre, Allahabad (CATC Course). It appears that in 1987 a new grade of post was created in between the ~~above~~ two grades by the name of Aerodrome Assistant and an Aerodrome Asstt. after completion of 5 years of service and passing a departmental test is also eligible for promotion to the grade of Asstt. Aerodrome Officer. The answering respondent begs to state that in 1991 when the D.P.C. sat, he had more than 8 years of service as Aerodrome Operator Grade -I and moreover had successfully underwent training in CATC course in 1983 and as such he fulfilled the requirements for the post of Asstt. Aerodrome Officer. On the other hand although Sri C.M. Behera completed 8 years of service as as Aerodrome Operator Grade-I, he could not complete the CATC course of training. He was deputed for the second time in May, 1994 but he remained absent. Even on the basis of alleged amendment in 1987 he could not fulfill the conditions because he was promoted as Aerodrome Asstt. provisionally on 20.12.89 and regularised on 8.12.92 and had not undergone the Departmental Test. The course underwent by the applicant in 1979 as claimed is only a course known as ab-initio course meant for the new entrants which was given to him as Aerodrome Oeprator Grade-I and not a departmental test as Aerodrome Asstt. Be it stated that the answering respondent was also promoted as Aerodrome Asstt. w.e.f. 20th April, 1992.

...contd...

6. That with regard to the statements made in paragraph 6.6 of the application the answering respondent disputes the correctness of the same and states that the applicant has suppressed a very material fact in this regard. As stated hereinabove, against the seniority list dated 8.1.91 the applicant filed O.A.No.171/91 and claimed promotion to the post of Asstt.Aerodrome Officer from Aerodrome Operator Grade-I. This application was dismissed vide judgement and order dated 17.2.94 by the Cuttack Bench of the Hon'ble Tribunal. The Hon'ble Tribunal came to the finding that the question of seniority between the applicant and respondent No.4 stood concluded by virtue of the judgement passed in O.A.No.406/88 and as such section 11 C.P.C. would operate against the applicant. It was further held that the applicant had once been deputed so far as training in Allahabad is concerned but he did not complete the training and therefore was found to be ineligible for the post in question.

A copy of the said judgement and order dated 17.2.94 is annexed herewith as Annexure-II.

7. That with regard to the statements made in paragraph 6.7 of the application the answering respondent begs to state that there exists three posts of Asstt. Aerodrome Officer and the first vacancy was filled up from the general category by promoting Sri R.K.Ratha in 1988. In 1991, the D.P.C. was held for filling up the

remaining two posts and the name of Sri T.C.Barkatoky and Sri R.N.Panda was recommended. As the applicant did not fulfill the requirements of the rules, his case was not considered. Sri T.C. Barkatoky was subsequently promoted in pursuance to the aforesaid recommendation of the D.P.C. But Sri R.N.Panda was not promoted and the third post was kept vacant as it is meant for SC candidates. Therefore, the applicant was given opportunities to complete CATC course training which he did not avail of. In those circumstances, the higher authorities were moved for de-reservation of the post and ultimately the competent authority by an order de-reserved the said post. Sri R.N.Panda, the answering respondent who had already been recommended in 1991 by the D.P.C. was then promoted by the impugned order on 15.5.95. In that view the claim of the applicant that it was a reserved vacancy is not correct.

8. That with regard to statements made in paragraphs 6.8 of the application, the answering respondent begs to state that the applicant did not qualify the CATC training which is an essential criteria in order to be considered for promotion to the post of Assistant Aerodrome Officer and as such he never became eligible for promotion and this is why the vacancies were filled up by persons from the general category, not finding the applicant eligible. If

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may be reiterated that the existing rule provides that an eligible candidate must have eight years experience with CATC training in the post of Aerodrome Operator Grade-I or minimum five years experience and passing a departmental test in the post of Aerodrome Assistant in order to be eligible for the post of Asstt. Aerodrome Officer. The applicant does not have either of the aforesaid qualifications and also did not pass any departmental test meant for such qualifications. It may also be mentioned herein that the ab-initio course is undertaken by the candidates who are directly recruited in order to get themselves acquainted with the nature of job. The applicant does not fall under the category of direct recruit ^{and} hence cannot claim ^{as} undergoing such course, for this is meant for freshers that the applicant is certainly not.

9. That with regard to the statements made in paragraphs 6.9 and 6.10 of the application, the answering respondent begs to state that there was no violation of any reservation policy. In fact the promotion of the answering respondent was made only after finding the applicant ineligible for the post and thus after obtaining de-reservation of the post from the Central Govt. It is further stated that the promotion of the answering respondent was also made in pursuance to the order of the Hon'ble Central Administrative Tribunal, Cuttack Bench, dated 13.7.90

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in O.A.No.406 of 1988. It may also be mentioned herein that the present applicant also approached the CAT, Cuttack Bench in O.A.No.171/91 claiming seniority to the answering respondent and also promotion to the post of Assistant Aerodrome officer and the Hon'ble Bench was pleased to dismiss the application with the finding that the applicant's seniority had long been decided in O.A.No.406/88 and so far the question of promotion ^{was} concerned, after ~~xxxxxxxx~~ perusing the record, the applicant was held ineligible to be considered for promotion to the post in question.

10. That with regard to the statements made in paragraphs 6.11, 6.12 and 7 of the answering respondent begs to state that these are answerable by the authorities concerned.

11. That with regard to the statement made in paragraph 8 of the application the answering the applicant had raised this issue earlier in his O.A.No.171/91 before the Hon'ble Central Administrative Tribunal, Cuttack Bench and the same was rejected by the Hon'ble Bench vide ~~our~~ order dated 17.2.94 as being barred by res-judicata.

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12. That with regard to the statements made in paragraph 9 of the application the answering respondent begs to submit that these grounds are not tenable at law and thus the applicant is not entitled to any relief in whatsoever manner from this Hon'ble Tribunal. It may be further stated that the applicant did not have the essential qualification as an Aerodrome Ceprator Grade-II as he did not have the CATC training although he had completed 8 years of service. Secondly, even as the Aerodrome Assistant also he did not qualify for the post of Assistant Aerodrome Officer as he did not completed 5 years of service as required under the recruitment rules. It may be worthmentioning that the promotion given to the answering respondent is only in pursuance to the judgement of the Hon'ble Tribunal and the and the D.P.C. held in 1991. It may be also be stated that there was no violation of any policy meant for the Scheduled Caste community in as much as the promotion of the answering respondent was given only after obtaining de-reservation of post from the Central Govt.

13. That the answering respondents begs to submit that this application suffers from suppression of material fact and on this ground alone the application is liable to be rejected.

14. That, the answering respondent begs to submit that there was no violation of applicants' right, fundamental or otherwise and as such he is not entitled to any relief and the application is liable to be rejected.

VERIFICATION

I, Shri Ravindra Nath Panda, son of late
Chintamani Panda, aged about 50 years, by occupation
service, do hereby verify that the statements made in
the foregoing paragraphs are true to the best of my
knowledge.

And I sign this verification on this 29th
day of ~~September~~^{August}, 1996 at Guwahati.

Ravindra Nath Panda
Deponent.

ANX-I

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- 11 -

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :::: CUTTACK.

Original Application No.406 of 1988.

Date of decision : July 13, 1990.

Ravindranath Panda Applicant.

- Versus -

Union of India and others Respondents.

For the applicant M/S. C. V. Murty,
C. M. K. Murty,
S. K. Rath, Advocates.

For the respondents Mr. Tahali Dalai,
No. 1 to 4. Addl. Standing Counsel,
n (Central).

CORIM :

THE HONOURABLE MR. B.R.PATIL, VICE CHAIRMAN

AND

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL).

1. Whether reporters of local papers may be allowed to see the judgement? Yes.
2. To be referred to the Reporters or Not? Yes.
3. Whether their Lordships with to see the fair copy of the judgement?

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JUDGEMENT

N. SENGUPTA, MEMBER (J) In this application a prayer has been made to quash Annexure-19, seniority list and for considering the applicant for promotion to the rank of Assistant Aerodrome Officer.

2. Some of the facts which are not seriously ~~questioned~~ controverted, may be stated at the outset. The applicant was appointed as an Aerodrome Operator, Grade-I and he joined on 5.11.1971. Respondents 5 & 6 joined respectively on 2.7.1973 and 1.2.1975 in the grade of Aerodrome Operator, Grade-I. As the applicant was appointed as Aerodrome Operator, Grade I earlier, in the seniority list vide Annexure-7 he was shown senior to Respondents 5 & 6. But later he was shown junior to them. The cause that has been assigned by the respondents for showing the applicant junior to Respondents 5 & 6 is that as there was a disciplinary proceeding against the applicant for unauthorised absence and he was found guilty and was censured, he was confirmed later i.e. Respondents 5 & 6 were confirmed with effect from 15.3.1977 whereas the applicant's confirmation was with effect from 1.4.1984. The applicant's case is that the absence was treated as leave and leave was allowed. Therefore, the absence could not be treated as unauthorised. He has further averred that it is not the date of confirmation but the date since which a particular person continuously officiates is essentially the determining factor for seniority and as admittedly the applicant had served as Aerodrome Operator, Grade-I since a date earlier to the when Respondents 5 & 6 come into the cadre,

he could not have been shown junior to those respondents. The applicant has further alleged that according to the Rules, an Aerodrome Operator, Grade-I is entitled to be promoted as Assistant Aerodrome Officer on his rendering right years of continuous service and passing an examination, by the time the posts of Assistant Aerodrome Officer fell vacant, he had already acquired the eligibility criteria but instead of promoting him Respondents 1 to 4 appointed Respondents 7 & 8 as Asstt. Aerodrome Officer, appointment of Respondent 7 & 8 as Asstt. Aerodrome Officers has been challenged, by the applicant. The other details pleaded by the applicant in his application need not be set out.

3. Respondents 1 to 4 in their counter have alleged that as there was disciplinary proceeding, confirmation of the applicant was delayed and according to the established principles for determining of seniority in Central Services vide Ministry of Home Affairs, Office Memorandum No.9/11/55-RSP, dated 22.12.1959 (Annexure-R-I), it was the date of confirmation which was material, and as admittedly the applicant was confirmed later, he was bound to be shown junior to Respondents 5 & 6 who were confirmed in the grade earlier. With regard to the claim of the applicant for promotion to the rank of Assistant Aerodrome Officer, the case of these respondents is that the applicant had not informed the authorities of having passed the required examination or having undertaken the training necessary, therefore, he could not claim to be promoted.

Apart from that in 1987 an amendment was made to the Rules of recruitment and promotion by which an Aerodrome Operator, Grade-I has to be promoted to the rank of Aerodrome Assistant and from that rank to Assistant Aerodrome Officer. Therefore, the prayer of the applicant for a direction to consider him for promotion to the rank of Assistant Aerodrome Officer is misconceived.

4. We have heard Mr.C.V.Murty, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents 1 to 4 at some length. From what has been stated above really two questions arise for consideration, namely, (i) whether taking the date of confirmation as the basis for determining the seniority could be supported ; and (ii) whether the applicant could be considered for promotion to the rank of Assistant Aerodrome Officer. Mr.Dalai has referred us to the Office Memorandum dated 22.12.1959 and has contended that in view of the proviso to Paragraph 4 of that Office Memorandum which relates to the direct recruits, the date of confirmation was material date for determining the seniority. First part of that paragraph 4 speaks that the seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment and persons appointed as a result of earlier selection would be senior to those appointed as a result of a subsequent selection, then follows the proviso which for a proper appreciation may be quoted in extenso.

- 15 -

" Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment seniority shall follow the order of confirmation and not the original order of merit".

We have underlined the portion to supply emphasis to what we are going to state just below. From the proviso it would be clear that it does not deal with years of appointment but its application has to be confirmed to determine the seniority as amongst recruits of one year. We are of this view because persons recruited in different years cannot be arranged in a merit list, the word 'merit' can be only with respect to recruits of the same year. The necessity for the proviso is for meeting certain contingencies; in many services passing of certain departmental and/or other examinations is insisted upon before confirmation and if a person placed higher in the merit list fails to pass the examination(s) and those placed below in order of merit passed examination earlier, the latter category of officers are to be given credit for having passed the required examination earlier and that is how their seniority is to be determined.

It has been urged by Mr. Dalai that the pendency of a disciplinary proceeding was a factor which was duly taken note of in ordering confirmation of the applicant.

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It is admitted that the punishment that was awarded to the applicant was 'censure' and it is settled beyond controversy that censur is not a ground for refuse promotion. It is also pertinent to note that no order with regard to affecting original seniority of the applicant was passed in that proceeding. Apart from that we find some force in the arguments of Mr. Murty that after granting leave to the applicant for the period which was alleged to be unauthorised absence, the very foundation for the proceeding vanished and infact the punishment should be deemed to have been obliterated. However, we express no opinion on this contention.

Apart from that the well known principle that when continuous officiation is followed by regularisation, length of officiating service would determine the seniority, has been reiterated in a very recent decision of the Hon'ble Supreme Court of India in the case of direct recruits Class II Engineering Officers Association and others versus State of Maharashtra and others reported in 1990 (2) SLO 40. Therefore, we have absolutely no doubt in our mind that Respondents 1 to 4 went clearly wrong in taking the date of confirmation as the relevant date for determining the seniority of the applicant vis-a-vis Respondents 5 & 6 and we would accordingly quash Annexure-19, the seniority list, so far as the applicant and Respondents 5 & 6 are concerned, and we would hold that the applicant is senior to Respondents 5 & 6, he having been appointed earlier to the grade of Aerodrome Operator Grade-I.

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S.P.
Certified to be true copy
Sengupta Sankha
Advocate
18.10.96

- 17 -

5.7 The applicant has prayed for a direction to consider him for promotion to the rank of Assistant Aerodrome Officer on the ground that he became eligible for consideration much prior to 1987. In this regard, Mr. Dalai has contended that after the amendment of the recruitment rules in 1987, the applicant's prayer in this regard is not tenable because he must pass through the rank of Aerodrome Assistant. It is not the case of the respondents that amendment was made retrospective; it is an established principle that the rights of a person are governed by the law or rule as prevailing at the time a right is said to accrue. There is some controversy as to whether prior to 1987, there was any post of Assistant Aerodrome Officer available, in view of this we would direct that if the applicant satisfied all the conditions laid down for promotion to the rank of Assistant Aerodrome Officer in the Rules of 1977 prior to the amendment in 1987, his case for promotion to the rank of Assistant Aerodrome Officer may be considered provided a post was available.

6. The applicant substantially succeeds and the case is disposed of with the directions as given above. No costs.

sd/- B.R.Patel

Vice Chairman

sd/- N.Sengupta.

Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.

July 13, 1990/ S.Sarangi.

Certified to be true copy
Swagat Panda
Advocate
18.10.96

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK

Original Application No. 171 of 1991

Date of decision: February 17, 1994

Chandramani Behera Applicant.

- Versus -

Union of India & others Respondents.

For the Applicant : M/S. Devanand Misra, Deepak Misra,
R.K.Naik, A.Deb, B.S.Tripathy,
P.Panda, Advocates.

For the Respondents : Mr.Ashok Misra, Senior Standing
Counsel (Central).

CORAM :

THE HONOURABLE MR.K.P.ACHARYA : VICE CHAIRMAN

THE HONOURABLE MR.H.RAJENDRA PRASAD : MEMBER (ADMN.).

JUDGMENT

K.P.ACHARYA, V.C. : In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to the opposite parties to promote the petitioner to the cadre of Assistant Aerodrome Officer

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Certified to be true copy
Surajit Pal
Advocate, 18.10.96

- 19 -

with effect from the date on which his juniors were promoted. It is further more prayed by the petitioner that he should be made senior to Opposite party No.4.

2. Shortly stated the case of the petitioner is that he is now working as Aerodrome Assistant posted at Doom Dooma after he was transferred from Charibatia. He is senior to Opposite party No.4 Shri Rabindranath Panda and for the post of Assistant Aerodrome Officer. His case should be considered prior to consideration of the case of Rabindranath Panda and the case of the petitioner not having been considered a clear illegality has been committed by the concerned authority which should be struck down and a direction should be issued to give promotion to the petitioner to the cadre of Assistant Aerodrome Officer in preference to the promotion given to Shri Rabindranath Panda, Opposite party No.4.

3. In their counter, the Opposite parties maintain that the seniority of the petitioner vis-a-vis Opp. party No.4 has already been fixed by the Central Administrative Tribunal in its judgment passed in Original Application No.406 of 1988 disposed of on 13th July, 1990 and therefore, this issue should not be agitated any further. In addition to the above, it is further submitted by the Opposite Parties in their counter that it was incumbent on the part of the petitioner to undergo training in Civil Aviation Training Centre at Allahabad. Since the petitioner had not undergone the training he was found to be ineligible for the post in question.

...contd...

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Suryajit Pradip
Advocate
18.2.96

- 20 -

Hence in a crux it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. We have heard learned counsel ~~for~~ for the petitioner and Mr. Ashok Mishra learned Senior Standing Counsel (Central) appearing for the Opposite parties.

5. Question of seniority between the petitioner and Opposite Party No.4 stands concluded by virtue of the judgment passed by this Bench in original Application No.406 of 1988 disposed of on 13th July, 1990. Section 11 of the Code of Civil Procedure (resjudicata) will operate against the petitioner and therefore, we are not prepared to entertain this argument advanced by the learned Counsel appearing for the petitioner. So far as training in Allahabad is concerned. From the records we find that the petitioner had once been deputed and did not complete the training and therefore, he was found to be ineligible.

6. In view of the fact that the petitioner was ineligible to be considered for the post in question, we find no merit in this application which stands dismissed. No costs.

sd/- H. Rajendra Prasad.
Member (Administrative).

sd/- K. P. Acharya.
Vice Chairman.

Central Administrative
Tribunal, Cuttack Bench, Cuttack/K. Mohanty/
17th February, 1994.

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK

O.A. NO. 171/1991

Chandramani Behera Applicant(s).

- Versus -

Union of India & others Respondent(s).

ORDER NO. 1 DATED 6.6.91

Heard, Admit. Issue notice to the respondents to show cause why this application should not be allowed. Requirements are said to have been filed, Office to verify and issue.

With regard to the prayer for interim relief, not to fill up the post of Assistant Aerodrome Officer without considering the case of the applicant, it may be stated that the present application is based on the ground of the vacancy against which the appointment is said to be going to be made falls on a reserve point. This can only be determined after a full hearing. However, to safeguard the interest of the applicant, I would direct that if any appointment is to be made and the person appointed is somebody other than the applicant, he should be specifically informed that his appointment is subject to the result of this case.

No other order except this is possible, in view of the ~~wa~~veat petition filed by Mr. Murty. It should be understood that the case of the applicant should not be left unconsidered, if he is eligible.

sd/- N. Sengupta

Member (Judicial).