

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.260/543/2012

Date of Reserve:24.01.2019

Date of Order: 14.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Maheswar Mohapatra, aged about 58 years, S/o. Late Binod Bihari Mohapatra, resident of Purusottampur, PO/PS/Dist-Jajpur – at present working as District Youth Coordinator Incharge, Nehru Yuva Kendra, Puri, PO/PS-Dist-Puri.

...Applicant

By the Advocate(s)-M/s.M.Basu
S.Debdas
Mrs.M.Kanungo

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Youth Affairs & Sports, C.Wing, Sastri Bhawan, New Delhi-110 001.
2. Nehru Yuva Kendra Sangathan represented by its Director General, Core-IV, 2nd Floor, Scope Minar Complex, Vikash Marg, New Delhi-110 092.
3. The Zonal Director (P.A.O.), Nehru Yuva Kendra Sangathan, N-2/45, ICR Village, Bhubaneswar, Dist-Khurda-751 015.
4. The Zonal Director, Nehru Yuva Kendra Sangathan, N-2/45, ICR Village, Bhubaneswar, Dist-Khurda-751 015.

...Respondents

By the Advocate(s)-Mr.S.B.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBERA(J):

Applicant is presently working as District Youth Coordinator In-charge, Nehru Yuva Kendra, Puri. He is aggrieved by the order dated 9.7.2012 (A/7) whereby and whereunder he has been reverted to the substantive post with immediate effect. In this Original Application filed under Section 19 of the A.T.Act, 1985, he has therefore, prayed for the following reliefs:

- i) To quash the impugned order dated 9.7.2012 passed under Annexure-7 and the Respondents be directed to allow the applicant to continue in the post of Incharge (DYC(District Youth Coordinator).
- ii) To direct the Respondent No.2 to give promotion to the applicant with all consequential benefits w.e.f. 29.1.2007.
- iii) To direct the Respondents to produce relevant record with copy of the learned Advocate for the applicant.
- iv) Any other order or further orders and/or direction/s may be passed as this Hon'ble Tribunal deems fit and proper.

2. Shorn of unnecessary details, it would suffice to note that initially the applicant had joined as Accounts Clerk cum Typist in the Ministry of Education & Social Welfare in the year 1974. After establishment of Nehru Yuva Kendra Sangathan (NYKS) (for short Sangathan) the applicant was transferred and subsequently absorbed in the Sangathan in the year 1996. While working as such, due to stagnation in the same grade, he was granted the benefit of 1st and 2nd financial upgradation under the ACP Scheme thus raising his pay scale to Rs.6500-10500/- with effect from 16.05.2001. While the matter stood as such, vide order dated 29.01.2007 (A/5) the applicant was transferred to NYK, Balasore with a direction to remain in charge of District Youth Coordinator and accordingly, he was designated as Youth Coordinator Incharge. While working as such, vide office order dated 9.7.2012(A/7) applicant was reverted to the substantive post with immediate effect. Aggrieved by this, the applicant has approached this Tribunal in the present O.A. seeking reliefs as referred to earlier.

3. The grounds on which the applicant has based his claim are that there being a conscious decision taken by the respondents to post the Accounts Clerk cum Typists drawing the scale of Rs.6500-200-10500/- and completing more than five years service as such as Youth Coordinator Incharge and while

the applicant was very much hopeful to be promoted to that post, the respondents instead of considering his promotion have reverted him to the substantive post, which according to him, is unjust, unreasonable and arbitrary. It is the further submission of the applicant that during the period of his service as Youth Coordinator Incharge, he has discharged his duties with due devotion and to the satisfaction of the authorities and at no point of time, he has ever been blamed or reprimanded. Since the applicant's position in the seniority list is at Sl.No.41 he has a right to be considered for promotion and for the reasons best known, the respondents are not considering him for promotion. According to applicant, for the period of his working against the post of Youth Coordinator Incharge which is a higher post, he has never claimed higher pay of the post. The manner in which the respondents have reverted him to the substantive post is violative of Articles 14 & 16 of the Constitution, besides, the orders so issued in reverting him is bald and sketchy which is not sustainable in the eye of law.

4. Per contra, respondents have filed a detailed counter. They have submitted that while working as Accounts Clerk cum Typist applicant was assigned the work of District Youth Coordinator and drew the salary in his existing pay scale till constitution of the DPC as per the rules and the said responsibilities cannot be treated as promotion nor appointment against the post. Respondents have pointed out that the applicant was well aware of the terms and conditions mentioned in the office order dated 27.07.2007 that the said assignment would not confer any right on him for regularization in the post of District Youth Coordinator. According to respondents, unless the applicant is promoted to the post of District Youth Coordinator on the recommendations of the DPC, he cannot lay any claim and therefore, his

reversion to the substantive post in no way abridges his rights nor any of the rules in force. Therefore, the respondents have pleaded that there being no cause of action for the applicant, the O.A. as filed by him deserves to be dismissed.

5. It appears from the record that vide order dated 6.8.2012, this Tribunal following the order of the CAT, Chandigarh Bench in O.A.No.719/PB/12, as an interim measure, stayed the order of transfer in respect of the applicant and this order is in force as on date.

6. We have heard the learned counsels for both the sides and perused the materials on record. We have also gone through the rejoinder filed by the applicant and the written notes of submission including the citations.

7. From the pleadings of the parties the short point to be decided in this O.A. is whether the reversion of the applicant to the substantive post is dehors the rules.

8. In this connection we have gone through the decisions cited by the applicant (i) Bhadei Rai vs. Union of India (AIR 2005 SC 2404), (ii) Badri Prasad & Ors. Vs. Union of India & Ors. [2005 (II) OLR (SC) 80], (iii) Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma & Ors. (AIR 1998 SC 2909) and State of Punjab & Anr. Vs. Dharam Pal (AIR 2017 SC 4438) and given our anxious consideration to the facts and circumstances of the case. It is to be noted that the appellant Badhei Rai (supra) having been promoted on ad hoc basis had worked for 20 years. In the instant case, the applicant was In-charge of District Youth Coordinator without any promotion – far less ad hoc. Therefore, the facts of the case in Bhadei Rai (supra) being distinct and different from the facts of the case in hand, is of no assistance to the applicant.

9. Secondly, in *Badri Prasad & Ors.(supra)* the applicants had been promoted on ad hoc basis which is not the case of the applicant herein. Therefore, the said decision is not applicable to the facts of the present case.

10. The decision in *Secretary-cum-Chief Engineer, Chandigarh (supra)*, the respondent therein had been promoted on stop-gap arrangement which too is not the case of the applicant herein. In *State of Punjab vs. Dharam Pal (supra)*, the decision is in re the benefit of officiating position in which it was held by the Hon'ble Supreme Court that the employee was entitled to salary and other benefits of promotional post. Viewed from this, both the decisions as cited by the applicant are not applicable to the facts of the case in the present O.A.

11. However, it reveals from the record that whereas the applicant was kept in charge of Youth Coordinator vide office order dated 29.1.2007, *Nehrui Yuva Kendra Sangathan Recruitment Rules (Amendment) 2010* came into being. Admittedly, in the instant case, the applicant had worked as Youth Coordinator Incharge which is a higher post for a period of five years when order of reversion to his substantive post came to be issued. Therefore, as a model employer, a duty is cast on the respondents to consider promotion of the applicant in the light of the Recruitment Rules, 2010 as aforesaid keeping in view the applicant's service rendered for a period of over five years. It is also not the case of the respondents that the applicant is ineligible to be considered for promotion as Youth Coordinator. There is no doubt that the respondents without considering his eligibility for promotion and without having regard to his service rendered in the higher post for a period of five years, have unceremoniously, even without assigning any justifiable reason, issued reversion order. Although promotion is not a matter of right, at the same time, the Tribunal is not oblivious of the laid down law that

consideration for promotion is a matter of right and that right can by no stretch of imagination, be curtailed and thus, it was imperative from the administrative point of view to consider promotion of the applicant before any action could be taken to issue the order of reversion. The Tribunal is conscious about its powers, authority and jurisdiction. Since the applicant has not been able to produce any corroborative documentary evidence to show that he had ever been promoted within the four corners of rules and instructions, we are not inclined to grant any relief to the applicant. However, we would urge upon the respondents to keep in view the observations made by us above and consider the case of the applicant for promotion within the frame work Recruitment Rules, 2010.

12. With the observations as aforesaid, the O.A. is dismissed. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS

