
(2008) 07 OHC CK 0071
In the Orissa High Court

Krushna Ch. Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Citation : (2008) 106 CLT 846

Hon'ble Judges : I.M. Quddusi, Acting C.J.; A.K. Parichha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, A.C.J.

1. This Writ Petition has been filed against the impugned Judgment/ order passed on 8th July, 1997 by the Central Administrative Tribunal,

Cuttack Bench, Cuttack in O.A. No. 236 of 1997 filed by the Petitioner.

2. The brief facts of the case are that the Petitioner was appointed as an Assistant in Central Tobacco Research Institute (in short "C.T.R.I.") on

14.9.1983 whereas the Opposite Party No. 3 was appointed on the post of Assistant on 9.10.1984 in the office of the C.T.R.I. Similarly, the

Petitioner was appointed on deputation on the post of Superintendent (Admn.) in the Central Institute of Freshwater Aquaculture (in short

"C.I.F.A") on 10.3.1989 whereas the Opposite Party No. 3 joined on deputation on the post of 1992, the permanent absorption of the

deputationists was considered but the Petitioner did not exercise his option and, therefore, the permanent absorption of Opposite Party No. 3 who

had exercised option was made.

3. In the absence of the option, the case of the Petitioner was not considered for permanent absorption. After permanent absorption, Opposite

Party No. 3 was promoted to the post of Assistant Administrative Officer on 31.5.1993. However, the Petitioner was subsequently absorbed

permanently on his exercising option on the post of Superintendent-cum-Accountant on 8.10.1993 in the same scale of pay as that of

Superintendent (Admn.) in C.I.F.A. Subsequently, in the year 1997 another post of Assistant Administrative Officer fell vacant but the Opposite

Parties without considering the case of the Petitioner brought one Dillip Kar who was working as Superintendent in I.C.A.R. Research Complex

for North Eastern Hill Region, Barapani, Meghalaya, on deputation as Assistant Administrative Officer. However, on 22.10.1998, the Petitioner

too was given promotion to the post of Assistant Administrative Officer.

4. Paragraph-9 of the counter affidavit filed on behalf of Opposite Parties 1 and 2 is quoted hereunder for reference:

That as regards the averments made in para-12 of the Writ Petition, it is submitted that the facts stated in the said paragraphs is hereby denied. It is

submitted that the Petitioner was not permanently absorbed in C.I.F.A and as the Petitioner did not exercise his option, his case was not

considered by the Departmental Promotion Committee on 28.5.1993 for promotion to the post of Assistant Administrative Officer.

5. It has been further stated in the counter affidavit that the recruitment rule was amended in 1995 by making provision to fill up the post of

Assistant Administrative Officer only from the post of Superintendent (Admn.) and as the Petitioner was holding the post of Superintendent-cum-

Accountant, his case for promotion was not considered,

6. The Petitioner has made a grievance regarding his non-consideration for promotion before Opposite Party No. 3. It is not disputed that in the

parent department, the Petitioner was senior to Opposite Party No. 3. But when the Petitioner as well as Opposite Party No. 3 both were on

deputation, their permanent absorption in CIFA was considered but as the Petitioner did not exercise any option, only the case of Opposite Party

No. 3 was considered and he was permanently absorbed and subsequently, he was given promotion as the employee of C.I.F.A. The Petitioner

could not be given promotion as he was on deputation at the time of considering the promotion and his services were not merged in CIFA due to

non-furnishing of his option. Therefore, it cannot be said that any illegality or

impropriety was committed by Opposite Party No. 2 while considering the promotion of the persons belonging to its department.

7. Learned Counsel for the Petitioner has relied on the case law of the Hon''ble Supreme Court in the case of S.I. Rooplal and Another Vs. Lt.

Governor Through Chief Secretary, Delhi and Others, in which the Hon''ble Supreme Court has inter alia directed the Respondents to accord

seniority to the Petitioner in the Delhi Police taking 1.10.1984 as the date of appointment as Sub-Inspector in the Border Security Force on a

substantive basis and accord all other benefit flowing from determination of such seniority as his services were merged in the Boarder Security

Force who was taken from Delhi Police on deputation.

8. The case in hand is not such a case. Here the Petitioner is claiming his consideration for promotion before the consideration of promotion of

Opposite Party No. 3 because of the reason that Opposite Party No. 3 was appointed later to the appointment of the Petitioner in his parent

department. However, Opposite Party No. 3 was absorbed in CIFA earlier to that of the Petitioner. Therefore, the case of S.I. Rooplal (supra)

would not be applicable in the instant case.

9. However, in view of the amendments in the Rule in the year 1995, the promotion of the Petitioner could not have been considered as he was not

posted on the post of Superintendent Administration rather he was posted Superintendent-cum-Accountant and thereafter when he was due for

promotion in accordance with the Rules, his case for promotion was considered.

10. Therefore, we do not find any illegality, impropriety or manifest error of law in the impugned Judgment/Order Dated 8th July, 2003 passed by.

11. Therefore, the Writ Petition is dismissed. There would be no order as to costs.

A.K. Parichha, J.

12. I agree.