

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

OA No. 908 of 2016

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Trailokya Das, aged about 55 years, S/o. Premananda Sethi working as Assistant, in the Office of the Director, Odisha Geo-Spatial Data Centre, Survey of India, Survey Bhawan, Po: R.R. Laboratory, Bhubaneswar-751013, Odisha.

...Applicant

-VERSUS-

1. Union of India, represented through the Secretary, Ministry of Science & Technology (Department of Science & Technology), Technology Bhawan, Near Mehrauli Road, New Delhi-110016.
2. The Surveyor General of India, Post Hathibarkala Estate, Dehradun-248001, Uttarakhand.
3. The Director, Odisha Geo-Spatial Date Centre, Survey of India, Survey Bhawan, PO-R.R Laboratory Bhubaneswar-751013, Odisha.
4. The Deputy Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
5. Sri Manjur Khan, Assistant, HIG-3/2, BDA Colony, Phase-1, Chandrasekharpur, Bhubaneswar-751016, Odisha.
6. Sri L.D. Nayak, Assistant, Office of the Director, Odisha Geo-Spatial Date Centre, Survey of India, Survey Bhawan, PO-R.R Laboratory Bhubaneswar-751013, Odisha.
7. Sri R. C. Tripathy, Assistant , Office of the Director, Odisha Geo-Spatial Date Centre, Survey of India, Survey Bhawan, PO-R.R Laboratory Bhubaneswar-751013, Odisha.
8. Kumari J Gruhalaxmi, Assistant, Office of the Director, Andhra Pradesh Geo-Spatial Date Centre, Survey of India, Uppal, Hyderabad-500039.
9. Babi Negi piya, Assistant, Office of the Director, Assam & Nagaland Geo-Spatial Data Centre, Survey of India, Malki Point, Shillong-793001.
10. Shri Roop Narayan Meena, Assistant, Office of the Director, Rajasthan Geo-Spatial Data Centre, Jaipur, Rajasthan.
11. Km. A. Nirmala Vinodhini, Assistant, Officer of the Director, Rajasthan Geo-Spatial Data Centre, Jaipur, Rajasthan.
12. Smt. Sakuntala Sahoo, Assistant, Office of the Director, Odisha Geo-Spatial Date Centre, Survey of India, Survey Bhawan, PO-R.R Laboratory Bhubaneswar-751013, Odisha.
13. Smt. Pattabhiraman Jayashree, Assistant Office of the Director, Geo-Spatial Data Centre, Bangalore.
14. S. Nisha, Assistant, Office of the Director, Tamilnadu, Pondichery Andaman & Nicobar Island Geo-Spatial Date Centre, Chennai.
15. K. Manjula, Assistant, Office of the Director, Karnataka Geo-Spatial Data Centre, Bangalor.
16. Satis Kumar, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
17. Smt. C. Parbina, Assistant Andhra Pradesh Geo-Spatial Data Centre, Survey of India, Uppal, Hyderabad-500039, Telangana.
18. Smt. Geeta Surendren, Assistant, Tamilnadu, Pondichery Andaman & Nicobar Island Geo-Spatial Date Centre, Chennai.
19. Shri Rajesh Singh, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.

20. Smt. Joplyne Pyngrope, Assistant, Tripura, Manipur and Mizoram Geo-Spatial Data Centre, Survey of India, N.S Avenue, Rangirkari, Silchar-788005, Assam.
21. Shri R.S. Rawat, Assistant, Survey (AIR) And Delhi Geo-Spatial Data Centre, Survey of India, 2nd floor, West Block No.4, Wing IV, R.K. Puram, New Delhi-110066.
22. Shri Durgadas Chhatterjee, Assistant, West Bengal and Sikkim Geo-Spatial Data Centre, Survey of India, 13, Wood Street, Kolkata-400016 (WB).
23. Shri Mukesh Kaushik, Assistant, Gujarat, Daman & Diu Geo-Spatial Data Centre, Survey of India, Sir Creek Bhawan, Sector 10-A, Opposite Birsa Munda Bhawan, Gandhinagar-382010, Gujarat.
24. Shri Prem Pal, Assistant, Digital Mapping Centre, Surveyor of India, 17 CE Road, GBO Complex, Dehradun-248001, Uttarakhand.
25. Shri Bijay Pal Singh, Assistant, Map Archives and Dissemination Centre, Surveyor of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
26. Shri Rana Das, Assistant, Office of the Additional Surveyor General, Eastern Zone, Survey of India, 15, Wood Street, Kolkata-700016.
27. Shri Jai Shankar Prasad Yadav, Assistant, East UttarPradesh Geo-Spatial Data Centre, Survey of India, B-2, 2nd floor, Gomati Nagar, Lucknow-226010, Uttarpradesh.
28. Shri Subodh Singh, Assistant Specialized Zone, Surveyor of India, Blcok No.6, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
29. Shri Ramasharay, Dass, Assistant, Bihar Geo-Spatial Data Centre, Surveyor of India, 164-Sheikhpura House, Newr J.D. Women's College, Baily Road Sheikhpura, PO-B.V. College, Patna-800014.
30. Sri R.B. Dhanvijay, Assistant, Indian Institute of Surveying & Mapping, Survey of India, Uppal, Hyderabad-500039, Telangana.
31. Shri B.K. Rana, Assistant Surveyor General, North East Zone, Survey of India, Malki, Shillong-793001, Meghalaya.
32. Shri D.S. Thakur, Assistant, Western Printing Group, Survey of India, Palam Village road, Near Railway Crossing, Delhi Cantt-110010.
33. Smt. Poornima Bentia, Assistant, Madhya Pradesh Geo-Spatial Data Centre, Surveyor Colony, Vijay Nagar, Jabalpur-482002., Madhya Pradesh.
34. Shri Bhiku Ram, Assistant, Jharkhand Geo-Spatial Data Centre, Surveyor of India Complex, Near Magistrate Colony, Doranda, PO-Hinoo, Ranchi-834002. Jharkhand.
35. Smt. Punam Rawat, Assistant, Western Printing Group, Survey of India, Palam Village Road, Near Railway Crossing, Delhi Cantt-110010.
36. Smt. M.J. Suma, Assistant, Office of the Director, Kerala & Lakhsdweep Geo-Spatial Data Centre, Trivandrum.
37. Shri V. Raja Gopal, Assistant, Office of the Additional Surveyor General, Printing Zone, Survey of India, Uppal, Hyderabad-500039, Telangana.
38. Shri S. Gurukeshava Murthy, Office of the Director, Kerala & Lakhsdweep Geo-Spatial Data Centre, Trivandrum.
39. Shri Rabindra Nath Rath, Assistant, Odisha Geo-Spatial Date Centre, Survey of India, Survey Bhawan, PO-R.R Laboratory Bhubaneswar-751013, Odisha.
40. Shri Balraj Sahni, Assistant, Office of the Director, Madhya Pradesh Geo-Spatial Data Centre, Surveyor Colony, Vijay Nagar, Jabalpur-482002., Madhya Pradesh.
41. Shri Bainkuntha Saloi, Assistant, Assam & Nagaland Geo-Spatial Data Centre, Survey of India, Ganeshguri Chariali, Dispur, G.S. Road, Guwahati-781006, Assam.
42. Shri Chairanji Lal Saklani, Assistant, National Geo Spatial Data Centre, Surveyor of India, Block No.6, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
43. Shri Sk. Mohd. Sab, Assistant, Central Zone Geo-Spatial Data Centre, Jabalpur-482002., Madhya Pradesh.

44. Smt. Pattabhiraman Jayashree, Assistant, Officer of the Additional Surveyor General, Southern Zione, Survey of India, Great ARC Bhawan, Sector-10, Vidhyadhar Nagar, Jaipur-302039, Rajasthan.
45. Smt. Paramjit Kaur, Assistant, Punjab, Haryana & Chandigarh Geo-Spatial Data Centre, Survey of India, S.O.I. Complex, Dakshin Marg, Sector-32A, Chandigarh-160030.
46. Shri Gopal Lal Bairwa, Assistant, Rajasthan Geo Spatial Data Centre, Survey of India, Great ARC Bhawan-1, Plot No.19, Sector-10, Vidhyadhar Nagar, Jaipur-302039, Rajasthan.
47. Shri Gobind Ballabh Gairola, Assistant, Office of the Surveyor General of India, B. Cell, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
48. Dipankar Dutta Choudhury, Assistant, Assam & Nagaland Geo-Spatial Data Centre, Survey of India, Ganeshguri Chariali, Dispur, G.S. Road, Guwahati-781006, Assam.
49. P. Siva Kumar, Assistant, Indian Institute of Surveying & Mapping, Survey of India, Uppal, Hyderabad-500039, Telangana.
50. Smt. Suman Sharma, Assistant, Office of the Additional Surveyor General, North Zone, Survey of India Complex, Dakshin Marg, Sector-32A, Chandigarh-160030.
51. Shri Rakesh Singh, Assistant, Punjab, Haryana & Chandigarh Geo-Spatial Data Centre, Survey of India. Complex, Dakshin Marg, Sector-32A, Chandigarh-160030.
52. Smt. Mina Gulati, Assistant, Uttarkhand & West Uttar Pradesh Geo Spatial Data Centre, 17 C.E. Road, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
53. Smt. S. Rohni, Assistant, Maharashtra & Goa Geo-Spatial Data Centre, Hyderabad Wing, CST & Map Campus, Survey of India, Uppal, Hyderabad-500039, Telangana.
54. Shri V.K. Balodi, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
55. Shri Bir Singh, Assistant, National Geo Spatial Data Centre, Survey of India, Block No.6, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
56. Smt. Premwati Rana, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
57. Shri Ajay Kumar Gupta, Assistant, Office of the Additional Surveyor General, Specialized Zone, Survey of India, Block No.6, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
58. Shri H.S. Bisht, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
59. Ranjeet Singh Bhandari, Assistant Geodetic & Research Branch, 17 C.E. Road, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
60. Shri Rajesh Bhandari, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
61. Shri Chilukur Lakshmana Kumar, Assistant, Indian Institute of Surveying & Mapping, Survey of India, Uppal, Hyderabad-500039, Telangana.
62. Shri Sunil Sardar, Assistant, Eastern Printing Group Survey of India, 15, Wood Street, Kolkata-700016, West Bengal.
63. Shri Subodh Kumar Brahamania, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
64. Shri Sashi Bhushan Verma, Assistant, Madhya Pradesh Geo-Spatial Data Centre, Survey Colony, Vijaya Nagar, Jabalpur-482002., Madhya Pradesh.
65. Shri D. Pullaiah, Assistant, Office of the Director, Karnataka Geo-Spatial Data Centre, Bangalor.
66. Shri Chandrapal, Assistant, Gujarat, Daman & Diu Geo-Spatial Data Centre, Survey of India, Sir Creek Bhawan, Sector 10-A, Opposite Birsa Munda Bhawan, Gandhinagar-382010, Gujarat.
67. Shri Sushil Kumar Mistry, Assistant, Office of the Additional Surveyor General, Eastern Zone, Survey of India, 15, Wood Street, Kolkata-700016, West Bengal.

68. Shri Sukumar Saha, Assistant, Eastern Printing Group Survey of India, 14, Wood Street, Kolkata-700016, West Bengal.
69. Shri Pawan Kumar, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
70. Shri Biplab Kumar Biswas, Assistant, West GBengal & Sikkim Geo Spatial Data Centre, Survey of India, 13, Wood Street, Kolkata-700016, West Bengal.
71. Shri Gobardhan Saha, Assistant, Office of the Additional Surveyor General of India, Survey Colony, Vijay Nagar, Jabalpur-282002, Madhya Pradesh.
72. Shri Lilam Chand Dekate, Assistant, Madhya Pradesh, Geo Spatial Data Centre Centre, Survey Colony, Vijay Nagar, Jabalpur-282002, Madhya Pradesh.
73. Shri har Singh, Assistant, Office of the Surveyor General of India, Hathibarkala Estate, Dehradun-248001, Uttarakhand.
74. Shri Ashish Brijwal, Assistant, Uttarakhand & West Uttar Pradesh Geo Spatial Data Centre, Survey of India, 17, E.C.Road, Dehradun-248001, Uttarakhand.

.....Respondents

For the applicant : Mr. P.C. Sethi, Counsel

For the respondents: Mr. S. Behera, Counsel

Heard & reserved on : 4.12.2019

Order on : 24.12.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A) :-

The OA has been filed with the prayer for the following reliefs:-

- “(i) To hold the rejection of the representation of the applicant by the Respondent No.2 under Annexure-A. 26 and Annexure-A.30 is illegal and is bad in law.
- (ii) To hold the denial of posting at Bhubaneswar by dismissing the representation and allowing others is illegal and discriminatory.
- (iii) To direct the Respondent No.2 to give seniority and retrospective promotion with effect from 23.12.2009 along with all consequential service benefits and arrear salary.
- (iv) To direct the Respondent No.2 to pay the cost of litigation.
- (v) To pass any other and further order as deemed fit in the nature and circumstances of the case.”

Learned counsel for the applicant has filed a Memo dated 4.12.2019 at the time of hearing the OA, stating that he is not pressing the reliefs prayed for at sub-paragraphs (i), (ii) and (iv) of paragraph 8 of the OA, which implies that only the reliefs at para 8(iii) and 8(v) are to be considered in this OA.

2. The applicant was initially appointed as Lower Division Clerk (in short LDC) under the respondent No. 3 on 1.2.1988 and was promoted as UDC w.e.f. 30.8.2001. He was thereafter promoted as Assistant/Head Clerk vide order

dated 23.12.2009 (Annexure-A.1 of the OA) and on promotion, he was posted to Bihar. The applicant submitted a representation dated 4.1.2010 (Annexure-A.2 of the OA) requesting to accommodate him at Bhubaneswar. The representation was rejected by the respondent no. 2 vide order dated 4.2.2010 (Annexure-A.3). He was again promoted to the grade of Assistant on 1.4.2015 (Annexure-A.16) along with the respondent No. 5. The applicant and the respondent No. 5 had submitted the representation to adjust them in Bhubaneswar. It is the case of the applicant that while the respondent No. 5 was accommodated at Bhubaneswar in a promotional post, a similar request of the applicant was rejected vide order dated 3.6.2015 (Annexure-A.22 of the OA). Thereafter, the respondent Nos. 6 and 7 were promoted as Assistant and were posted at Bhubaneswar vide order dated 17.11.2015 (Annexure-A.23), without considering the case of the applicant.

3. The applicant submitted a representation dated 1.12.2015 (Annexure-A.25 of the OA) relying on the fact that at Bhubaneswar, as against the sanctioned of 7 Assistants at Bhubaneswar, as many as 14 number of Assistants have been posted in excess of the sanctioned strength. The applicant requested to adjust him as Assistant at Bhubaneswar retrospectively from 23.12.2009, when he was promoted as Assistant for the first time and his request to adjust him at Bhubaneswar on promotion was rejected by the respondent No. 2. This representation dated 1.12.2015 was rejected by the respondent No. 2 vide order dated 8.1.2016 (Annexure-A.26). Thereafter, the applicant was promoted as Assistant and was posted at Bhubaneswar vide order dated 28.3.2016 (Annexure-A.29 of the OA). His grievance petition dated 22.3.2016 (Annexure-A.28) was rejected vide order dated 3.6.2016 (Annexure-A.30). The orders dated 8.1.2016 and 3.6.2016 at Annexure A.26 and A.30 respectively of the OA have been impugned in this OA by the applicant.

4. The grounds advanced in the OA are that the orders to reject his representation to adjust him at Bhubaneswar on promotion as Assistant, passed by the respondents, are illegal and discriminatory. It is stated that the applicant has been discriminated vis-a-vis the respondent No. 5 and that promotion of the respondent No. 6 and 7 are bad in law and illegal. The case of the applicant in nut shell is that since the respondent Nos. 5, 6 and 7 have been adjusted as Assistant at Bhubaneswar beyond the sanctioned strength, the applicant's case for similar treatment was rejected, for which, he has been discriminated.

5. The stand of the respondents as per the Counter is that the applicant was offered promotion as Assistant from the year 2009 till 2015, but he refused the promotions. Since the representations submitted by the applicant to be

posted at Bhubaneswar could not be considered, he was debarred for promotion as per the rules. The reason for not accommodating the applicant at Bhubaneswar as Assistant, as stated in the Counter, is due to excess number of Assistants at Bhubaneswar beyond the sanctioned strength. It is stated that Smt. Binita Mukhi who was promoted as Assistant in 2009 was posted at Bhubaneswar as per the functional requirement and administrative need and after taking into the fact that she was a lady employee.

6. In the Rejoinder, the applicant has stated that there were excess Assistants posted at Bhubaneswar. When 7 persons could be adjusted as Assistant beyond sanctioned strength, not posting the applicant at Bhubaneswar on promotion as Assistant is discrimination. It is stated that the respondents have not furnished any reason for not allowing the applicant to be posted at Bhubaneswar on promotion as Assistant prior to 2016. It is further stated that after his promotion on 29.6.2012, no place of posting of the applicant was specified. The examples of some other employees/private respondents, who were adjusted in their place of choice, have been furnished in the Rejoinder and Additional Rejoinder.

7. Learned counsels for the applicant and the respondents were heard. They reiterated the contentions in their respective pleadings. Learned counsel for the applicant stated that the private respondents being junior to the applicant, had become senior since they were posted at Bhubaneswar earlier than the applicant due to discriminatory action of the respondents. The question to be decided in this case is that whether the applicant's claim for antedating his date of promotion as Assistant to 23.12.2009 with all benefits is sustainable under law. The undisputed fact is that the applicant was promoted as Assistant in 2009 and was given a posting at place different from Bhubaneswar, which was refused by the applicant and his request for posting him at Bhubaneswar on promotion was rejected by the respondent no. 2 vide order dated 4.2.2010 (Annexure-A.3 of the OA). If the applicant was aggrieved by rejection of his representation dated 4.1.2010 to for posting at Bhubaneswar, nothing prevented him to challenge the order of rejection dated 4.2.2010 of the respondent No. 2 as per the provisions of law. From the records, it is clear that the applicant had accepted the order dated 4.2.2010 rejecting his case for posting at Bhubaneswar on promotion as Assistant without challenging the same as per law. Even in this OA, the applicant did not opt to challenge the order dated 4.2.2010 passed by the respondent No. 2 refusing to post him at Bhubaneswar on promotion as Assistant. If the applicant felt discriminated by the respondents for not adjusting him at Bhubaneswar, he could have approached the appropriate forum to challenge the order.

8. The applicant has stated that the promotion and posting of the respondent Nos. 6 and 7 is illegal, without challenging their promotion order in this OA. As stated in the OA and Rejoinder, the applicant is aggrieved by different orders rejecting his representations and promoting some of the private respondents. But these orders have not been challenged in this OA and quashing of these orders is not included in the reliefs prayed for in the OA. The grievance of the applicant is that being senior, his case for a posting at Bhubaneswar on promotion as Assistant, was rejected by the respondents a number of times and these actions were discriminatory due to the fact that many other junior employees were adjusted at Bhubaneswar on promotion and the number of Assistants posted at Bhubaneswar was higher than the sanctioned strength. The applicant has not challenged the rejection orders of the respondents issued prior to 3.1.2016 (Annexure-A.26 of the OA). The orders of the respondents not to post him at Bhubaneswar after his promotion in the year 2010 and subsequent years till 2015 were not challenged within the time as stipulated under law. It is averred in para 3 of the Counter as under:-

“Further, after 2009 he was offered promotion every year up to 2015, but he kept on refusing to join his promotion on transfer. Number of representations submitted by him were sympathetically considered by the competent authority but the same were rejected and he was debarred from promotion for further one year.”

The applicant has also mentioned about promotions given to him in 2011, 2012, 2013 and 2015 stating that he refused the promotions since he was not posted at Bhubaneswar on promotion. Clearly, the applicant's case has been considered for promotion and he has been promoted, but since he could not be adjusted in Bhubaneswar, he had refused the same till 2016 when he was posted at Bhubaneswar on promotion.

9. The applicant has not furnished any rules or policy guidelines of the respondent No.1 to show that he had legally enforceable right for a posting at Bhubaneswar on promotion. It is the discretion of the administrative authorities to post the employees taking into account the requirement of work including administrative exigencies keeping in view the policy guidelines of Government. The reason furnished by the respondents that due to excess number of Assistants continuing at Bhubaneswar, the applicant could not be posted at Bhubaneswar, cannot be faulted. If some employees had been posted wrongly beyond the sanctioned strength at Bhubaneswar, it will not give a similar right to the applicant to be posted similarly beyond the sanctioned strength. It is the settled position of law that wrong decision in favour of some employees will not entitle another employee for a similar wrong benefit. Hon'ble Apex Court in the case of **State of Haryana & Ors, vs. Ram Kumar Mann, 1997 (3) SCC 321**, was held as under:-

"The admitted facts are the respondent, while working as a Small Pox Supervisor in the Health Department, had tendered his resignation on April 23, 1982 to contest the election as a Member of the State Legislative Assembly. His resignation was accepted on May 18, 1982. He contested the election but was defeated. Thereafter, he filed an application on May 21, 1982 withdrawing his resignation. That was dismissed. Consequently, the respondent filed the aforesaid writ petition in the High Court. The High Court observed that since three similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similar circumstanced person claim equality under Section 14 for reinstatement? Answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

10. Similarly, in the case of **Secretary, Jaipur Development Authority vs. Daulat Mal Jain & Ors, 1997 (1) SCC 35**, it was held by Hon'ble Apex Court as under:-

"The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some person derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead nor court can countenance that benefit had from infraction of law and must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts? Answer is obviously no.

.....

Suffice to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities."

11. In the case of Chaman Lal vs State Of Punjab & Ors, reported in (2014) 15 SCC 715, the appellant's claim for parity with another employee who was granted similar benefit was not accepted on the ground that the benefit was wrongly allowed to that employee. It was observed by Hon'ble Apex Court as under:-

"15. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise it may not be a ground to grant similar relief to others. This Court in Basawaraj & Anr. v. The Spl. Land Acquisition Officer, AIR 2014 SC 746 considered this issue and held as under:

"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an

earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937)."

12. In a recent case of State of Odisha vs. Anup Kumar Senapati in Civil Appeal No. 7295 of 2019 and other Civil Appeals with similar issues, Hon'ble Apex Court on the issue of parity with other employees who were wrongly allowed the benefits, has held as under:-

30.In Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013) 5 SCC 427, this Court held as under:

"19. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Vide Sneh Prabha v. State of U.P., (1996) 7 SCC 426, Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548, State of W.B. v. Debasish Mukherjee, (2011) 14 SCC 187 and Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433.]"

In Arup Das and others v. State of Assam and others, (2012) 5 SCC 559, this Court observed as under

"19. In a recent decision rendered by this Court in State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330, this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake."

In State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436, it was observed:

“56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Yogesh Kumar v. Govt. of NCT of Delhi, (2003) 3 SCC 548, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581, Krishan Bhatt v. State of J & K, (2008) 9 SCC 24, State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65 and Union of India v. Kartick Chandra Mondal, (2010) 2 SCC 422)”

31. It is apparent on consideration of Paragraph 4 of order of 2004 that only saving of the right is to receive the block grant and only in case grant in aid had been received on or before the repeal of the Order of 2004, it shall not be affected and the Order of 1994 shall continue only for that purpose and no other rights are saved. Thus, we approve the decision of the High Court in Lok Nath Behera (supra) on the aforesaid aspect for the aforesaid reasons mentioned by us.”

13. Applying the ratio of the judgments as discussed above, it is clear that the applicant cannot claim enforceable right for being posted at Bhubaneswar at par with some other employees who had been posted at Bhubaneswar as Assistants irregularly much beyond the sanctioned strength of Assistants at Bhubaneswar. It is also not open for him to allege discrimination by claiming a benefit on the ground that such benefit was irregularly given to some other similarly situated employees. Allowing the claim of the applicant for a posting at Bhubaneswar retrospectively is not within purview of this Tribunal in view of the fact that the applicant has not furnished any rules or policy circular to legally establish his right to be posted at Bhubaneswar on promotion as Assistant. The grounds advanced in the pleadings of the applicant are, therefore, either not legally tenable.

14. In view of the discussions above, we are of the view that the OA being devoid of merit, is liable to be dismissed. Accordingly, it is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

