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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 130 OF 1986

Date of decision: 22.9.92.

Indramani Mallick ... Applicant

-Versus-

Union of India and others.. Respondents

For the Applicant ... M/s A.Bagchi, R.B.Rath, A.Mohanty,  
J.B.Patnaik, S.Mohanty, S.Das,  
S.Mohapatra, S.Das, Advocates

For the Respondents ... Mr.P.N.Mohapatra, Addl.St.Counsel

For the Respondent 4 ... Mr.S.N.Misra, Advocate.

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C O R A M:

THE HONOURABLE MR. K.P.ACHARYA, MICE CHAIRMAN

A N D

THE HONOURABLE MS. USHA SAVARA, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *NO*
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a declaration that the present petitioner is senior to Opposite Party Nos.4 and 5 in the grade of Headclerk in the Office of the Opposite Party No.3 i.e. The Regional Provident Fund Commissioner, Bhubaneswar and for a further declaration that the documents prepared by Opposite Party Nos.1,2 and 3 placing Opposite Party Nos.4 and 5 as senior to the Petitioner in the seniority list of Headclerk is bad in law.

2. Shortly stated the case of the petitioner is that he belongs to the category of Scheduled caste and has been serving as a Head Clerk in the Office of the Opposite Party No.3. According to the Petitioner both the Petitioner and Opposite Party No.5 are governed under the employees Provident Fund (Staff and conditions of Service) regulations, 1962 as amended from time to time. The Petitioner was recruited to the post of Lower Division Clerk on 9th November, 1967 and subsequently an examination for promotion to the post of Upper Division Clerk was held on 1st March, 1974. A list of successful candidates eligible for promotion against future vacancies was released on 5th July, 1974 which expired on 14th September, 1975 but the validity of the said list was extended for a further period of one year vide extension Circular dated 1th March, 1976 and therefore finally the said list spent its force on 13th September, 1976. One Shri B. Sethy got promotion and the present Petitioner and Opposite Party No.4 though qualified could not be given promotion due to want of vacancies. Another examination was held in April, 1977 for promotion to the same grade and a

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list of successful candidates was released on 1st October, 1977 in which the present petitioner stood first in the reserved category and this was followed by the petitioner's final absorption in the Upper Division Clerk grade on 27th December, 1977. The eligibility list drawn in the year 1974 ~~and~~ finally lapsed on 13th September, 1976. The Petitioner and Opposite Party No.4 were shown to have been successful candidates eligible for promotion against future vacancies and in the ~~merit~~ list, Opposite Party No.4 <sup>was</sup> placed higher than the present petitioner but Opposite Party No.4 did not choose to appear once again in the departmental examination held on 1st April, 1977. Later on the basis of two judgments of the Kerala High Court and Orissa High Court in OP No.5116 of 1976 H and OJC No.247 of 1978 respectively, Opposite Party Nos.4 and 5 were placed above the petitioner in the grade of Head Clerk in the seniority list and the representation filed by the Petitioner was illegally turned down by the authorities upholding the seniority list prepared vide Annexure 2 dated 5th July, 1974 placing Opposite Party No.4 above the petitioner. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the seniority list of the petitioner vis-a-vis Opposite Party Nos.4 and 5 in the grade of Upper Division Clerk has been fixed in accordance with the dictum laid down by Their Lordships of the Kerala High Court and the High Court of Orissa in OP 5116/1976 and OJC No.247/1978. Hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. A. Bagchi learned counsel appearing for the Petitioner, Mr. P. N. Mohapatra learned Standing

Counsel appearing for the Opposite Party Nos.1,2 and 3 and Mr. S.N.Misra learned Counsel appearing for the Opposite Party No.4.

5. From the prayer of the Petitioner in this case, it is clear that he wants a declaration in his favour to rank as senior to Opposite Party Nos.4 and 5 in the grade of Head Clerk in the Office of Opposite Party No.3. Before we express our opinion, on the merits of this case, it is worthwhile to mention that vide order dated 20th March, 1991 it was directed that Original Application No.130 of 1986 be heard alongwith Original Application No.402 of 1989. Hence both Original Application No.130 of 1986 and Original Application No.402 of 1986 were posted to 25th September, 1991 for hearing. Since there was no appearance on the side of the Petitioner in Original Application No.130 of 1986, the Bench dismissed the case for default on the part of the petitioner and proceeded to hear the case forming subject matter of Original Application No. 402 of 1989 on merit and judgment was delivered. A petition was filed for restoration of Original Application No.130 of 1986 which formed subject matter of Misc. Application No. 376 of 1991. Vide order dated 4th February, 1992, the Misc. Application was allowed and Original Application No.130 of 1986 was restored for hearing which was heard on merits on 6th February, 1982. Petitioner in Original Application No.402 of 1989 Shri Maheswar Behera is Opposite Party No.4 in this application in which prayer has been made by the <sup>present</sup> petitioner to be ranked senior to said Maheswar Behera and in Original Application No.402 of 1989 which has been disposed of by a regular judgment, the present petitioner Shri Indramani Mallick

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is Opposite Party No.3.

6. Now coming to the merits of this case, it may be stated that according to the petitioner Shri Indramani Mallick while he and Maheswar Behera, Petitioner in Original Application No.402 of 1989, were functioning as Lower Division Clerk, both of them appeared in a Departmental Examination on 1st March, 1974, qualified themselves for promotion to the Post of Upper Division Clerk. In the merit list, the said examination, Maheswar Behera and Indramani Mallick were placed against Sl. Nos. 2 and 3 respectively. Another examination was held on 1st April, 1977. Though the present Petitioner Shri Indramani Mallick had appeared in the examination, Shri Maheswar Behera (Petitioner in Original Application No.402 of 1989) did not appear as his name had already appeared in the list pertaining to the examination held in the year 1974. The Kerala High Court having admittedly observed that there was no time limit for the validity of the selection list of Departmental examination and that those who had come out successful in the competitive examination for a promotional post, would have to be treated as qualified for those promotional posts whenever vacancy arises, in pursuance to the said judgment, the Central Provident Fund (Staff and Conditions of Service) Regulations, 1962 was amended and it was decided that all the persons who have passed the examination may be deemed to be qualified for promotion and be promoted as and when vacancies occur without any validity period for the panel and it was further more provided that all the persons qualified for promotion by passing the examination held in the previous years shall

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be promoted from the date from which they could have been promoted had the panel not been allowed to lapse, or spent its force. Since the name of Shri Maheswar Behera(Petitioner in Original Application No.402 of 1989) did not find place in the draft seniority list, Indramani Mallik came up with an application forming subject matter of Original Application No. 402 of 1989 with a prayer to direct the Opposite Parties 1 and 2 in the said application to fix the seniority position of the Petitioner namely Shri Maheswar Behera over Opposite Party No. 3 i.e. Shri Indramani Mallick(Present petitioner). After hearing counsel for both sides, in Original application No.402 of 1989, the Bench in which one of us (namely Acharya J -V.C. was party) gave the following direction:

"In view of the aforesaid discussions, we would direct the respondents to fix the seniority of the applicant vis-a-vis the Respondent No.3 and pass necessary orders according to law and thereafter the name of the applicant should find place in the seniority list".

7. In the said judgment, the Bench did not express any opinion regarding the seniority position of either Sri Maheswar Behera or Shri Indramani Mallik. It was left open to be decided by the competent authority keeping in view the rules prevalent on the subject.

8. In such circumstances, in our opinion, it would not be proper to express any opinion regarding the seniority position of the present petitioner vis-a-vis Shri Maheswar Behera, Opposite Party No.4 in the present application. Expression of any opinion, regarding the inter-se-seniority of these two officers in the present case would not only amount to a contradiction of the direction given in Original Application No.402

Yours,

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of 1989 but it would also create an embarrassing situation for the competent authority. Therefore, we refrain ourselves from expressing any opinion regarding the seniority of the present petitioner namely Shri Indramani Mallick vis-avis Shri Maheswar Behera, Petitioner in Original Application No.402 of 1989. We would accordingly direct the Opposite Party No.3, the Regional Provident Fund Commissioner, Bhubaneswar to fix the seniority of the petitioner Shri Indramani Mallick vis-avis Shri Maheswar Behera, petitioner in Original Application No.402 of 1989 keeping in view the judgment delivered in Original Application No.402 of 1989.

9. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

*J. Narang*  
MEMBER (ADMINISTRATIVE)

*L. M. D. S. 22-9-92*  
VICE CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack/K. Mohanty.

22.9.92

