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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 144 of 1987.

Date of decision:- 28-3-1990.

J. Tarakanadha Rao Applicant

Versus

The Comptroller and Auditor
General of India, New Delhi
and others. Respondents

For the Applicant.. M/s C.V.Murty & C.M.K.Murty
Advocate.

For the Respondents..
3,5,6,7,9,10,11,
12 and 13 . .. Mr. M.M. Basu, Advocate

For Respondents 1 & 2.. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (J)

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.

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N. SENGUPTA, MEMBER (J) .

The applicant is an employee in the office of the Accountant General, Orissa, Bhubaneswar. At the

outset some of the undisputed facts may be stated :

The applicant joined in the ministerial cadre of the office of the Accountant General and after that he appeared at the Subordinate Accounts Service (for short, S.A.S.) examinations on different occasions. In 1969 he appeared in such examination and he was declared to have passed as a Scheduled Caste candidate but the result of this examination came to be challenged before the High Court of Orissa in a writ petition bearing OJC No.735 of 1970 (Annexure-3(1)) to the application. The Hon'ble High Court quashed the results. Subsequently in November, 1974 he passed the S.A.S. Examination. Before the writ in the High Court of Orissa, the applicant was promoted from selection grade Clerk to S.A.S. Accountant in February, 1970, but after the decision of the High Court in the aforesaid O.J.C., he was reverted back to his original post. In 1974 after he passed the S.A.S. Examination, it is alleged by the applicant, that a post was available for his promotion, but he was not promoted due to the pendency of a departmental proceeding on the allegation that he deliberately filed a false Scheduled Caste Certificate to reap undue advantage. After he was exonerated in the departmental proceeding, he has again been promoted in 1979. The prayer of the applicant is a declaration that he is senior to respondents 3 to 13 and consequential benefits. In the counter, the official respondents have alleged that the applicant was given promotion as a general category candidate and not as a scheduled caste candidate. Of the other respondents, respondents, 3, 5 to 7 and 9 to 13 have filed a counter but for what we are going to state below, it is not necessary to refer to that counter in detail in

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this judgment. However, it may be stated that these respondents were promoted to S.A.S. Accountant posts as scheduled caste candidates.

3. We have heard Mr. C.V.Murty for the applicant and Mr. M.M.Basu for the private respondents who have entered appearance, and Mr. Ganeswar Rath, learned Senior Standing Counsel for the respondents 1 and 2. From the facts narrated above, what would emerge is that the applicant had been promoted as a scheduled caste candidate in the year 1970 and subsequently that promotion was cancelled but the promotions of other respondents who have entered appearance, which were of course mostly later to the date of promotion of the applicant, were not cancelled, but with that we are not now much concerned. From the counter of the official respondents i.e. respondents 1 and 2, it would appear that no ~~concealed~~ ^{sealed} cover procedure was adopted when the applicant's chance for promotion after 1974 i.e. when he was declared to have passed the S.A.S. examination, came. Therefore, the applicant on his exoneration could be promoted retrospectively provided of course he was found fit to be promoted and a post was available. On reading the final order passed in the departmental proceeding which was pending against the applicant in 1974, one thing is clear that he was treated as a general category candidate and subsequently promoted though there is no clear indication as to whether the applicant really belonged to a Scheduled Caste or not.

*Memorandum
28/3*

4. Mr. Basu has urged that the application is barred by limitation, but as the applicant made a representation and he was informed on 18.9.86 vide Annexure-9 that the

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matter was under consideration and could not be disposed of due to non-availability of the relevant papers, the application cannot be said to be barred by limitation.

5. For the aforesaid circumstances, we would direct that the applicant should be given promotion if a post of general category was available after he passed the S.A.S. Examination in November, 1974 and he should be entitled to all the financial and other benefits on that footing. We would make it clear that no opinion is expressed with regard to whether the applicant really belongs to a Scheduled Caste or not, the department is however free to decide after resorting to proper procedure.

6. In the result, the application is allowed, ^{- as indicated above} There shall however be no order as to costs.

B. K. S. 28.3.90
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VICE- CHAIRMAN.



M. S. S. 28/3/90
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MEMBER (JUDICIAL)