

6
11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.20 of 1987.

Date of decision : March 30 , 1988.

N.K.Rath son of late R.N.Rath
Daftry, Construction Division,
Malkangiri Colony, Dist-Koraput-764048 .. Applicant.

Versus

1. Union of India represented by
Secretary, Department of Internal
Security, Rehabilitation Division,
Jaisalmar House, Mansingh Road,
New Delhi-110011.
2. Chief Administrator, DNK Project,
Project Headquarters, Koraput-764020.
3. P.G.Nayak, Daftry (S.G.), Zonal Office,
P.O.Malkangiri, Koraput-764048.
... Respondents.

For the applicant : Mr. A.K. Mohapatra, Advocate.

For the respondents : Mr. Tahali Dalai, Additional Standing
Counsel (Central).

C O R A M :

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

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *Yes*.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant claims seniority over Respondent No.3 and claims that in preference to Respondent No.3 he should have been promoted to the post of Selection grade Daftry.

2. Succinctly stated, the case of the applicant is that he was appointed as a Peon under the Dandakaranya Development Authority on 2.6.1959 and respondent No.3 was appointed to the post of a peon on 1.2.1959. In due course of time the applicant was promoted to the post of Daftry on 5.2.1963 whereas respondent No.3 was promoted to the post of Daftry on 7.5.1973. When Selection Grade Daftry posts were created and fell vacant, on 7.8.1985 respondent No.3 was promoted to the selection grade Daftry post even though the applicant was promoted to the post of Daftry practically 10 years before promotion to the same nature of post was obtained by the respondent no.3. Hence, the applicant prays that the order of promotion given to respondent No.3 be quashed and respondents be commanded to give promotion to the applicant to the selection grade post.

3. In their counter the respondents maintained that according to the directions of the Ministry of Home Affairs (Department of Personnel) contained in their Office memorandum No.49011/30/78/Establishment dated 22.5.1980 the post of Daftry and Jamadar was made a combined cadre and further directions of the Ministry was that 20 per cent of the combined strength of posts of Daftry and Jamadar may be sanctioned in the selection grade and the posts in the selection grade should be filled from the combined list of Jamadars and Daftries prepared on the

basis of their seniority in the grades of Peons. Such being the direction respondent No.3 having been appointed as a Peon on 1.2.1959 and the applicant having been appointed 4 months thereafter, respondent No.3 was promoted to the post of Selection grade Daftry and no illegality having been committed the application is liable to be dismissed.

4. We have heard Mr.A.K.Mohapatra, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel (Central) at some length. Admittedly, there is no post of Jamadar in the Dandakaranya Development Project and therefore, the question of a combined cadre of Daftries and Jamadars does not arise. Hence, the office memorandum contained in Annexure-R-1 would not have any application to the facts of the present case. Further admitted case is that there is no rule framed in regard to recruitment and promotion. In the absence of any Rules and after holding that Annexure-R-1 would have no application to the facts of the present case, now the date of promotion to the higher post would be the determining factor for seniority. Incidentally it may be mentioned that in the gradation list prepared in respect of Daftries, the applicant has been shown as senior to Respondent no.3. This was not disputed before us because admittedly the applicant has been promoted on 5.2.1963 whereas the respondent no.3 has been promoted on 7.5.1973. In such circumstances, we are of opinion that the applicant should have been promoted to the post of Selection grade Daftry and not respondent no.3. Notice was also sent to Respondent No.3 who has not entered appearance and has not contested the matter. In view of the aforesaid discussions,

Yours,

9
1A

VII

we would direct that promotion given to respondent no.3 be quashed and in his place the applicant should be promoted to the post of Selection Grade Daftry and this judgment should be given effect to within one month from the date of receipt of the same.

5. Thus, this application stands allowed leaving the parties to bear their own costs.

.....30.3.88.....
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree.

.....30.3.88.....
Vice-Chairman



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 30, 1988/S. Sarangi.