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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 31 of 1988

Date of decision: January 30, 1989.
Bishnu Charan Swain,
aged about 41 years,
son of Late Bholanath Swain
Supervisor, Savings Bank Control
Organisation (SBCO), Balasore
Head Office (Postal) At, P.O. &
District - Balasore. Applicant

-Versus-

1. Union of India
represented by its Secretary,
in the Department of Posts,
Dak Bhavan, New Delhi.
2. Postmaster General, Orissa Circle,
At/P.O. Bhubaneswar, Dist. Puri.
3. Umesh Chandra Parida,
Supervisor, Savings Bank Control
Organisation, At, P.O. Athgarh,
Dist. Cuttack.

Respondents

For the applicant. M/s. Devananda Misra
Deepak Misra, R.N. Naik
R.N. Hota & Anil Deo

For the respondent No. 1 and 2. Mr. A.B. Misra, Sr. Standing
Counsel (Central)

For respondent No. 3 M/s. S. Misra (1), Sarojanand Misra
& Miss. R. Sikdar

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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)

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1. Whether reporters of local papers may be allowed to see the judgement? Yes
2. To be referred to the Reporters or not? ~~Yes~~ No
3. Whether Their Lordships wish to see the fair copy of the judgement? Yes

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JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the orders passed by the competent authority contained in Annexures 4 and 5 and to command the respondents to restore the original order of promotion given to the applicant and declare the applicant to be senior to Respondent No. 3.

2. ~~Short of details,~~ the case of the applicant is that at present he is working as a Supervisor, Savings Bank Control Organisation posted at Balasore in the Postal Department. In the year 1977-78 the applicant appeared at an examination for promotion to Lower Selection Grade cadre against 1/3rd quota vacancy. The examination was held on 10th December, 1978 and vide Annexure-1 dated 6.6.1979 the applicant was declared to be successful and vide Annexure-2 dated 11.11.1983 the applicant was given a posting against 1/3rd quota vacancy which occurred in the year 1980.

The applicant feels aggrieved by the order passed as contained in Annexures-4 and 5 which are dated 18.10.1984 and 8.8.1986. Vide Annexure-5 the applicant was placed below Respondent No. 3, i.e. Shri Umesh Chandra Parida and therein it is mentioned that Shri Umesh Chandra Parida has been selected to the Lower Selection Grade cadre against 1/3rd quota of 1980 instead of 2/3rd quota relating to the year 1982 and the applicant is placed against serial No. 4 in the said list and against the name of the applicant it is mentioned that he has been selected for the L.S.G. cadre

post against 2/3rd quota of 1983 instead of 1/3rd quota of 1980. Prior to issuance of Annexure-4, at the risk of repetition it may be stated, that, vide Annexure-2 dated 11.11.1983 the applicant had been selected to the L.S.G. cadre against 1/3rd quota of 1980 and eventually he was senior to Respondent No.3, Shri Umesh Chandra Parida. Annexure-5 is the order of rejection of the representation filed by the applicant on 20.7.1985 against the order passed in Annexure-4. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that by mistake the applicant had been given promotion to the L.S.G. cadre against 1/3rd quota and soon after this mistake was detected, it was regularised and order contained in Annexure-4 was passed refixing the seniority of the applicant vis-a-vis the Respondent No.3 and no illegality having been committed by the departmental authority, Annexure-4 should be sustained instead of being quashed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A.B. Mishra, learned Senior Standing Counsel (Central) at some length. Ofcourse there was vehement argument advanced by counsel for both sides - Mr. Deepak Misra submitted that there being a clear illegality committed in the matter of refixation of seniority between the applicant and Respondent No.3, Annexure-4 is bound to be quashed whereas this submission of Mr. Deepak Misra was stiffly opposed by learned Senior

Standing Counsel (Central) contending that mistake once having been found, it was obligatory on the part of the departmental authorities to correct the mistake and in course of such correction Annexure-4 was ordered to be issued and it has been issued according to Rules and therefore Annexure-4 should be sustained. We do not like to express any opinion on the merits of the case because of the order we propose to pass in this case and any expression of opinion by us may embarrass the concerned authorities.

Reliance was placed by Mr. Deepak Misra, learned counsel for the applicant on three judgments reported in 1982 (1) SLR 242 (Mohinder Singh Vaid v. The Union of India and others). This is a judgment of Punjab and Haryana High Court. The Hon'ble Judge observed that principles of natural justice is to be followed before refixation of seniority or where alteration of seniority of any of the incumbents takes place, and the concerned parties should be heard before an order affecting their seniority is passed. The Hon'ble Judge further held the orders so passed without hearing the affected parties is bad in law. Exactly similar view has been taken in another case reported in 1982 (1) SLR 611 (Harbhagwan Chetandas Bhatia and another v. Union of India and others). Exactly similar view has also been taken by the Jammu & Kashmir High Court in a case reported in 1973 (2) SLR 184 (Abdul Rashid Qadiri versus State of Jammu & Kashmir and another). The Division Bench was dealing with a case of sufferance of the petitioner in regard to loss of pay etc. while redetermination of seniority took place. Their Lordships held that before redetermination

of seniority, an opportunity should have been given to the affected ~~offer~~ ^{authority} to place his say in the matter and thereafter orders should have been passed. In this connection, Their Lordships relied upon the observations in the case of P.L.Dhingra v. Union of India reported in AIR 1958 SC 36 and so also in the case of K.H.Phadnis v. State of Maharashtra reported in 1971 (2) SLR 345 and Their Lordships also relied upon the case of State of Orissa v. Dr. (Miss) Binapani Dei reported in AIR 1967 SC 1269. In the present case, admittedly the applicant was not heard personally before the order contained in Annexure-4 was passed. Admittedly, by refixation of the seniority the applicant is being affected and therefore, with respect, following the above mentioned decisions with which we agree, it cannot but be held that in the present case principles of natural justice have been violated. We would therefore quash Annexures-4 & 5 so far as the relative seniority of the applicant and Respondent No.3, Shri Umesh Chandra Parida is concerned and request the Postmaster General, Orissa Circle, to reconsider the matter and after giving personal hearing to the applicant and Respondent No.3 pass orders according to law. In case, any officer subordinate to the Postmaster General is the competent authority to hear and decide the matter, then we give liberty to the Postmaster General to pass orders directing the particular concerned offer to hear the parties and pass orders according to law. In case, the applicant feels aggrieved by any subsequent order, he is

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given liberty to approach this Bench, if so advised.

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

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30.1.89
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

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30.1.89
Vice-Chairman



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 30, 1989/S. Sarangi.