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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.86 of 1988.

Date of decision : April 16, 1990.

Lakhami Kanta Khuntia, son of
late Ananta Charan Khuntia, aged
about 53 years, at present posted as
Assistant in the Central Rice Research
Institute, Cuttack.

Applicant.

Versus

1. Director, Central Rice Research Institute, Cuttack-6.
2. Director General, Indian Council of Agricultural Research, Krishi Bhavan, Dr. Rajendra Prasad Road, New Delhi-110001.
3. B.N.Mishra, (through Director, C.R.R.I., Cuttack-6) Assistant, Central Rice Research Institute, Cuttack-6.
4. B.B.Dash, Assistant (through Director, C.R.R.I., Cuttack-6) Central Rice Research Institute, Cuttack-6.

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Respondents.

For the applicant ... M/s.K.P.Bhaumik
A.R.J.Sharma, Advocates.

For the respondents ... M/s.C.V.Murty,
C.M.K.Murty, Advocates.

C O R A M:

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

A N D

THE HON'BLE MR.N.SENGUPTA, 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.

N. SENGUPTA, MEMBER (J) The applicant's prayer in substance is for fixation of his seniority as against him and Respondents 3 & 4.

2. The case of the applicant is that on 1.9.1960 though he was appointed as a Field Assistant in the Office of the Central Rice Research Institute, Cuttack (CRRI), he was doing ministerial work and in-fact the Field Assistant was equated with a Lower Division Clerk. On 1.8.1962 he was transferred as a Lower Division Clerk and worked as such, in which post he was confirmed with effect from 3.3.1964. According to the Rules prevalent in the Organisation for the promotion to the rank of Upper Division Clerk, 50 per cent of the U.D.C. posts are to be filled up by promotion of persons working as L.D.Clerks and Stenographers and rest 50 per cent by a competitive examination open to those two categories of employees. A special provision is also therefor temporarily promoting Stenographers who have rendered at least 4 years of service as U.D.Cs. or cashiers for a period upto 2 years. In the year 1966, 4 posts of U.D.Cs. fell vacant, according to the Rules two persons were promoted as U.D.Cs. and two others were appointed as U.D.Cs. on the basis of the result of a competitive examination on 26.11.1966. He (the applicant) was one of the two to have got appointment on the basis of the competitive examination. It has also been averred in the petition that 16 persons including the two promoted and Respondent No.4 appeared at that competitive examination but Respondent No.4 could not qualify. He was confirmed in the post of U.D.C. with effect from 1.8.1979. The applicant's case is that his confirmation was delayed as his seniority was reckoned not

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from the date of his first appointment i.e. 1.9.1960 but from the date he was transferred as L.D.C. i.e. 1.8.1962. He was promoted to the rank of Assistant in the category of Administrative staff on 9.1.1984 and was confirmed in that post with effect from 9.1.1986. Prior to the filing of the present application, the applicant moved the Hon'ble High Court of Orissa by filing O.J.C. No.220 of 1981 where he also agitated the question of his seniority as amongst himself and 4 others. To that O.J.C. the present respondents 3 & 4 were parties and they were opposite parties 4 & 7. In that O.J.C. the High Court while disposing of the writ petition filed by the applicant ordered that adequate materials had not been placed before it to decide the question of seniority as amongst the applicant and Opposite parties 4 & 7 therein and left the matter for further determination by the authorities of the Indian Council of Agricultural Research (ICAR) on the guidelines of ICAR Circular letter No. F8(5)/76-Per-III dated 20.10.1976. It is averred that the ICAR authorities did not properly determine his seniority, so he (the applicant) had been compelled to approach this Tribunal for the appropriate relief. The applicant's further case is that Shri B.N.Mishra, Respondent No.3 was appointed as an L.D.Clerk on 16.12.1960 and thereafter was appointed as a Junior Auditor on 28.2.1964. Though the post of a Junior Auditor carried the same scale of pay as that of an Upper Division Clerk, it was not a promotional post from the rank of L.D.Clerk and the post of a Junior Auditor was an ex-cadre post. Respondent No.3 was promoted to the post of Assistant on 9.12.1983 in supersession of his (applicant's) claim. As regards Respondent No.4 the case of the applicant is that not only was he

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appointed as an L.D.C. later than him(the applicant) but also the said respondent could not qualify in the competitive examination in which he(the applicant) came out successful and was promoted. In view of the earlier entry into service and his qualifying in the competitive examination, he, in the gradation list published on 30.6.1983 was shown at serial No.4 whereas Respondent No.4 was shown at serial No.12. The authorities i.e. Respondents 1 and 2 after the judgment of the High Court under the garb of determining the seniority afresh, showed him(the applicant) junior to Respondents 3 & 4. After this he made representations but they having not borne any fruit, the applicant has prayed for declaring him senior to Respondents 3 and 4 both in the rank of L.D.C. as well as in the rank of U.D.C.

3. The Respondents 1 and 2 in their counter have stated that the Director, C.R.R.I. passed an order on 26.4.1986 in accordance with the direction issued by the Hon'ble High Court of Orissa in O.J.C. No.220 of 1981. They have taken the plea of limitation as the order was passed almost two years prior to the date when impugned order of the Director was passed, the present application is barred under section 21 of the Administrative Tribunals Act, 1985. They have further stated with regard to limitation that though the representation made by the applicant on 8.4.1987 was rejected on 9.10.1987, that representation not being one envisaged under the service Rules, cannot extend the period of limitation. It is averred that no doubt the applicant was appointed as a Field Assistant on 1.9.1960 but that was not a ministerial post nor

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could it be equated with that of an L.D.C. The applicant was transferred as an L.D.C. as he became a surplus staff and as such his service as L.D.C. has to be counted from 1.8.1962 and his seniority fixed accordingly. At the time the applicant was transferred on his being ^a surplus Field Assistant, as L.D.C., he was asked to acquire a speed of 30 words per minute in typewriting to remain in the post of L.D.C. Subsequently, the applicant in June, 1964 acquired the required speed in typewriting. Both these respondents 3 & 4 were appointed as L.D.C. prior to the applicant. Accordingly they were confirmed in those posts with effect from 1.8.1963 whereas the applicant was confirmed in the post of L.D.C. on 3.3.1964. When Respondent No.3 was working as an L.D.C., the Government of India sanctioned one post of Junior Auditor in the U.D.Cs' scale. No recruitment Rules had been framed by 1964 and it was felt necessary to urgently fill up the post of Junior Auditor. A Departmental Promotion Committee meeting was convened and on the recommendation of the Departmental Promotion Committee the Respondent No.3 was appointed as Junior Auditor on 27.2.1964 vide Annexure-E/3. As the post of Junior Auditor was newly sanctioned and was not by then made equivalent to the post of U.D.C., the name of Respondent No.3 did not find place in the gradation list of Clerks. In January, 1967 the Indian Council of Agricultural Research by their letter No.15-16/66. Instt. II dated 17.1.1967 informed to have no objection to treat the post of Junior Auditor as equivalent to U.D.C. and filling the post in accordance with the recruitment rules applicable to the posts of U.D.Cs. and Cashiers. In September, 1967 a Departmental Promotion Committee considered the case of Respondent No.3

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and recommended for his promotion to the post of U.D.C. It is true that Respondent No.3 appeared at the competitive examination held on 26.11.1966 but however his promotion to the rank of U.D.C. was based not on the results of the competitive examination but on the principles of seniority cum fitness.

As regards Respondent No.4 the case of these two respondents is that he (Respondent No.4) was appointed as Junior Assistant i.e. the post similar to that of Senior Clerk having same nature of work and scale of pay and similar rules for recruitment.

As the post of an Accounts Clerk which was sanctioned under the Breeding Paddy variety resistant to Drought Scheme was abolished Respondent No.4 was selected through a competitive examination and appointed as an Upper Division Clerk with effect from 18.12.1962. Initially the post held by Respondent No.4 was an ex-cadre post but later it was caderised with effect from 3.12.1965 and subsequently, the Deputy Secretary to Government of India on an evaluation of the work of Respondent No.4 being satisfied with his performance made him quasi-permanent in the grade of U.D.C. with effect from 1.7.1966.

The case of these respondents, in short, is that the applicant was junior to Respondents 3 & 4 at every stage of the service. Therefore, the reliefs prayed for cannot be granted to him.

4. The Respondent No.3 filed a separate counter but his counter being substantially same as that filed by Respondents 1 and 2, the facts stated therein need not be stated in this jurdgment except saying that he has maintained that he did not forfeit his right to be promoted on the basis of seniority cum fitness merely because he opted to appear at a competitive examination held on 26.11.1966.

Pls. See p. 16. 4. 96

5. We have heard Mr. K. P. Bhaumik, learned counsel for the applicant and Mr. C. V. Murty, learned counsel for Respondents 1 to 3 and have perused different annexures filed by the parties. As would be evident on going through the facts ~~said~~ ^{alleged} by the parties to this application really three questions arise for consideration namely, (i) Whether the applicant can claim to have been appointed as an L.D.C. or a ministerial officer with effect from 1.9.1960, or in other words, whether the post of a Field Assistant can be equated with that of a Lower Division Clerk; (ii) whether the officiation of Respondent No. 3 as Junior Auditor could enure to his benefit for counting his services in the rank of U.D.C.; and (iii) whether the fact of the applicant to have come out successful in the competitive examination held on 26.11.1966 for promotion to the rank of U.D.C. could give him a right to seniority over Respondent No. 3 in the rank of U.D.C.

6. With regard to the first question namely whether the applicant can be said to have been appointed as L.D.C. on 1.9.1960 a reference may be made to the averments in the application itself and the counters filed by Respondents 1, 2 and 3, to annexures 1 and 2 to the application. That the applicant was appointed as a Field Assistant on 1.9.1960 has remained uncontroverted. It is the case of the respondents that the applicant was declared to be a surplus Field Assistant and in order not to deprive him of the opportunity of employment, he was appointed as an L.D.C., the post that was then available. This stand of the respondents appears to be correct in view of Annexure 2, relevant portion of which is:

*Subs. by
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" The following arrangements for adjustment of the surplus field Assistants are made. "

A portion has been underlined to emphasise the fact that the order was really for accommodating the surplus field Assistants. It may be that the post of a Field Assistant carried the same scale of pay as that of an L.D.C. but that cannot be sufficient to say that the post of a Field Assistant was that of an L.D.C. There has been no real controversy with regard to the fact that appointments to the cadre of U.D.Cs. are made from amongst the persons occupying the posts of L.D.Cs. and Stenographers. Therefore, it is quite clear that the promotion to the post of an U.D.C. cannot be made from amongst the persons working as Field Assistants. In this view of the matter, the contention of the applicant that his seniority in the grade of L.D.C. is to be reckoned with effect from 1.9.1960 cannot be accepted. This would lead to the further conclusion that as admittedly Respondent No.3 was appointed earlier than the applicant as L.D.C., the applicant is bound to be found junior to Respondent No.3 in the L.D.Cs.cadre.

7. With regard to Respondent No.4, it may be stated that the applicant has sought to maintain that Respondent No.4 was never appointed as an L.D.C. and he got into the U.D.C.post in a dubious manner. In this regard, the case of the Respondents 1 and 2 has been that Respondent No.4 was first appointed as Junior Assistant equivalent to that of Junior Clerk in one of the Branches of I.C.A.R. i.e. " Comparative efficiency of ammonical and nitrate fertilizer on paddy" and thereafter on the sanction of a post of Accounts Clerk i.e. U.D.C. sanctioned under the scheme, "Breeding paddy varieties resistant to

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"drought", he was appointed as such Accounts Clerk. When Respondent No.4 was holding the post of Accounts Clerk it was an ex-cadre post but later to keep uniformity of the posts under the I.C.A.R. the said post was caderised and the seniority of Respondent No.4 was determined on the basis of his promotion as Accounts Clerk in the U.D.Cs.grade. This part of the case of Respondents 1 and 2 has not been controverted by the applicant. Therefore, as regards Respondent No.4 it has also to be stated that he was senior, he having joined the service as L.D.Clerk in the said organisation at an earlier date than the applicant. Therefore, the applicant cannot claim to be senior to Respondent No.4 even in the grade of L.D.C.

8. The next question that falls for consideration is whether the respondent No.3 had any disability by not having come out successful in the competitive examination held in November, 1966. As has been stated above, there is no dispute that besides appearing at a competitive examination, an L.D.C. could be promoted as U.D.C. on the basis of seniority-cum-fitness. The idea of introducing a competitive examination for promotion is really to afford an opportunity to a competent person for accelerated promotion. To elaborate this, it may be stated that a person's turn on the basis of seniority cum fitness might not come at the time ~~if~~ question of promotion would arise but if by competing he comes out successful, he would be entitled to occupy a promotional post. That being the position we are of the view that mere failure in the competitive examination to come out successful even for promotion by competition would not debar a person to be considered for promotion on the basis of seniority cum fitness.

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9. Annexure-IV is a copy of the minutes of the Departmental Promotion Committee meeting held on 3.12.1966. From this it would be found that the case of Respondent No.3 was considered for promotion as a Junior Auditor. This would leave absolutely no room for doubt that Respondent No.3 was promoted from the rank of L.D.Clerk to that of Junior Auditor and the recommendation of the Departmental Promotion Committee for promotion of Respondent No.3 was given on the same day. From Annexure-X to the application it would be found that Respondent No.3 was appointed as Junior Auditor on 28.2.1964. Therefore, as the post of Junior Auditor was made equivalent to that of an U.D.C. and the applicant was promoted as U.D.C. with effect from 5.12.1966, there could hardly be any doubt about Respondent No.3 being senior to the applicant in the cadre of U.D.C. From the foregoing paragraphs of this judgment it would be found Respondent No.4 was initially appointed as Junior Assistant or Junior Clerk in a scheme under the I.C.A.R. and he was promoted as Accounts Clerk, U.D.C. post in another scheme in February, 1962 and after encadering those posts the seniority of Respondent No.4 was bound to be reckoned from 1962 when he was first appointed on promotion as Accounts Clerk under the scheme "Breeding paddy varieties resistant to drought". Thus, it would be seen that both in the cadre of L.D.Cs and U.D.Cs. the applicant could not have been senior to Respondents 3 & 4.

10. In view of what has been stated above, the applicant is not entitled to the reliefs claimed by him. Accordingly, this application stands dismissed. ~~not~~ As the applicant might

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have harboured the notion, though not correct, that the services of Respondents 3 & 4 in posts which were previously ex-cadre and subsequently encarered, would not account for determination of their seniority, there would be no order as to costs.

11. With regard to limitation, it is unnecessary to speak much. It is now settled that if a representation made by the applicant is considered on merits, by the authorities, it would give a fresh start of limitation. As admittedly in the year 1987 the applicant made a representation and the same was rejected, the application cannot be said to be barred by limitation.

Arshad 16.4.90
Vice-Chairman

Naresh 16.4.90
Member (Judicial)

