

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

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Original Application No.140 of 1989.

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Date of decision : August 10, 1990.

Srinibas Nayak

: Applicant

Versus

Union of India and others

: Respondents

For the applicant

: M/s. Devanand Misra,
Deepak Misra,
R.N. Naik,
A. Deo,
Advocate.

For the Respondents
(Nos.1 to 3)

: Mr. Ganeswar Rath, learned
Standing Counsel (Central)

For the Respondent No.4

: M/s. Dhuli Ram Patnaik,
Chitaranjan Kar.

For the Respondent No.5

: In person.

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)

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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 ? *yes*
 3. Whether their Lordship's wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

N. SENGUPTA, MEMBER (J), Initially the applicant asked for two reliefs, later he withdrew his claim for one of the reliefs. The residuary relief is for quashing the order at Annexures-3, 4 and 6 which are order of promotion of Bhadi Behera (Respondent No.4), to a carry forward vacancy as reserved for Scheduled Caste Candidate and promotion of Respondent No.5.

2. The facts alleged by the applicant are that he is an Upper Division Clerk (U.D.C.) in the Office of the Regional Director, National Savings Organisation at Cuttack. He entered into the service as a Lower Division Clerk (L.D.C.) in May, 1965, he was to be promoted in May, 1973 but he was given promotion in October, 1979 after his juniors were promoted as U. D. C. There is a post of Head Clerk in the National Savings Organisation and that post is to be filled up by promotion of a person from amongst the U.D.Cs. In July, 1988 a seniority list was drawn up and circulated where Respondent No.4 was shown two places junior to him (the applicant).

Respondent No.5 was a Stenographer. One Miss. Sujata Bose was the Head Clerk. On her retirement the post was to be filled up by promotion. As the applicant was not promoted, he made a representation on 24.11.1988 and another on 20.12.88. Respondent No.4 had been promoted on 17.10.1988 treating the vacancy on retirement of Miss. Sujata Bose as reserved for S.C. Candidate. In reply to the representation the Respondent No.3 sent a reply that the post of Head Clerk could not be

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treated as unreserved. Prior to the promotion of Respondent No.4 as Head Clerk, the applicant was asked to state his willingness to accept the post of Head Clerk and he informed of his willingness to accept the post but inspite of that he was not promoted as the Respondents treated the vacancy as reserved. So far as the case relating to Respondent No.5 is concerned, it is unnecessary to refer to the pleading concerning him(Respondent No.5) as Respondent No.5 was promoted as District Savings Officer and the applicant during the course of hearing has withdrawn his claim for promotion as District Savings Organiser.

3. Respondents Nos. 1 to 3 have filed a counter, Respondent No.4 another and a 3rd counter has been filed by Respondent No.5. It is unnecessary to state the facts alleged by the Respondent No.5 as in the meantime the applicant has withdrawn his claim to the post to which Respondent No.5 has been promoted. The counter filed by Respondent No.4 is in general terms and he has asked the applicant to substantiate all the allegations made in the Original Application. The real contestants are Respondent Nos. 1 to 3. The case of Respondent Nos. 1 to 3 ^{is} ~~are~~ that on the retirement of Miss. Sujata Bose a Post of Head Clerk was available for appointment with effect from 1.10.1988. As per the 40 point roster the second point was to be treated as unreserved but as the first point was to be reserved for SC candidate but against that vacancy a candidate belonging to unreserved category was appointed in the year 1981, It was carried forward in

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accordance with the instructions of the Government in the matter. They have further stated in the counter that though, the applicant in his representation made a reference to a Supreme Court judgment, as no such judgment was circulated in the Department nor accepted by the Government as a Rule, it could not be implemented. In para 4(d) of his application the applicant ^{has} stated that his position is at Sl.No.2 and that of Respondent No.4 at Sl.No.4 of the Seniority List, he also made a further allegation that the Stenographers belonging to a cadre below that of a U.D.Cs, though, in para 6 of their counter Respondents have disputed the fact of Stenographer belonging to the cadre below the U.D.Cs, they have not disputed the allegation about the position of applicant and the Respondent No.4 in order of seniority.

4. We have heard Mr. Deepak Misra for the applicant and Mr. Ganeswar Rath for Respondent Nos. 1 to 3, much argument has been addressed concerning the question whether the post of the Head Clerk could be treated as reserved. It may be mentioned that the parties have agreed that so far as the office of the Regional Director, National Savings Organisation, Cuttack is concerned, there is a separate cadre for Head Clerk and in this cadre there is only one post. The moot point is whether when there is only post in a cadre, could the Rule of carry forward be made applicable. Mr. Misra has cited the case of Dr. Chakradhar Paswan Vs. State of Bihar and others reported in 1988 (2) S. C. C. 214 = A.T.J. 1988 (2), 255. In that case the Hon'ble Supreme Court

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reviewed^a number of judgments delivered by it previously and in para 17 of their judgment observed:

" These principles unmistakably lead us to the conclusion that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or for filling up a future vacancy in respect of that post. A reservation which would come under Article 16(4), presupposes the availability of at least more than one post in that cadre".

After that decision of Supreme Court the Ernakulam Bench of this Tribunal had an occasion to deal with a case having facts almost similar to the instant case. That is the case reported in A.T.R. 1989(2), C.A.T. 319. (P. Sivaraman Nai Vs. Director of Postal Services and Others). The facts of that case were that in the office of the Post Master General there was a cadre of Deputy Office Superintendent and that cadre consisted of a solitary post. The applicant in that case was a person belonging to General Category and the 3rd Respondent was one belonging to a Scheduled Tribe community. The Postal Department in that case wanted to support the promotion of the Respondent No.3 on the ground of carry forward of reserved vacancy. In the instant case though the post is different, the circumstances are the same. In that case the Ernakulam Bench of this Tribunal stated that if there is only post in the cadre there could be no reservation with reference to the post either for recruitment at the initial stage or for filling up of future vacancy in respect of that post and that the reservation^{to be} warrants^a under clause (4) of Article 16 of the Constitution of India, ^{more than} one post in the

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cadre must be available. This observation was based on the decision of the Supreme Court cited by Mr. Misra for the applicant. In our opinion in view of this decision of a Bench of this Tribunal covering the case it will be a futile exercise to dilate more on the point. We are in respectful agreement with the conclusion of the Ernakulam Bench and hold that there could be no reservation since there is only one post in the cadre of Head Clerk. Accordingly, no question of any carry forward could arise.

5. After the conclusion of oral arguments a written note of argument has been filed by Respondent No.4 copies of which have been served on the advocates for the applicant and Respondents No.1 to 3 and 5, so we have accepted that note. In this written note it has been stated that as the post of Head Clerk is a promotional post, the observations of the Hon'ble Supreme Court in the case of Chakradhar Paswan referred to above could not apply. This submission is based on wrong notion about the meaning of the word 'Recruitment'. In para-6 of the written note it has been stated that the present one is not a case of Recruitment but promotion, this would clearly show that the submission is based on misconception. Annexure-R/II is a copy of the Recruitment Rules with respect to Group 'C' and Group 'D' posts in the National Savings Organisation. The Respondent No.4 was promoted under the said Rules. Recruitment means to bring a new person to a particular fold or category, therefore, recruitment need not necessarily be confined to direct appointment. For this reason we find no

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substance in this contention raised in the written note.

6. From Annexure-R/1 to the counter of Respondent Nos. 1 to 3 it would be found that the applicant was at Sl. No.2 and Respondent No.4 at Sl.No.4 of the seniority list. The applicant holds the post substantively from 3.10.1979 and Respondent No.4 with effect from 11.5.1981. Therefore, there can be no doubt about the seniority of the applicant. From Annexure-R/2, Recruitment Rules it would be found that the Post of Head Clerk is a Selection Post. From the counter filed by the Respondents it would be found that the applicant was not passed over on account of any unfitness but on the ground of reservation of the post for USC candidates. The Post being a selection post and there being no material before us relating the merits of the persons coming within the zone of consideration for promotion, we cannot accede to the prayer of the applicant to promote him.

7. In this circumstances, stated above we would substantially allow the application and quash the order of promotion of Respondent No.4 as Head Clerk vide Annexure-3 and direct the Respondents to consider the claim of the applicant for promotion ^{from 1.10.88 -} treating the post of Head Clerk as unreserved. There shall be no order as to costs.

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VICE-CHAIRMAN

10.8.90



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MEMBER (JUDICIAL) 10/8/90