

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

Original Application No. 252 of 1989

Date of decision: 21st February, 1990.

1. Sri Nimai Charan Khuntia, aged about 32 years  
Son of Sri Amiya Charan Khuntia,  
At-Tinkonia Bazar, P.O./P.S. Choudwar,  
District-Cuttack,  
At present serving as the Works Clerk, Grade-II  
in the Telecom-Civil Wing in the Office of  
the Executive Engineer, Postal Civil Division  
At-Professorpara, Cuttack.

..... Applicant

-Versus-

1. Union of India, represented through its  
Secretary to the Government in the Department  
of Tele-communication, Sanchar Bhawan, New Delhi.
2. The Chief General Manager of Tele-communication,  
Orissa Circle, Bhubaneswar-751001.
3. The Superintending Engineer, Telecom, Civil  
Circle, 101/A, Saheed Nagar, Bhubaneswar-751007.
4. Local Joint Consultative Machinery,  
represented through its Circle Secretary,  
Sri Niranjana Sahu, at present serving in  
the office of the Executive Engineer (Postal)  
Civil Division, At-Professorpara, Cuttack-753003.

..... Respondents

For the Applicant. .... M/s. Sashi Das, S.P. Dhal  
& B.B. Das, Advocates

For the Respondents. .... Standing Counsel (Central)  
Mr. T. Dalei, Addl. S.C.

C O R A M:

THE HON'BLE MR. P. S. HABEEB MOHD, MEMBER (ADMINISTRATIVE)  
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 judgement ? Yes.
  2. To referred to the Reporters or not ?
  3. Whether Their Lordships wish to see the fair  
copy of the Judgement ? Yes.

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:- J U D G E M E N T :-

P.S.HABEEB MOHD, MEMBER (ADMN)

Sri Nimai Charan Khuntia works Clerk,

Grade-II in the Telecom Civil Wing in the Office of the Executive Engineer, Postal Civil Division has filed this Petition before the Tribunal with the prayer that the promotions to the posts of Works Clerk-Grade-I by way of merit rating test as per Annexure-6 may be quashed and also that he might be promoted to the post of Works Clerk Grade-I according to seniority as per Annexure-3 and for directions by passing other incidental orders.

2. There is no dispute about the fact that there are recruitment rules framed by the President under Article 309 of the Constitution and issued by the Government of India Ministry of Communications (Department of Telecommunications in F.No.72-86-CSE dated 13.3.87, which indicates that the works Clerk Grade-I is a non-selections post in the promotion category, in the promotion quota.

3. The applicant is working as a works clerk Grade-II (Cashier) in the office of the Executive Engineer Civil Division at Cuttack. There was bifurcation, of the Department of Posts and the Department of Telecommunications which was earlier under one Department. It is stated that the service conditions of such employees were those of similar employees under the C.P.W.D. The applicant became eligible for promotion to the posts of Works Clerk Grade-I and in the seniority list of works clerk Grade-II is the second person. The normal procedure for filing of the posts works clerk Grade-I is



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that 50% should be filled up by persons according to seniority and fitness and the other 50% on the basis of a Departmental Examination. The recruitment rule clearly indicates as follows:-

"50% by seniority-cum-fitness.

50% by merit rating test from amongst works clerks Grade-II who have put in 3 years regular service in the grade".

The recruitment rules had been earlier followed. In the proceeding of the local Consultative Machinery held on 8.2.89 there was an indication that action was taken by the office for filling up 50% to the posts on seniority cum fitness basis and for filling of the other 50% by Departmental Examination.

4. The decision of Respondents No.3 i.e. Superintendent Engineer to hold the merit tests is not accordance with the law, according to the applicant.

5. The Respondents on the other hand have stated in their reply that there have been 19 vacancies as on 5.4.89, the break-up being 8 posts in the year 1986-87, 10 posts in the 1987-88 and 1 post for 1988-89. It is stated that 10 posts have been filled up by way of Departmental Promotion and the other <sup>five</sup> by Merit Rating Tests. The Respondents has taken a plea that P & T Manual Volume-4 Appedix 18 <sup>h</sup> <sub>^</sub> Page-298-301 Rule-6, provides that the quota vacancies can be carried forward to two successive recruitment years. The said provisions runs as follows: "In case full quota of vacancies reserved for the Lower Division Clerks through

competitive test in the recruitment of a particular year is not taken by the officials of that category, the vacancies left over will be filled up from amongst the surplus qualified officials of the subordinate offices, of the test of the same year and vice-versa. In case the number of qualified candidates in both the categories is insufficient even after mutual re-adjustment the unfilled vacancies will be carried forward for the respective category of officials and will be added to the number of vacancies falling to the quota of that category of officials in the next year's recruitment. Such vacancies can be carried forward for two recruitment years and if not filled up within that period, this will lapse."

6. On going through the documents including the rejoinder filed by the applicant it is clear to us that the recruitment rules framed by the President and issued in Notification No. 72-86-CSE dated 18.3.87 has to prevail and it clearly indicates that 50% of the posts should be filled up by seniority cum fitness and the other 50% by the merit rating test. The rule in the P & T Manual referred to by the Respondents has no application in the present case. It only speaks of filling up the full quota of the vacancies for the Lower Division Clerk through competitive test. It does not speak of the cases, where half the number of posts are to be filled up by promotion and the other half by the merit rating test. The carry forward of the vacancies also relates only to the direct recruitment. This provision has no

application in a case where specific rules have been framed and issued by the President and speak of two sources of the recruitment. The stand taken by the Respondents in the case of the recruitment rules, to rely on a provision of the P & T Manual envisaged in a different context is not in accordance with the law. It is not dispute<sup>d</sup> with<sup>in</sup> that the seniority list the applicant is No.2. There is no doubt that a vacancy<sup>a</sup> exists<sup>4</sup> and there is provision in the rules for promotion.

7. The Respondents are directed to consider the case of promotion of the applicant, without subjecting him to the merit rating test, on the basis of <sup>his</sup> the suitability for promotion in accordance with the Rules. This should be done within the period of one month from the date of receipt of the copy of this order.

No order as to costs.

*[Signature]*  
21.2.70.  
MEMBER (JUDICIAL)

*[Signature]*  
21/2/1990  
MEMBER (ADMINISTRATIVE)

