

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 386 OF 1989

Date of decision: April, 19, 1991.

Shri Dinabandhu Behera : Applicant

Versus

Union of India and others : Respondents

For the applicant : M/s B.L.N. Swamy and
B.V.B. Das, Advocates.

For the Respondents : Mr. Ganeswar Rath, Sr.
Standing Counsel (Central)

C O R A M:

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

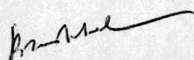
A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted 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.

J U D G M E N T

B.R.PATEL, VICE CHAIRMAN: Briefly mentioned the facts are that
was
the applicant/initially appointed as a Lower Division Clerk in the Office of the Regional Labour Commissioner Bhubaneswar, on 11th March, 1969. A vacancy in the Post of Upper Division Clerk(U.D.C.) arose in the year 1976-77 against which the applicant was appointed on adhoc basis as local arrangement as his seniors Shri Samuru Uram and P.L.Rai declined to accept the adhoc promotion vide order dated 1.10.1977(Annexure-1). The Recruitment Rules issued by the President of India under Articles 309 of the Constitution of India came into force from 7th December, 1978. As per the provisions of these Rules, 50 per cent of the existing vacancies in the post of U.D.C. are to be filled up on seniority-cum-fitness basis and the rest are to be filled up through an examination which will be confined to the local Lower Division Clerks(L.D.Cs). There were five regular posts of UDCs in Bhubaneswar Office, two posts of which had been filled up by regular incumbents vide Office Memorandum dated 28.4.1985(Annexure-2) and the remaining three posts were sought to be filled up on regular basis - Two posts by promotion on seniority cum-fitness basis and one post by examination as laid down by the Recruitment Rules. Two posts under the Seniority-cum-fitness quota were given to two senior Lower Division Clerks(LDCs) namely D.Tanty and



Shri S.Uram vide Office Memorandum dated 6.5.1985 (Annexure-3). For the remaining post the examination as prescribed in the Recruitment Rules, was decided to be held on 14/15th October, 1989 and the applicant was called upon to take this examination for promotion to the post of UDC (Annexure-6). The applicant has challenged this order of the Department on the ground that he has been working as UDC for long 11 years and the department ^{has} estopped from denying ~~him his~~ ^{his} right-ful place in the cadre of Upper Division Clerk.

2. The Respondents have maintained in their counter affidavit that the examination was held as per the recruitment Rules and as the applicant was not senior enough he could not be accommodated under the Seniority cum-fitness quota and as such he was given an opportunity to sit in the examination for promotion against the remaining post which comes under the Examination quota. According to them, there is no other posts to accommodate the applicant and he will have to take his turn for the next vacancy under the seniority-cum-fitness quota if he does not take the examination.

3. We have heard Mr. B.L.N.Swamy, the learned Counsel for the applicant and Mr. Ganeswar Rath, ~~the~~ learned Senior Standing Counsel (Central) for the Respondents and perused the relevant papers. Mr. Swamy has urged that the applicant had been promoted

B.L.N. Swamy

to the cadre of Upper Division Clerk with effect from 21-9-1977(Enclosre-1) and the recruitment rules came into force only next year in December and as such the recruitment rules should not apply to the case of the applicant .We are unable to agree with Mr.Swamy because the appointment of the applicant as UDC was not on a regular basis and the applicant has to be regularised under the Recruitment Rules. Mr.Swamy thereafter pleaded that as the applicant has worked as UDC for long 11 years he cannot be sent away to his substantive post unceremoniously, if he does not succeed in the examination. We are unable to accept this plea also on the ground that the posts that are available under the seniority-cum-fitness quota will have to go to those LDCs who are senior to the applicant Mr. Ganeswar Rath the learned Counsel for the Respondents has pointed out that there are three others in the cadre of L.D.Cs who are senior to the applicant, namely S/Shri S.Uram, P.C.Rai and Shri D.Tanty.Mr.Rath has further said that one of them namely Shri S.Uram has ~~since~~ declined the promotion as he wanted to work at Rourkela as LDC and the resultant vacancy in the seniority cum fitness quota has gone to the next senior LDC namely Shri P.C.Rai.According to Mr.Rath

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therefore, there is no vacancy available under this quota for the applicant. As there is no post now available, the applicant will have to wait his turn according to his seniority as LDC. or he will have to take his chance under the examination quota. Though the examination was fixed sometime on 14th and 15th October, 1989 no information has been supplied to us whether the applicant took that examination or not

4. The application is accordingly disposed of leaving the parties to bear their own costs.

[Signature]
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MEMBER (JUDICIAL) 19.4.91



[Signature] 19.4.91
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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench: K. Mohanty.