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Date of decision: 31. 1. 1992

Versus

For the applicant ... M/s. S. Mishra (I),
S. N. Mishra,
S. K. Nayak (II), Advocates.

For the respondents
1 and 2 ... Mr. P. N. Mohapatra,
Addl. Standing Counsel (Central)

For the respondent No.3 .. M/s.Amitav Bagchi,
R.B.Rath, S.Misra, Advocates.

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

THE HONOURABLE MR. I. P. GUPTA, MEMBER (ADMN.)

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.402 of 1989.

Date of decision : 31.1.1992

Maheswar Behera ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.S.Mishra(I),
S.N.Mishra,
S.K.Nayak(II), Advocates.

For the respondents ... Nos.1 and 2 Mr.P.N.Mohapatra,
Addl. Standing Counsel (Central)

For the respondent No.3 ..~~M/s.~~ Amitav Bagchi,
R.B.Rath, S.Misra, Advocates.

C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.I.P.GUPTA, MEMBER (ADMN.)

J U D G M E N T

K.P.ACHARYA,V.C., In this application under section 19 of the Administrative Tribunals Act,1985, the applicant prays that the seniority list(Annexure-4) be quashed and Respondents 1 and 2 be directed to refix the seniority position of the applicant treating him senior to Respondent No.3.

2. Shortly stated, the case of the applicant is that both the applicant and Respondent No.3, while functioning as Lower Division Clerks under Respondents 1 and 2, appeared in the Departmental examination on 1.3.1974 for being enlisted for promotion to the post of Upper Division Clerk. In the said examination the applicant and Respondent No.3 were placed against serial Nos.2 and 3 respectively. While the applicant and Respondent No.3

were officiating as U.D.C. on ad hoc basis another departmental examination was held on 1.4.1977 in which Respondent No.3 chose to appear and the applicant did not appear as he was already enlisted on the basis of the examination held in 1974. On the basis of the select list prepared as a result of the examination in 1977, the services of the Respondent No.3 were regularised as U.D.C. on 27.12.1977 and ultimately Respondent No.3 was promoted to the post of Head Clerk on 1.7.1980 bypassing the case of the applicant. In its judgment dated 16.10.1979 the Kerala High Court observed that there was no time limit for the validity of a selection list of a departmental examination and it further held that those who had come out successful in the competitive examination for a promotional post would have to be treated as qualified for those promotional posts whenever vacancy arises. In pursuance to the said judgment, the Central Provident Fund (Staff and Conditions of Service) Regulations, 1962 was amended and it was decided that all the persons who ~~may or~~^{may} have passed the examination may be deemed to be qualified for promotion and be promoted as and when vacancies occur without any validity period for the panel and it was furthermore ^{provided} ~~held~~ that all the persons qualified for promotion by passing the examination held in the previous years shall be promoted from the date from which they could have been promoted had the panel not been allowed to lapse. In pursuance to this amendment the services of the applicant were regularised in the post of U.D.C. with effect from 22.12.1977 and the applicant was promoted to the cadre of Head Clerk with effect from 1.7.1980. Despite the changed

situation a draft seniority list circulated by Respondent No.2 on 10.7.1989 did not contain the name of the applicant and even though the specially constituted Committee headed by the Assistant Provident Fund Commissioner in its letter dated 27.6.1986 recommended the case of the applicant to be included in the seniority list, no action having been taken the applicant feels aggrieved and has, therefore, filed this application with the aforesaid prayer.

3. In their counter, the respondents maintained that all the Officers who may be affected not having been made parties this application should be in limine dismissed. It may be further stated that passing of the applicant in the departmental examination and his name having appeared against serial No.2 vis-a-vis the Respondent No.3 against serial No.3 and the judgment of the Kerala High Court and the amendment to the C.P.F. (Staff & Conditions of Service) Regulations, 1962 and in pursuance thereto the applicant having been promoted on regular basis to the post of U.D.C. and then as Head Clerk is not disputed. The only ground on which the respondents ^{rely and} ~~rely~~ in stating that the name of the applicant does not appear in the seniority list because of the pendency of original application No.130 of 1986 which has been filed by the present Respondent No.3 challenging the amendment to the C.P.F. (Staff & Conditions of Service) Regulations, 1962 and the promotion of the present applicant (Respondent No.4 in the said original application).

4. We have heard Mr.S.Misra(I), learned counsel for the applicant and Mr.P.N.Mohapatra, learned Additional Standing Counsel(Central) for the respondents 1 and 2 at a considerable length. Since almost all the facts alleged by the applicant are admitted, the only contention raised by Mr.Mohapatra is in regard to non-joinder of necessary parties and pendency of O.A.130 of 1986.

5. In our considered view the case does not suffer from any infirmity and cannot be held as bad for non-joinder of necessary parties. In the present case the seniority position of the applicant vis-a-vis the Respondent No.3 has to be determined and the name of the applicant has to find place in the seniority list keeping in view the effective date of promotion of both these officers to the cadre of U.D.C. in pursuance to the amendment adopted in the C.P.F. (Staff & Conditions of service) Regulations, 1962. Therefore, in such circumstances, we find no merit in the contention of Mr.Mohapatra that the case is bad for non-joinder of necessary parties.

6. So far as the pendency of O.A.130 of 1986 is concerned, it would no longer stand on the way of the respondents to determine the aforesaid issue because vide order dated 25.9.1991, the said original application has been dismissed for default as there was no appearance on the side of the applicant(of that case). In view of the aforesaid discussions, we would direct the respondents to fix the seniority of the applicant vis-a-vis the Respondent No.3 and pass necessary orders according to law and thereafter the name of the applicant should find place in

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the seniority list. Annexure-4 i.e. the Office order No. Adm. 36/86/Part-1122 dated 20.9.0983 and the final seniority list attached thereto ^{are} hereby quashed. We hope and trust the seniority matter of both these officers would be finalised within 60 days from the date of receipt of a copy of this judgment.

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

[Signature]

 MEMBER (ADMINISTRATIVE)

[Signature]

 VICE-CHAIRMAN

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.

