

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH.

Original Application No. 224 of 1990.

DATE OF DECISION: July 30, 1993.

Radha Mohan Sahu

...

Applicant.


Versus

Union of India and others ...

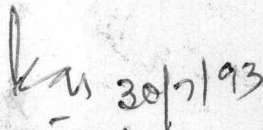
Respondents.

( FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *No*

  
( H. RAJENDRA PRASAD )  
MEMBER (ADMINISTRATIVE)

30 JUL 93

  
( K. P. ACHARYA )  
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK.

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Radha Mohan Sahu .. Applicant.

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Union of India and others ... Respondents.

For the applicants ... M/s. S.K. Dash,  
D.R. Patnaik,  
P.R. Barik,  
P.R. Panda, Advocates.

For the respondents ... M/s. B. Pal,  
O.N. Ghosh, Advocates.

C O R A M:

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

A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

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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 to direct the respondents to make the promotions given to the applicant effective on and from 15.5.1965 that is the date on which his junior R. Sanyasia was given promotion and further direction be issued to consider the case of the applicant and give promotion to the applicant for the subsequent promotional post with effect from the date on which the said R. Sanyasia was given promotion.

2. Shortly stated, the case of the applicant is that he was originally recruited as Commercial Clerk in the

South Eastern Railway, Khurda Road. The Chief Personnel

Officer (Respondent No.2) intimated to the Divisional Superintendent that it had been decided that posts upto and including the Grade of RS.100-185/- in the branches of Coaching and Parcel were to be filled up by the Divisional office from amongst staff of the respective divisions on the basis of their divisional seniority. Accordingly, the Divisional Superintendent, South Eastern Railway, Khurda Road held a test and on the basis of selection, promoted the applicant along with 8 others of Khurda Road Division to the rank of Enquiry-cum-Reservation Clerks. A seniority list of the existing incumbents in the posts of Enquiry-cum-Reservation Clerks was also prepared by the Divisional Officer. The post of Enquiry-cum-Reservation Clerk was declared to be selection post ~~and~~ with effect from 1.4.1964 and on the basis of such declaration the Respondent No.2 selected some other members of staff and wanted to replace the applicant along with 8 others promoted by the Divisional Office. Though Divisional Superintendent, South Eastern Railway, Khurda Road, had raised an objection for replacement on the ground that the applicant along with 8 others had already been promoted prior to 1.4.1964 on regular basis, hence should not be disturbed, yet, the Respondent No.2 though had not taken any steps, prepared a revised seniority list in which the names of the applicant and 8 others were omitted. The applicant along with 8 others filed a writ application under Article 226 of the Constitution before the Hon'ble High Court of Orissa, forming subject matter of O.J.C.No.22 of 1976. A writ of mandamus was issued to the Opp. parties 1 and 2 for inclusion of the names of the applicant and

8 others in the seniority list meant for Enquiry-cum-Reservation Clerks. The applicant and 8 others also challenged the promotion of the said R.Sanyasia who was junior to the applicant and 8 others and the said R.Sanyasia was Opposite party No.4 in O.J.C.No.22 of 1976.

After hearing the parties the Hon'ble High Court of Orissa directed the Opp.parties 1 to 3 to consider the claim of the petitioner along with 8 others to be promoted to the posts held by R.Sanyasia from time to time on the footing that the applicant and 8 others had already been promoted by the Divisional Office and necessarily they were senior to the Opp.party NO.4 i.e. R.Sanyasia. Since this order passed by the Hon'ble High Court of Orissa was not given effect to one of the petitioners in O.J.C.No.22 of 1976 filed another writ application before the Hon'ble High Court of Orissa and during its pendency the Administrative Tribunals Act, 1985, having come into force the said case was transferred to this Bench for disposal according to law. This formed the subject matter of T.A.266 of 1986. This Bench was of the view that the petitioner in the said transferred application was bound to be considered for the promotional posts to which R.Sanyasia had been promoted and if found suitable, the petitioner in the said transferred application should be given promotion with effect from the date on which R.Sanyasia was promoted and his case should also be considered for the subsequent promotional posts to which R.Sanyasia had been

promoted. This order was given effect to by the concerned authorities and though the present applicant made representations to Respondent No.2 and to Respondent No.4 to treat the case of the applicant at par, no action having been taken, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that erroneous interpretation having been made in regard to the direction given by the Chief Personnel Officer, Khurda Road Division filled up the posts of Enquiry-cum-Reservation Clerks on the basis of divisional seniority whereas the posts were required to be filled up by volunteers from amongst the Commercial Staff. In other words, the posts of Enquiry-cum-Reservation were centrally controlled by the Headquarters office of the South Eastern Railway and the Divisional Offices were not authorised to fill up the posts. Furthermore, it is maintained in the counter, six of the petitioners in the O.J.C. were posted against supernumerary posts created as per the orders of the Hon'ble High Court of Orissa. Subsequently, due to another litigation no selection/suitability test was conducted in the cadre of Reservation Clerks. Therefore, only adhoc promotions were given to those petitioners, as Enquiry-cum-Reservation Clerks and then Supervisors. In a nut-shell, it is maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.S.K.Dash, learned counsel for the applicant and Mr.B.Pal, learned Senior Standing Counsel (Railways) at a considerable length.



5. Admitted case of the parties is that in O.J.C.No. 22 of 1976 the Hon'ble High Court had directed that the names of the present applicant and others should find place in the seniority list and accordingly promotion should be given. Further admitted case is that one of the petitioners in O.J.C.No.22 of 1976, namely Gobardhan Udgata invoked the jurisdiction of the High Court in a writ application forming subject matter of O.J.C.No.499 of 1985 which was renumbered as T.A.266 of 1986 and the Bench had directed to give effect to the directions contained in O.J.C.No. 22 of 1976 and further directions were given the case of Gobardhan Udgara should be considered for promotion with effect from the date on which R.Sanyasia was promoted. After disposal of the case of Gobardhan Udgata O.A.No. 100 of 1990(Harihar Patra vrs. Union of India and others), O.A.No.101 of 1990(Dhrubacharan Dash vrs. Union of India and others) and O.A.244 of 1990( Heramba Kumar Chatterjee vrs. Union of India and others) were heard and by a common judgment passed in the aforesaid cases, on 30.9.1992 the Bench held as follows:

" Therefore, considering the arguments advanced by counsel for both sides in all these original applications and the fact of special leave petition having been dismissed we direct that all the applicants in these three applications be treated as senior to R.Sanyasia and case of all the three applicants be considered for promotion to all the posts to which R.Sanyasia had been given promotion and thereafter cases of all these three applicant should be considered for any subsequent promotional posts if due to them according to their seniority and if they are found to be suitable they should be given promotion to such post/posts and we hope and trust the entire process

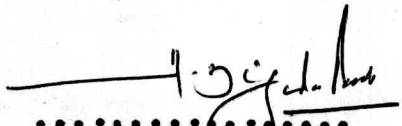
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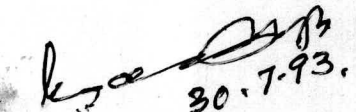
in this regard should be finalised within 60 days from the date of receipt of a copy of this judgment and within 60 days therefrom each of the applicants should be paid their emoluments to which the applicants would be entitled in respect of promotional post/posts."

After hearing learned counsel for both sides we are of opinion that the case of the present applicant is fully governed by the principles laid down in the case of Gobardhan Udgata, the applicant in T.A.266 of 1986 and the present case is also governed by the principles laid down in the original applications mentioned above, relating to Harihar Patra, Dhrubacharan Dash and Heramba Kumar Chatterjee.

6. We find absolutely no distinction between the case of the present applicant and the above mentioned cases. We find no justifiable reason to make a departure from the view already taken in the abovementioned cases. Therefore, we would direct that the present applicant be treated as senior to Shri R.Sanyasia and the case of the present applicant be considered for promotion to all the posts to which Shri R.Sanyasia had been given promotion and thereafter the case of the applicant should be considered for any subsequent promotional posts if due to him according to his seniority and if he is found to be suitable he should be given promotion to such post/posts and we hope and trust the entire process in this regard should be finalised within 60 days from the date of receipt of a copy of this judgment, and within 60 days therefrom the applicant should be paid his emoluments to which he would be entitled to in respect of promotional post/posts.

7. Thus , the application stands allowed leaving the parties to bear their own costs.

  
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MEMBER (ADMIN) 30-7-93

  
30.7.93.  
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VICE-CHAIRMAN.

Central Administrative Tribunal,  
Cuttack Bench, Cuttack,  
July 30, 1993/Saranghi.