

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No.251 of 1990

Date of decision : July 19, 1991.

K.Thrinadham ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ...Mr.P.Venkataswarlu, Advocate.

For the respondents. Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

A N D

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

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ?
3. Whether Their Lordships 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), The applicant is an employee in the Office of the Regional Labour Commissioner(Central), at Bhubaneswar. He is working as Upper Division Clerk in that Office. Initially he was appointed in the lower grade, thereafter he was promoted on ad hoc basis. Since his ad hoc service which was followed by regularisation was not taken into account, he approached this Tribunal by filing O.A.No.48 of 1988. This Tribunal directed revision of the seniority list by taking the ad hoc services of the applicant into account and accordingly the respondents revised the seniority list. After revision of his seniority, it is averred by the applicant that he came within the zone of consideration for promotion to the post of Labour Enforcement Officer(Central). But he was not considered. The applicant's grievance is that though his case should

have been considered from 1978 onwards for vacancies occurring in the grade of Labour Enforcement Officer, his case was not considered by making the amended Rules of 1984 applicable to him even with respect to the vacancies occurring prior to those Rules coming into force.

The applicant has further averred that according to the amended Rules, a limited Departmental competitive examination is to be conducted by the Labour Department but the Labour Commissioner framed syllabus and other Rules concerning the Departmental examination which he was not competent to do and as such those Rules framed or the circulars issued by the Labour Commissioner concerning the Departmental Examination should be declared invalid.

2. The respondents in their counter have sought to maintain that the promotion to the post of Labour Enforcement Officer (Central) is subject to the result of limited Departmental Examination in case of 20 per cent of the vacancies and 5 per cent through Departmental Promotion Committee on the basis of seniority as per the Rules framed in 1984. The applicant was asked to appear in the said examination in July, 1990 but he did not sit for the examination, so he could not be considered for the post of Labour Enforcement Officer (Central) through the limited Departmental examination quota. It has further been averred in the counter that on the basis of his revised seniority he is not eligible for promotion to that post on seniority basis. In the meantime the applicant has been promoted as Office Superintendent Grade II on the basis of his revised seniority, therefore, the present application

is not maintainable. With regard to the averments in the application concerning the limited departmental examination the case of the respondents is that the Departmental examination was conducted by the Chief Labour Commissioner (Central) which is an Office of the Ministry of Labour and as such, the applicant cannot challenge the examination or the syllabus for the examination.

3. Mr. Tahali Dalai, learned Additional Standing Counsel (Central) for the respondents has contended that the present application is not maintainable as admittedly, the applicant did not avail of the opportunity of appearing at the limited Departmental examination for promotion. On the other hand, it is the contention of Mr. P. Venkateswarlu, learned counsel for the applicant that a number of vacancies arose prior to the coming into force of the 1984 Rules and the case of the applicant was not considered against the vacancies that arose prior to 1984. Therefore, the applicant has a case. To put it in other words, the contention of Mr. Venkateswarlu is that the claim of the applicant for promotion prior to the Rules of 1984, was to be judged in the context of the Rules then prevailing. Admittedly, the set of Recruitment Rules known as Labour Enforcement Officer (Central) Recruitment Rules, 1958 were framed by the President in exercise of the powers under the proviso to Article 309 of the Constitution of India and those Rules came into force on 25th April, 1959. A copy of the Rules is Annexure-A-III to the application. Rules 4 and 5 are really material. Under Rule 4 of the said Rules, recruitment to the cadre of Labour Enforcement Officers was to be made

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by direct recruitment in accordance with Part II of the Rules and by promotion on the recommendation of the Departmental Promotion Committee for Class II posts. Rule 5 provided for the percentage of direct recruitment and it is enjoined that the direct recruitment quota was 75 per cent of the vacancies arising after the 25th April, 1959 and to the rest 25 per cent by promotion from amongst Superintendents in the Offices of Regional Labour Commissioners who had completed not less than one year of service as Superintendent, Upper Division Clerks in the Offices of the Regional Labour Commissioners who had completed not less than 5 years of service and Junior Labour Inspectors having not less than 3 years of service as such Inspectors. We are not concerned with Part II as the claim of the applicant is not for direct recruitment. From Rule 4 of the 1959 Rules it can be found that against 25 per cent of the vacancies the cases of Upper Division Clerks having 5 years of service were to be considered. The applicant was promoted to the rank of Upper Division Clerk on 6.10.1969. Therefore, by the time 1984 Rules came into force on 28.7.1984, the applicant had definitely put much more than 5 years of service as Upper Division Clerks. The question for consideration is whether the case of the applicant for promotion was to be considered according to 1959 Rules or according to 1984 Rules. In this regard, learned counsel for the applicant has drawn our attention to the decision of the Hon'ble Supreme Court in the case of Y.V. Rangaiah and others vrs. J. Sreenivasa Rao and others reported in Supreme Court Services Law Judgments 1950-1988 (Volume 3) at page 417; a decision of

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the New Delhi Bench of this Tribunal in the case of Purendra Kumar Sharma vrs. Union of India and others reported in II(1988) ATLT (CAT)(SN)29 and another decision of Chandigarh Bench of this Tribunal reported in 1990(1) SLJ 474(S.M.Bhatti v. Union of India and others). It is an accepted principle of law that the rights and liabilities of a person are to be determined according to the law prevailing at a particular juncture of time. We have no doubt in our mind that if the applicant's case for promotion to the rank of Labour Enforcement Officer(Central) arose prior to the coming into force of the 1984 Rules, his promotion would have been made in accordance with 1959 Rules. As stated above, under the 1959 Rules, the applicant's case would have been considered under 25 per cent of the vacancies. For this reason we wanted the parties to indicate the number of vacancies available in different years after 5.10.1974 when the applicant acquired the eligibility for consideration. The applicant has given a list of vacancies from 1980 to 1982, according to him there were 13 vacancies in 1980, 5 vacancies in 1981, 22 vacancies in 1982. For the respondents another statement has been filed which shows the number of posts available for promotion quota and in that statement vacancy position (for promotion quota) has been shown to be 3 during the year 1980-81, 4 during the year 1981-82 , 7 during 1982-83 and 2 till August, 1984. From these two statements one thing is clear that posts were available for promotion quota. As indicated above, the applicant acquired the eligibility for consideration with effect from 5.10.1974. Therefore, he was to be considered against the vacancies at least for

the posts as shown available in the statement filed by the respondents. But on reading the counter it would be found that his case was never considered according to the 1959 Rules. Therefore, we would agree with Mr. Venkateswarlu that the applicant's case for promotion to the rank of Labour Enforcement Officer (Central) merits consideration against the posts available till 1984 Rules came into force.

4. The question whether the applicant would be required to appear at the limited departmental examination under the 1984 Rules would arise only after he is found unfit for promotion under the 1959 Rules. Under the 1984 Rules a provision has been made that 80 per cent of the vacancies for the promotion quota was to be filled on the basis of limited departmental competitive examination to be conducted by the Department of Labour open to Upper Division Clerks and Stenographers with 5 years regular service. From the enclosure to Annexure-A-I it would be found that different syllabi were prescribed for limited departmental examination for 20 per cent of the vacancies and limited departmental examination for filling up 80 per cent of the vacancies falling under the promotion quota. From the second enclosure to Annexure-A I it would be found that from the Office of the Chief Labour Commissioner under the Ministry of Labour, a set of Rules was circulated. From the enclosures it appears that the Under Secretary addressed letters to all Regional Labour Commissioners informing the decision about the subjects of examination and the manner of holding the examination. There is no clear mention as to under what

authority this letter was issued. In view of these facts, we do not deem it proper to comment on the validity or otherwise of the enclosures to Annexure-A-I.

5. Admittedly, the post of Labour Enforcement Officer (Central) is a selection post. Therefore, the selection is to be made on the basis of merit cum seniority. On 24.12.1980 Government of India in the Department of Personnel and Administrative Reforms formulated principles for promotion to selection posts. In the circumstances of the case, we would direct that a Departmental Promotion Committee be convened within three months from the date of receipt of a copy of this judgment to consider the case of the applicant in accordance with the instructions contained in the Department of Personnel and Administrative Reforms Office Memorandum No.22011/3/76 dated 24.12.1980 i.e. without clubbing the vacancies for the different years together. If the applicant is found suitable by the Departmental Promotion Committee for promotion in any of the years preceding the coming into force of the 1984 Rules, he should be promoted and given all service benefits except back wages.

6. The case is accordingly disposed of. No costs.

S. P. Singh
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MEMBER (ADMINISTRATIVE)



S. P. Singh
.....
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 19, 1991/Saranghi.