

15

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NO.456/90 AND O.A.NOS.131 & 132 OF 1991
Cuttack, this the 4th day of January 1999

Dharanidhar Dixit and others Applicants

Vrs.

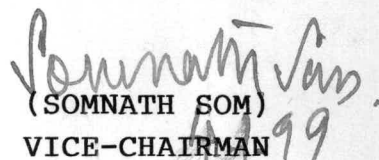
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?



(A.K.MISRA)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

16
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

O.A.NO.456 OF 1990 AND O.A.Nos.131 & 132 OF 1991

Cuttack, this the 4th day of January 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI A. K. MISRA, MEMBER (JUDICIAL)

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In O.A. 456/90

Sri Dharanidhar Dixit,
aged about 41 years,
s/o late Gangadhar Dixit
Head Clerk, Regional Office,
E.S.I. Corporation,
Janpath, Unit-IX,
Bhubaneswar,
Dist. Puri

Applicant

By the Advocates

- M/s P.V. Ramdas,
B.K. Panda & D.N.
Mohapatra

Vrs.

1. Union of India
represented by the Secretary,
Ministry of Labour,
Government of India,
New Delhi-110 001.
2. Director General,
E.S.I. Corporation,
Establishment Branch No.1,
Panchadeep Bhavan,
Kotla Road,
New Delhi-110 002.
3. Regional Director,
Regional Office, Orissa,
E.S.I. Corporation,
Janpath, Unit-IX,
Bhubaneswar-751 007.
4. Sri G.C. Swain
5. Sri R.K. Nayak,
Both are Head Clerks,
Regional Office,
E.S.I. Corporation,

Janpath, Unit-IX,
Bhubaneswar-751 007

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Respondents

By the Advocates

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M/s Devananda
Misra, G.A.R.Dora
& A.K.Misra.

In O.A.No.131/91

Sri S.K.Routray,
Asst,
E.S.I.Corporation,
"ES-IC" Bhawan,
Bhubaneswar-7

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Applicant

By the Advocates

-

M/s B.N.Rath,
K.B.Panda,
S.Ghosh,
S.N.Mohapatra,
K.R.Mohapatra,
R.P.Mohapatra &
S.K.Jethy.

Vrs.

1. Director General,
E.S.I.Corporation,
Panchdeep Bhaban,
Kotla Road,
New Delhi-110 002.
2. Regional Director,
E.S.I.Corporation,
ESIC Bhavan, Janpath,
Unit-IX, Bhubaneswar-7.
3. R.K.Nayak,
Assistant, E.S.I.Corporation
(Regional Office), ESIC Bhawan,
Janpath, Unit-IX, Bhubaneswar-7.
4. N.Parija, Assistant,
E.S.I.Corporation (Regional Office),
ESIC Bhawan, Janpath,
Unit-IX, Bhubaneswar-7

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Respondents

By the Advocates

-

M/s Devanand
Misra, R.N.Naik, A.D
eo, B.S.Tripathy, P.
Panda & GAR Dora.

In OA No.132/91

Sri A.B.Ghose,
Assistant, ESI Corporation,
ESIC Bhawan,
Bhubaneswar-7

.....

Applicant

By the Advocates

-

M/s B.N.Rath,
K.B.Panda,
S.Ghosh,
S.N.Mohapatra,
K.R.Mohapatra,
R.P.Mohapatra &
S.K.Jethy.

Vrs.

1. Director General,
E.S.I. Corporation,
Kotla Road,
New Delhi.
2. Regional Director,
E.S.I. Corporation,
ESIC Bhawan,
Janapath,
Unit-IX, Bhubaneswar-7.
3. R.K.Nayak,
Assistant, ESI Corporation
(Regional Office),
ESIC Bhawan,
Janpath, Unit-IX,
Bhubaneswar-7.
4. N.Parija,
Assistant,
E.S.I. Corporation (Regional Office),
ESIC Bhawan, Janapath,
Unit-IX, Bhubaneswar-7.
5. G.C.Swain,
Head Clerk,
E.S.I. Corporation (Regional Office),
ESIC Bhawan,
Janpath, Unit-IX, Bhubaneswar-7

By the Advocates

-

...Respondents

M/s Devanand
Misra, R.N.Naik,
A.Deo, B.S.Tripathy
P.Panda &
G.A.R.Dora

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In these three Original Applications, the petitioners have challenged their supersession by their juniors by the Departmental Promotion Committee. They were superseded in the same meetings of the D.P.C. whose recommendations have been challenged. These three cases have been heard together and one order will govern these cases. Facts of these cases, according to the applicants, are largely similar though not in all respects and therefore, facts of each case have to be set out separately.

2. In O.A.No.456/90 applicant Dharanidhar Dixit has prayed for a direction to respondent nos. 1 to 3 to convene a Review D.P.C. to consider his case for promotion to Head Clerk with effect from 1986 when the vacancy took place. There is also a prayer for a direction to fix his seniority above respondent no.4 G.C.Swain and respondent no.5 R.K.Nayak in Annexure-A/5 which is the order giving them appointment in the posts of Head Clerk on regular basis on the recommendation of the D.P.C. and also in Annexure-A/6 which is the seniority of Head Clerks drawn up on the basis of Annexure-A/5 so far as the applicant and respondent nos. 4 and 5 are concerned. The applicant's case

is that he joined as L.D.C. on 20.4.1971 in Employees' State Insurance Corporation (hereinafter referred to as "Corporation") against a regular vacancy. He was promoted as U.D.C. on ad hoc basis on 1.2.1977 and his appointment as U.D.C. was regularised with effect from 17.7.1981. Respondent no.4 G.C.Swain joined as L.D.C. on 4.5.1971. In the merit list for the post of U.D.C. in which applicant and respondent nos. 4 and 5 were appointed through a written test, respondent no.4 ranked below the applicant. Respondent no.4 was promoted on ad hoc basis as U.D.C. on 1.2.1977, same date as the applicant. But he was regularised as U.D.C. with effect from 16.7.1983 (Annexure-A/4). Thus the admitted position is that in the ranks of L.D.C. and U.D.C. the applicant was senior to respondent no.4. The applicant was given ad hoc appointment to the post of Head Clerk in order dated 12.8.1982 (Annexure-A/2). According to the applicant, this ad hoc promotion was against a long term vacancy. Respondent no.4 was not given ad hoc appointment to the post of Head Clerk and he got regular appointment along with the applicant only in the order dated 1.12.1989 with effect from 15.5.1989. Respondent no.5 R.K.Nayak joined the Corporation as L.D.C. on 1.4.1976, five years after the applicant. He was promoted to the post of U.D.C. on ad hoc basis with

effect from 25.6.1979, more than two years after the applicant. His substantive appointment as U.D.C. was kept in abeyance on the basis of recommendation of D.P.C. held on 7.3.1988 and 20.4.1988 till completion of the investigation into the complaint/disciplinary proceedings against him. Respondent no.5 had also never worked as Head Clerk on ad hoc basis. The applicant's grievance is that in the meeting of the D.P.C. held on 4.5.1989 he was illegally superseded by respondent nos.4 and 5 who are much junior to him and the order dated 1.12.1989 was issued in which the names of respondent nos.4 and 5 and the applicant have been shown against serial nos.3,5 and 6 respectively and they have all been given regular appointment from 15.5.1989. The recommendations of the D.P.C. have been challenged by the applicant on various grounds. But as the grounds of challenge are almost the same in the other two cases, these will be taken up together. One submission of the applicant, however, requires to be stated here. He has submitted that while his service record was without any blemish, respondent no.4 was awarded penalty of stoppage of one increment for one year in the year 1985 for submitting false LTC Bill. It is also submitted that respondent no.5 was proceeded against for committing fraud and misappropriation of Government money and the proceedings culminated in a penalty of censure.

2.1 In this O.A., the departmental authorities have filed counter in which they have submitted that recruitment/promotion to various posts under the Corporation is regulated under the provisions of the Employees' State Insurance Corporation (Recruitment) Regulation, 1965. As per Regulation 28 of this 1965 Regulation, promotion to the post of Head Clerk is to be made in the following manner:

- (a) 50% of the vacancies are to be filled up by promotion on the basis of selection on merit with due regard to the seniority; and
- (b) the remaining 50% vacancies are to be filled up on the basis of seniority subject to rejection of unfit.

J. Som.
The departmental respondents have further stated that prior to 1.12.1980 promotion to the post of Head Clerk was made on the basis of all India seniority. But this was decentralised in order dated 15.11.1990 on which date detailed instructions were issued to the Regional Director for constitution of D.P.C. and for filling up of the posts. The departmental respondents have stated that after receipt of the above order of decentralisation, D.P.C. meetings

were convened by the Regional Director on 28.11.1980, 4.7.1981, 31.12.1981, 16.5.1984 and 8.11.1985 and as promotion to the post of Head Clerk was made both by way of selection on merit with due regard to the seniority and on the basis of seniority subject to rejection of unfit, in those D.P.C. meetings from 28.11.1980 to 8.11.1985 a large number of officials were superseded by their juniors. Details have been given by the respondents in paragraph 8 of the counter. It has further been stated that because of non-finalisation of roster for reservation in the Corporation service for S.C. and S.T., D.P.C. meetings could not be held for several years after 8.11.1985. Ultimately, the meeting was held on 4.5.1989 and the cases of eligible candidates were duly considered. The D.P.C. followed the rules and instructions scrupulously and in the process, the applicant was superseded by respondent nos. 4 and 5 on the basis of recommendations of D.P.C. and as such, he can have no cause of grievance. The departmental respondents have also stated that the ad hoc appointment of the applicant to the post of Head Clerk could not have been taken into account by the D.P.C. while making their recommendation for promotion to the post of Head Clerk.

S. Som,
2.2 Respondent nos.4 and 5 have filed a joint counter. In their counter they have not contested that they are junior to the applicant in the ranks of L.D.C. and

U.D.C. They have stated that the applicant and respondent nos. 4 and 5 were regularised as U.D.C. with effect from 17.7.1981. This is prima facie incorrect because in the order dated 20.4.1988 at Annexure-A/4 the applicant and respondent no.4 have been given substantive appointment as U.D.C. from 16.7.1983 whereas the substantive appointment of respondent no.5 has been kept in abeyance till the conclusion of the departmental proceedings against him. Respondent no.5 has not filed any paper to indicate from which date, if at all, he was given substantive appointment as U.D.C. However, nothing very much hinges on this point because the admitted position is that in the rank of U.D.C., the applicant is senior to respondent nos. 4 and 5. Respondent nos. 4 and 5 have further stated that D.P.C. in their meeting on 8.5.1989 strictly followed the rules and instructions and prepared the select list in which the applicant was superseded by respondent nos. 4 and 5 and therefore, he can have no objection. Inter se seniority in the rank of Head Clerk was accordingly determined at Annexure-A/6. A representation against Annexure-A/6 filed by the applicant was also rejected in order dated 25.10.1990 at Annexure-A/7. Respondent nos. 4 and 5 have

J.S.M.

further stated that D.P.C. took into account C.Rs. for five years from 1981 to 1985 of the applicant and respondent nos. 4 and 5 and rated respondent nos. 4 and 5 as outstanding and the applicant as very good. Respondent nos. 4 and 5 have also stated that the minor penalty is not a bar against consideration for promotion and the penalty imposed on respondent nos. 4 and 5 had expired long ago and could not have been taken into account by the D.P.C. On the above grounds, respondent nos. 4 and 5 have opposed the prayers of the applicant.

3. In O.A.No.131 of 1991, applicant S.K.Routray has prayed that his seniority should be counted as Head Clerk/Assistant with effect from 20.8.1982 and he be declared senior to respondent no.3 R.K.Nayak and respondent no.4 N.Parija as Assistant in the Head Clerk/Assistant cadre. The applicant's case in this O.A. is that he joined as L.D.C. in the Corporation against a regular vacancy through a written test conducted on all India basis. He was promoted as U.D.C. on ad hoc basis with effect from 1.2.1977 and was regularised as U.D.C. from 17.7.1981. His service as U.D.C. from 1.2.1977 till 17.7.1981 was continuous and uninterrupted. He was promoted to the post of Head Clerk/Assistant on 25.8.1982 on ad hoc basis. The posts of Head Clerk and Assistant belong to a

26
common cadre. He is continuing as Head Clerk from 25.8.1982 and has been regularised in order dated 1.12.1989 with effect from 15.5.1989. After issue of the office order dated 1.12.1989 on the basis of which the applicant's promotion to the post of Head Clerk was regularised, the seniority list was circulated which is at Annexure-1. In this seniority list, the applicant was shown below respondent nos. 3 and 4. Names of respondent no.3 R.K.Nayak and respondent no.4 N.Parija and the applicant were shown as against serial nos. 24,26 and 28 respectively. The applicant's case is that respondent nos. 3 and 4 were junior to the applicant in the cadres of L.D.C. and U.D.C. as per details given in the O.A. The applicant's case is that the office order dated 1.12.1989 in which he has been shown below respondent nos. 3 and 4 is based on the recommendations in the meeting of the D.P.C. held in May 1989. His further case is that the D.P.C. while making their recommendations did not follow the rules and instructions strictly and the applicant was illegally superseded. It has been further submitted that respondent no.3 was proceeded against for fraud and misappropriation and he was censured. As regards respondent no.4, it is submitted that there were allegations against him for having assets disproportionate to his known sources of

income. Necessary investigation was conducted in the matter because of which respondent nos. 3 and 4 were not given substantive appointment in the order dated 20.4.1988 in which the applicant was given substantive appointment as U.D.C. from 16.7.1983 whereas in case of respondent nos. 3 and 4 it was mentioned in this order that decision in their case has been kept in abeyance till completion of the investigation into the complaints/disciplinary proceedings, as the case may be, against them. In spite of this, the D.P.C. had recommended respondent nos. 3 and 4 and given them higher position over the applicant. The applicant had submitted a representation at Annexure-4 to respondent no.1 but this was rejected in order dated 25.10.1990 (Annexure-5) in which the applicant was informed that seniority assigned by the D.P.C. was in order.

3.1 Respondent nos. 1 and 2 have filed counter opposing the prayers of the applicant. This counter is more or less on same lines as the counter filed in OA No.456/90 and therefore, it is not necessary to mention the same points again. It only requires to be stated that respondent nos.1 and 2 have stated in their counter that the D.P.C. in their meeting on 4.5.1989 had followed the rules and instructions correctly and no illegality had been committed. Though the recommendations of the D.P.C. held on 4.5.1989 which cleared 11 names for promotion were accepted

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by the Regional Director, the same could not be acted upon immediately as Director General was moved for dereservation of certain vacancies. D.P.C. was again convened on 24.8.1989 to finalise names for promotion to two posts which occurred due to regular promotion of two officials to the post of Insurance Inspector/Manager, Grade-II and after receipt of approval to the proposal of de-reservation, the order of promotion of 13 officials in total was issued in order dated 1.12.1989. Respondent nos. 1 and 2 have stated that it is not a fact that the applicant was promoted as Head Clerk with effect from 25.8.1982 on ad hoc basis. According to respondent nos. 1 and 2, the applicant was posted as U.D.C. in charge during the period from 25.8.1982 to 15.4.1986 in an ex-cadre post. Regarding the proceedings against respondent nos. 3 and 4, it has been submitted in the counter that penalty of censure in respect of respondent no.3 does not constitute a bar for promotion and as far as respondent no.4 is concerned, investigation was made against him, but nothing substantive was found. The cases of respondent nos. 3 and 4 were considered long after finalisation of disciplinary proceedings and conclusion of investigation and once the D.P.C. have taken these aspects into consideration and found them more meritorious, the D.P.C.'s recommendation should not be interfered with.

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29

3.2 Respondent nos. 3 and 4 have filed a joint counter in which they have stated that the applicant was not given posting as Head Clerk on ad hoc basis. From the order dated 12.8.1982 at Annexure-R/3 it is clear that he was appointed as U.D.C. in charge. It has been submitted that the D.P.C. has followed the procedure and instructions correctly and have assigned higher position to respondent nos. 3 and 4 vis-a-vis the applicant. On the basis of consideration of C.Rs. for five years from 1981 to 1985, they have been given higher position and the same cannot be challenged. It has also been stated that the Regional Director in his letter dated 26.2.1990 has pointed out that the penalty of censure imposed on respondent no.3 was in April 1988 and this did not constitute a bar to promotion. As regards respondent no.4, the Regional Director in the same letter has reported that the preliminary enquiry against respondent no.4 was completed before the D.P.C. meeting and nothing adverse was found. The stand taken by the applicant that respondent no.3 R.K.Nayak was at the relevant point of time working in P.A.Cell and was in charge of putting up of files, instructions, etc., to the D.P.C. and thereby he influenced the D.P.C. has been controverted by respondent nos. 3 and 4 on the basis of

J. W. M.

the letter dated 26.2.1990 of the Regional Director stating that as a mere Assistant he could not have been in a position to influence the D.P.C. which consisted of senior officers. On the above grounds, respondent nos. 3 and 4 have contested the prayers of the applicant.

3.3 The applicant has filed a rejoinder in which it has been stated that in the D.P.C. meeting held prior to 4.5.1989, promotions were given on the basis of merit. But in the D.P.C. held on 4.5.1989 disciplinary proceedings, etc., against respondent nos. 3 and 4 have not been taken into account. It has been further submitted that in the year 1986 there were only two vacancies in the merit quota for General candidates and had the D.P.C. meeting been held in 1986, respondent nos. 3 and 4 would not have come within the zone of consideration as only eight persons, four times the number of vacancies would have come within the zone for two vacancies in the merit quota. It has further been stated that of the seven vacancies in 1986, three were for S.C./S.T. candidates which were de-reserved only in 1989 and therefore, these vacancies should not have been considered by the D.P.C. for being filled up through General candidates and respondent nos. 3 and 4 should not have been brought within the zone of consideration. The main contention in the rejoinder is that had the D.P.C. meeting held earlier in 1986 or 1988, the

31
applicant would have been promoted and the cases of respondent nos. 3 and 4 would not have come up for consideration.

4. In O.A.No.132 of 1991, applicant A.B.Ghose has prayed for counting his seniority as Assistant with effect from 20.8.1982 and for declaring him senior to respondent no.3 R.K.Nayak, respondent no.4 N.Parija and respondent no.5 G.C.Swain. The facts are similar to the other two cases. The applicant's case is that he joined as L.D.C. on 10.5.1971 in a regular vacancy through a written test conducted on all India basis. He was promoted as ad hoc U.D.C. on 1.12.1977 and was regularised from 17.7.1981. His ad hoc service as U.D.C. from 1.12.1977 to 17.7.1981 was continuous and uninterrupted. Respondent nos. 3,4 and 5 joined as L.D.C. much later than him. Admittedly in the cadres of L.D.C. and U.D.C., these three respondents are junior to him. But D.P.C in their meeting held on 4.5.1978 recommended supersession of the applicant by respondent nos. 3,4 and 5. The applicant claims that the D.P.C. did not follow the rules and instructions strictly. It is also averred that respondent no.3 was caught in a fraud case by the Vigilance Department in 1984 and he was punished by a censure in 1988. It is also alleged that because of certain complaints/investigation against respondent no.4,

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his substantive appointment as U.D.C. was kept in abeyance in order dated 20.4.1988. Respondent no.5 G.C.Swain was awarded penalty in 1985 for submitting false L.T.C. Bill. But in spite of that, these three respondents have been adjudged better and given higher position by the D.P.C. The applicant has challenged the recommendation of the D.P.C. and has come up with the aforesaid prayers.

4.1 Respondent nos. 1,2 and 3, the departmental authorities have filed a counter which is on the same lines as counter filed by them in the other two cases. Their stand is that D.P.C. has correctly adjudged the merit of the various persons and found respondent nos. 3,4 and 5 as more meritorious and have accordingly rightly assigned them higher position in the select list. On these grounds, they have opposed the prayers of the applicant.

4.2 Respondent nos. 3,4 and 5 have filed a joint counter in which they have stated that according to the recommendation of D.P.C., promotion orders were issued on 1.12.1989 and seniority list was also prepared and circulated in order dated 6.12.1989 (Annexure-1) inviting objection. The applicant represented and his representation was rejected in order dated 25.10.1990 at Annexure-5. Respondent nos. 3,4 and 5 have further stated that the

D.P.C. has followed rules and instructions correctly and have assigned them positions higher than the applicant and accordingly they have been promoted. They have also stated that for the year 1986 there were three vacancies of Head Clerks/Assistants in the seniority quota and three persons who were senior to the applicant were promoted and the applicant was fourth in the order of seniority. He was selected in 1987 against the only vacancy which came in the seniority quota that year as he was the seniormost candidate. Respondent nos.3,4 and 5 have also submitted that respondent no.3 was given the penalty of censure in April 1988 and this penalty was not bar to promotion. Similarly, the enquiry against respondent no.4 was completed before the D.P.C. meeting and no adverse finding was reached. As against respondent no.5, penalty of withdrawing of one increment for one year without cumulative effect was imposed on him on 4.7.1984. By the time the D.P.C. met, the effect of penalty was over. The D.P.C. adjudged the C.Rs. of these three respondents along with others and assigned them higher position. In view of this, respondent nos. 3,4 and 5 have opposed the prayers of the applicant.

4.3 The applicant has filed a rejoinder to the counter filed by respondent nos. 3 to 5. In the rejoinder,

the applicant has stated that had the D.P.C. meeting been held in 1986, there would have been four vacancies of which two would have been in merit quota and respondent nos. 3,4 and 5 would not have come within the zone of consideration. By delaying the D.P.C. meeting, the vacancies have been increased and they have been brought within the zone of consideration and have thereafter illegally superseded the applicant.

5. From the above recital of facts, it is clear that the cases of the three applicants are substantially the same. They have challenged their supersession in the D.P.C. meeting held in 1989. The applicants have urged a large number of grounds challenging the recommendation of the D.P.C. and these are discussed below.

6. We have heard the learned counsels appearing for both sides and have also perused the records.

7. It has been submitted that D.P.C. meeting was not held prior to May 1989 for a number of years. The last D.P.C. meeting prior to 1989 was held on 8.11.1985. It is also submitted that when the D.P.C. met in 1989, they should have considered the vacancies yearwise and made recommendations against yearwise vacancies, but this was

not done. The departmental authorities in their counter in O.A.No.132/91 have submitted that D.P.C. meeting could not be held prior to 1989 because of non-finalisation of roster for reservation for S.C. and S.T. After the roster was re-drawn as per instructions of headquarters, the meeting of D.P.C. was held. In course of hearing, the minutes of the D.P.C. in original have been produced along with connected papers and from this, we find that the D.P.C. considered vacancies and made recommendations yearwise. As such this contention is without any merit and is rejected.

8. Coming to the rules regarding promotion to the post of Head Clerk/Assistant, the departmental authorities in their counter have pointed out that as per rules, 50% of the vacancies are to be filled up on the basis of selection on merit with due regard to seniority and the remaining 50% on the basis of seniority. Accordingly, while considering the cases of the applicants and the private respondents for promotion, the D.P.C. has earmarked the vacancies coming under merit with due regard to seniority quota and the vacancies coming under seniority quota separately for each year. The vacancies under each of these two quotas reserved for S.C. and S.T. have also been separately earmarked. Thus in the matter of earmarking of vacancies for merit-cum-seniority quota and for seniority

quota, D.P.C. has acted strictly in accordance with Rules. The applicants have also submitted that in 1986 there were four vacancies under merit-cum-seniority quota of which two were for General candidates and two for S.C. candidates. The applicants have stated that at the time of holding of D.P.C. meeting on 4.5.1989 the two S.C. vacancies were not de-reserved and therefore, D.P.C. should not have recommended any reserved candidates against the reserved vacancies. Their stand is that by taking the reserved vacancies in the merit-cum-seniority quota as unreserved vacancies, the total number of vacancies has been wrongly taken as four and thereby the zone of consideration has been increased to three times the number of vacancies, i.e. twelve and some of the private respondents have come within the zone of consideration. We note from the minutes of the D.P.C. that the D.P.C. clearly noted that after verifying the service records, they found that there was no candidate belonging to S.C/S.T. candidates available with three years qualifying service in the feeder cadre. In view of this, there is nothing wrong in the D.P.C. recommending that the two reserved vacancies in the merit-cum-seniority quota should be filled up by unreserved candidates and thereby taking four vacancies for 1986 in the merit-cum-seniority quota for unreserved candidates. This contention is,

therefore, held to be without any merit. Accordingly, we also hold that the zone of consideration against the four vacancies has been rightly taken to be twelve. This contention of the applicants must also , therefore, fail.

9. Coming to the actual recommendations of the D.P.C. with regard to the applicants and the private respondents, we note that along with the minutes of the D.P.C. an assessment sheet of the C.Rs. of all the persons considered for 1986 and 1989 vacancies have been enclosed. On the top of this sheet, the following words have been mentioned:

ASSESSMENT SHEET USED BY THE DEPARTMENTAL
PROMOTION COMMITTEE WHICH MET ON 4.5.89"

Sdm.
This sheet has also been signed by all the members of the D.P.C. who have signed the minutes of the D.P.C. There is no controversy with regard to the three vacancies for the year 1986 filled up in the seniority quota. These three posts have gone to S.Guru, D.Rout and D.D.Dixit (applicant in OA 456/90) strictly in accordance with the seniority. The sole vacancy for the year 1987 fell in the seniority quota and the next seniormost person, A.B.Ghose has been recommended against that vacancy. We mention this to bring out the point that the whole dispute in this case thus

boils down only to the recommendations made with regard to merit-cum-seniority quota. The rules provide that 50% of the vacancies should be filled up on the basis of merit with due regard to seniority. From this rule, it is clear that not only merit should be considered but adequate consideration should be shown to seniority as well. But between the two, merit will be the pre-eminent factor. But the above formulation regarding merit with due regard to seniority does not envisage that merit alone will be the guiding factor and seniority will not be given any consideration. This aspect will have to be kept in view while considering the recommendation of the D.P.C. with regard to the merit-cum-seniority quota of four vacancies for which D.P.C. recommended S.Das, G.C.Swain, R.K.Nayak and N.Parija. G.C.Swain, R.K.Nayak and N.Parija have been adjudged as outstanding as per the assessment sheet referred to by us earlier whereas D.D.Dixit (applicant in OA 456/90), S.K.Routray (applicant in OA 131/91) and A.B.Ghose (applicant in OA 132/91) have been adjudged as very good. The point for consideration is whether the D.P.C. was right in view of the assessment of C.Rs. of the applicants and the respondents as "Very Good" and "Outstanding" to place the outstanding persons in the merit-cum-seniority quota leaving out the three applicants who have been adjudged very good.

10. The applicant in OA No.132/91 has referred to the Department of Personnel & Training's O.M dated 10.4.1989 in which in paragraph 6.3.1 it has been mentioned that list of candidates considered by the D.P.C. and the overall grading assigned to each candidate would form the basis for preparation of the panel for promotion by D.P.C. and the following principles should be observed in the preparation of panel. The relevant portion of the circular is quoted below:

- (i) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts a bench mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group "C", Group "B and Group "A" posts upto (and excluding) the level of Rs.3700-5000/- excepting promotions for induction to Group-A posts or services from lower groups, the bench mark would be "good". All officers whose overall grading is equal to or better than the bench mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their interseniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench mark of "good".

J.P.M.
Private respondent nos.3, 4 and 5 in their counter in O.A.No.132 of 1991 have submitted that Government of India instruction dated 10.4.1989 was effective from 1.4.1989 and

therefore, the D.P.C. was not required to review the recommendations pertaining to the years 1986 and 1987, but the recommendations were reviewed in case of S.K.Routray (applicant in OA No.131/91) in the D.P.C. meeting held on 1.12.1989. As the Government of India circular was issued and was admittedly effective from 1.4.1989, we do not see any reason why the D.P.C. did not follow the circular. According to the circular, the bench mark is "Good" and therefore, any candidate whose overall grading is "Good" and above should have been arranged on the basis of their inter se seniority in the lower cadre, i.e. in the cadre of U.D.C. In these cases, all the three applicants, D.D.Dixit, S.K.Routray and A.B.Ghose have been given overall grading "Very Good" by the D.P.C. and therefore, the D.P.C. should have, after finding the applicants "Very Good", assigned them position in the merit list according to their seniority. A point has been taken by the private respondents that as the circular regarding the bench mark being "Good" was effective from 1.4.1989, this could not have been applied to 1986 and 1987 vacancies. We are unable to accept this submission firstly because the D.P.C. actually met on 4.5.1989 after issuing of this circular. We find from the minutes of the D.P.C. (paragraph 2) that a

J. Am.

circular dated 1.5.1989, presumably relating to reservation, has been taken into consideration by the D.P.C. Therefore, this circular dated 10.4.1989 which was admitted by respondent nos.3,4 and 5 in paragraph 8 of their counter in OA No.132/91 to have become effective from 1.4.1989, should have been taken note of by the D.P.C. and recommendations made strictly in accordance with this circular. In view of the above, we hold that the recommendations of the D.P.C. in respect of the merit-cum-seniority quota for 1986 vacancies cannot be sustained and the same is, therefore, quashed. This panel is also liable to be quashed on another ground. By adjudging respondent nos. 3,4 and 5 in OA No.132/91 and by recommending them against the three out of the four vacancies in the merit-cum-seniority quota for the year 1986 vacancies, the D.P.C. obviously did not follow the requirement of the rules for giving due regard to seniority. The D.P.C. has totally gone by merit and therefore, the requirement of rule that merit-cum-seniority quota should be filled up on the basis of merit with due regard to seniority has not been followed.

J.S.M.
11. The next aspect is the punishment imposed on respondent nos. 3 and 5 in OA No.132/91 and the enquiry against respondent no.4 in that O.A. As regards respondent

no.4, the matter can be disposed of simply by saying that all that happened in respect of respondent no.4 was that an enquiry was conducted against him which was completed before the D.P.C. met and in course of the enquiry nothing incriminating was found against him. It is no doubt true that the substantive appointment of respondent no.4 N.Parija was delayed because of this enquiry. But the enquiry having been completed prior to D.P.C. meeting, the D.P.C. could not have taken note of the enquiry which had been conducted against respondent no.4 N.Parija and in which he came out unblemished. As regards the punishment of censure against respondent no.3 R.K.Nayak and punishment of stoppage of one increment imposed on respondent no.5 G.C.Swain, the respondents have correctly pointed out that censure is no bar to promotion and the punishment of stoppage of increment was imposed on respondent no.5 G.C.Swain in 1984. While these punishments are no bar to the promotion of respondent no.3 R.K.Nayak and respondent no.5 G.C.Swain in OA No.132/91, the D.P.C. should have taken note of these punishments. Applicant in O.A.No.132/91 has pointed out that the Department of Personnel & Training circular dated 10.3.1989 lays down that before making the overall grading after considering the C.Rs. for the relevant years, the D.P.C. should take into account whether

43

the officer has been awarded any major or minor penalty or whether any displeasure of any superior officer or authority has been conveyed to him as reflected in the C.Rs. From the minutes of the D.P.C. meeting, we find that these two punishments imposed on respondents R.K.Nayak and G.C.Swain, even though they were no bar to their promotion, were not taken into consideration by the D.P.C. This should have been done and this is one more ground which militates against D.P.C. granting them higher position in the merit-cum-seniority list of 1986 by adjudging them "Outstanding" over the applicants who were adjudged as "Very Good". On this ground also, the merit-cum-seniority panel for 1986 vacancies cannot be sustained.

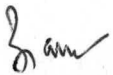
12. In view of the above discussions, the prayers made by the three applicants are discussed below. As we have already held that the merit-cum-seniority panel for the year 1986 is not sustainable, it is ordered that a Review D.P.C. should meet within a period of 90 (ninety) days from the date of receipt of copy of this order and adjudge the relative merit of the candidates coming within the zone of consideration taking the bench mark as "Good" and work out the recommendations accordingly. After receipt of the revised recommendation of the D.P.C., the departmental authorities will act in accordance with such recommendations. The prayer of the applicant in

O.A.No.456/90 to treat him as regular Head Clerk with effect from 1986 is held to be without any merit as a regular appointment to the post of Head Clerk/Assistant can be done only in accordance with the recommendation of the D.P.C. and in 1986 when he was acting as ad hoc Head Clerk, his appointment was not in accordance with the recommendation of the D.P.C. His prayer for refixing his seniority will be worked out in accordance with the revised recommendation of the D.P.C. He has also made a prayer to regularise his service as Head Clerk with effect from 1982 when he was appointed as Head Clerk on ad hoc basis. This prayer is without any merit because ad hoc appointment cannot give him a right to regularisation and such appointment was made without recommendation of the D.P.C. This prayer is also rejected.

13. The prayer of the applicant in OA No.131/91 for counting his seniority as Assistant which is the same cadre as Head Clerk with effect from 20.8.1982 is without any merit because such appointment was made on ad hoc basis. His further prayer is that he should be declared senior to respondent no.3 R.K.Nayak and respondent no.4 N.Parija will abide by the recommendation of the Review D.P.C. for which we have separately ordered.


14. The prayer of applicant A.B.Ghose in OA No.132/91 is again for counting his seniority as Assistant with effect from 20.8.1982. For reasons indicated earlier in respect of S.K.Routray, applicant in OA No.131/92, this prayer is rejected. His claim of seniority over respondents R.K.Nayak, N.Parija and G.C.Swain will be determined in accordance with the recommendation of the Review D.P.C.

15. In the result, therefore, the three applications are allowed in terms of the orders and directions given in paragraphs 10 to 14 above. There shall be no order as to costs.



(A.K.MISRA)

MEMBER(JUDICIAL)



(SOMNATH SOM)
VICE-CHAIRMAN
1.1.99

AN/PS