

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos.100,101& 244 of 1990.

Date of decision : 30.9.1992.

In O.A.100 of 1990.Harihar Patra ... Applicant.

Versus

Union of India and others ... Respondents.

In O.A.101 of 1990. Dhruba Charan Dash ... Applicant.

Versus

Union of India and others ... Respondents.

In O.A.244 of 1990 Hemamba Kumar Chatterjee ... Applicant.

Versus

Union of India and others... Respondents.

In all the three cases For the applicant ... 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

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THE HONOURABLE MR.M.Y.PRIOLKAR, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed 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.

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J U D G M E N T

K.P.ACHARYA, V.C., Since the applicants in all the above mentioned three cases have a common grievance relating to their respective service benefit and according to them their case being governed by the judgment of this Bench in T.A.266 of 1986 disposed of on 23.12.1988, and the facts of all these cases being one and the same, we have heard these three cases namely O.A.100 of 1990, O.A.101 of 1990 and O.A.244 of 1990 one after the other and we would direct that this common judgment will govern all the three cases mentioned above.

2. In O.A.100 of 1990 Shri Harihar Patra is the applicant who is at present working as a Chief Reservation Supervisor, Grade I in the Reservation Office at Puri Railway station. In O.A.101 of 1990 the applicant is Dhruba charan Dash ~~who is~~ at present working as a Chief Reservation Supervisor, Reservation Office, in the Cuttack Railway Station and in O.A.244 of 1990, the applicant is Heramba Kumar Chatterjee, at present working as Reservation Supervisor in the Reservation off-ice in Cuttack Railway Station. The common case of the applicants in all the three original applications is that each of the applicants was recruited as Commercial Clerk under the South Eastern Railway, Khurda Road Division. A decision was taken that posts upto and including the grade of Rs.100-135/- in the branches of Coaching (including Enquiry Clerk) and Parcel were to be filled up by the Divisional Officers from amongst the staff of the respective divisions on the basis of their Divisional seniority. Accordingly, a test was held and the applicants in these original applications along with 5 others of

the Khurda Road Division, were promoted to the rank of Enquiry-Cum-Reservation Clerk. A seniority list was also prepared. Along with the order of promotion of these three applicants and 5 others, Respondent No. 2 wanted to select some other incumbents and further wanted to replace the applicants by those incumbents. This could not materialise because it was found that these three applicants along with 5 others had been promoted on regular basis prior to 1.4.1964 after turning out successful in the suitability test. However, when Respondent No. 2 prepared the seniority list the name of these three applicants and so also 5 others were omitted from the said seniority list while retaining their juniors in the list. All the three applicants along with 5 others filed an application before the Hon'ble High Court of Orissa under Article 226 of the Constitution which formed subject matter of O.J.C. No. 22 of 1986 praying for inclusion of their names in the above mentioned seniority list meant for Enquiry-cum-Reservation Clerks. They also put forth their grievance in the writ application (O.J.C. No. 22 of 1986) that an illegality has been committed for having treated these applicants along with five others as juniors to one R. Sanyasia - opp. party No. 4 in the said O.J.C. No. 22 of 1976, which should be declared to be illegal and so also promotion given to Shri R. Sanyasia on that count should also be declared illegal. Further case of the applicants is that the Hon'ble High Court of Orissa, in its judgment dated 11.1.1978 passed in O.J.C. No. 22 of 1976 held that the petitioners in the said O.J.C. should be treated as senior to Shri R. Sanyasia and the petitioners should be treated to be holding the post of Enquiry-cum-Reservation Clerk from the date of their appointment and they should be shown

in the appropriate gradation list and Opp. parties 1 to 3 (in that O.J.C.) were directed to consider the claim of the petitioners to the higher posts to which O.P.No.4 (R.Sanyasia) had been promoted from time to time on the erroneous basis of ~~xx~~ being senior to the applicants. Despite these directions given by the Hon'ble High Court of Orissa no steps were taken to implement the judgment even though several representations were made by the applicants. Finding no other alternative one of the petitioners before the Hon'ble High Court of Orissa, filed another application under Article 226 of the Constitution which formed subject matter of O.J.C.No.499 of 1985 praying therein to direct the Opp. parties to give promotion to the petitioner in O.J.C.499 of 1985 with effect from 28.7.1966 and also to pay arrear emoluments to which the petitioner was legally entitled to. This case came on transfer to the Central Administrative Tribunal, Cuttack Bench under section 29 of ~~the~~ the Administrative Tribunals Act, 1985, which was renumbered as T.A.266 of 1986 and disposed of on 23.12.1988. In the said judgment the Bench directed that the case of the applicant be considered for the promotional post ^{and/or posts} to which R.Sanyasia had been promoted and if found suitable the petitioner in the said transferred application be given promotion to the same post with effect from such dates ~~of promotions~~ on which R.Sanyasia had been promoted and the ^{he} petitioner in the said transferred application was also made entitled to all arrear emoluments. According to the applicants in these original applications, they had made representations to the appropriate authorities that the directions given by this Bench in the transferred

application applies mutatis mutandis to the present applicants and they should be given the same benefits. But unfortunately, the request of the applicants not having been acceded to, these original applications have been filed with the aforesaid prayer.

3. Counter has been filed on behalf of the respondents in all these three original applications and the defence taken in all the three counters are practically the same. The common ground taken in all these three counters is that the decision taken in T.A.266 of 1986 disposed of on 23.12.1988 has no application to the facts of the present case. Furthermore, it is maintained that suitability test could not be conducted in the cadre of Reservation Clerks due to another litigation. Since then, only adhoc promotions were given to M/s.H.H.Patra, U.V.S.Prakash Rao, Ch.V.Rao, & D.Das to the post of Enquiry cum Reservation Supervisor and Chief Reservation Supervisor. Shri H.K. Chatterjee has been promoted to the post of Enquiry and Reservation Supervisor and Shri R.N.Sahu has also been promoted to the same post though he did not carry out the same. M/s.Ch.V.Rao and R.N.Sahu have retired from service.

4. The only moot question that needs determination is as to whether the judgment of the Hon'ble High Court of Orissa has to be implemented in its strictest terms and whether the judgment passed in T.A.266 of 1986 applies to the present applicants. Incidentally, it may be stated that one of the petitioners in O.J.C.No.22 of 1976 was Shri Gobardhan Udgata along with the present applicants in the above mentioned original applications. The judgment

of the Orissa High Court not having been implemented the said Gobardhan Udgata filed O.J.C, No. 499 of 1985 which was renumbered as T.A. 266 of 1986 and was heard by the Cuttack Bench and disposed of on 23.12.1988.

5. After hearing Mr. S. Dash, learned counsel for the applicants in all these cases and Mr. B. Pal, learned Senior Standing Counsel (Railways) appearing for the respondents in all these three cases we are of opinion that the findings and directions given in T.A. No. 266 of 1986 apply with full force to the facts of the present case even though it was urged by Mr. B. Pal that the said judgment has no application to the facts of the present original application. Our reasonings in differing with Mr. Pal are as follows: Admittedly, Gobardhan Udgata was one of the petitioners along with the present ~~original~~ applicants in O.J.C. No. 22 of 1976. Admittedly, the High Court of Orissa had found that all the petitioners namely, Gobardhan Udgata and the present applicants are senior to R. Sanyasia and the names of the petitioners in the said O.J.C. should find place in the gradation list placing them as seniors to R. Sanyasia. Further more, direction was given in the said judgment that the petitioners before Their Lordships were entitled to all promotions (if they are found to be suitable) to all such posts to which R. Sanyasia was promoted with effect from the ^{date} ~~date~~ on which Shri R. Sanyasia had been promoted. At the cost of repetition we may say that the case put forward by all the applicants in these original applications are one and the same compared to the pleadings set forth by Shri Gobardhan Udgata in T.A. No. 266 of 1986. Therefore, we

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find no merit in the contention of Mr.B.Pal, learned Senior Standing Counsel(Railways) that the judgment passed in T.A.266 of 1986 has no application to the facts of the present cases. On the contrary, we would repeat our finding to say that the said judgment has fullest application to the facts of the present case and our direction in this judgment would be pursuant to the finding given by the Hon'ble High Court of Orissa in O.J.C.No.22 of 1976 and so also pursuant to the findings and directions given in T.A.266 of 1986 especially when the judgment passed in T.A.266 of 1986 had been carried in appeal to the Supreme Court. It formed subject matter of S.L.P.8617 of 1989. Vide order dated 9.7.1990, the Supreme Court dismissed the special leave petition. Thereby the view taken by this Bench in T.A.266 of 1986 was upheld. At the cost of repetition it may be stated that the facts constituted in T.A.266 of 1986 and the grievance of the petitioner in the said case are exactly similar to the facts of these cases including the grievance of the petitioners in these cases. 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 in this regard should be finalised within 60 days from the date of receipt of a copy

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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.

6. Thus, all these three applications stand allowed leaving the parties to bear their own costs.

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MEMBER (ADMINISTRATIVE)

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack,
30.9.1992/Saranghi.

