

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 422 OF 1991
Cuttack, this the 22nd day of October, 2001

Sri R.Suryanarayana Sastry Applicant

Vrs.

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 Tribunal or not? No.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
22.10.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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Cuttack, this the 22nd day of October, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

.....
Sri R.Suryanarayana Sastry, son of late R.V.Sastry, aged 59 years, Ex-Senior Section Supervisor, O/O Telecom District Engineer, Dhenkanal, at present residing at New Colony, Pattapole, P.O-Cuttack-753 001.....applicant

Applicant appeared in person.

Vrs.

1. Union of India, represented by the Chairman, Department of Telecommunications, ex officio Secretary, Ministry of Telecommunications, Sanchar Bhawan, New Delhi.
2. The Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar-751 001.
3. Sri Mahendra Prasad Behera, aged 62 years, ex Senior Section Supervisor, O/O Telecom District Engineer, Bhubaneswar, at present staying at Near Susma-Bhawan, Gandarpur, P.O-Cuttack-753 003.
4. Sri Gopal Chandra Panigrahi, son of late Jagabandhu Panigrahi, aged 61 years, ex-senior Section Supervisor, O/Telecom District Engineer, Cuttack-753 001, at present staying at Ballibhagat Road, P.O-Cuttack- 753 001.... Respondents

Advocate for respondents - Mr.P.N.Mohapatra
ACGSC

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

J.S.M.
In this O.A. the petitioner has prayed for a direction to the Secretary, Department of Telecommunication (respondent no.1) and Chief General Manager, Telecommunication, Orissa, Bhubaneswar (respondent no.2) to modify the seniority in the gradation list of LSG Clerk as per direction contained in the D.G,

P&T's letter dated 3.11.1978 and grant him promotion to the post of LSG Clerk retrospectively with consequential benefits.

2. The case of the applicant is that he was originally appointed as Time Scale Clerk in the office of Sub-Divisional Officer, Telegraphs, Cuttack on 17.8.1951 as an unapproved candidate. M.P. Behera (respondent no.3) and G.C. Panigrahi (respondent no.4) were approved candidates and were appointed in the same office on 10.11.1952 and 19.3.1953 respectively. Subsequently, the applicant was exempted from passing recruitment examination by virtue of having put in one year aggregate service as on 1.10.1952 as per D.G., P&T's telegram dated 7.10.1952 (Annexure-1). The applicant has stated that according to the decision of the Hon'ble Supreme Court seniority of persons appointed prior to 22.12.1959 will be governed by the length of service. The same principle of length of service was also followed by the Hon'ble High Court of Orissa and Hon'ble High Court of Madras. In view of this, D.G., P&T in his letter dated 12.4.1978 (Annexure-2) communicated his decision to revise the seniority of Clerks, Sorter, Telephone Operators, etc., appointed in Operative Offices of the Department between the period from 22.6.1949 to 21.12.1959. The applicant was appointed on 17.8.1951 and was exempted from passing the recruitment examination. The applicant has further stated that in a subsequent letter dated 7.8.1978 (Annexure-3) from D.G., P&T, benefit of fixation of pay on re-fixation of seniority was also allowed. General Manager, Telecommunication, Orissa, has prepared and circulated a seniority list of Time Scale Clerks appointed during the

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period from 22.6.1949 to 21.12.1959 in his letter dated 21.10.1978 (Annexure-4) in which the applicant's name has been correctly shown above the names of respondent nos. 3 and 4. The applicant has stated that his date of promotion to LSG cadre has not been correctly shown in Annexure-4. It should have been 27.2.1965 from the date on which respondent no.3 was given promotion to LSG cadre, but this was not done and his date of promotion was shown as 1.12.1966. The applicant filed a representation on 22.1.1979 but without any result. The applicant has stated that D.G., P&T had further directed taking of expeditious action to prepare revised Circle gradation list of LSG Clerks as soon as revised gradation list in the basic cadre of T.S.Clerk is prepared as per principle laid down in the letter dated 12.4.1978. The applicant has stated that this has been laid down in DG, P&T's circular dated 3.11.1978 (Annexure-5). But this hasnot been done. The applicant has stated that the Department should have granted him seniority in LSG cadre with consequential benefits, but this was not done. The applicant has referred to a further circular dated 26.4.1980 at Annexure-7, his representation dated 22.1.1979 at Annexure-6, and the BCR Scheme at Annexure-8. The applicant has stated that on the basis of 26 years of service he was promoted to the higher scale of pay on 30.11.1990, the date from which the BCR Scheme came into force. The applicant has stated that for the purpose of promotion under the BCR Scheme, his entire period of 26 years of service from his initial appointment has been taken into account and therefore, he should have been given promotion to LSG cadre on that basis. The

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representations of the applicant were rejected in the orders dated 23.11.1990 (Annexure-9) and 15.3.1991 (Annexure-10). The applicant has stated that principle of seniority on the basis of length of service has been implemented by the Chief Post Master General, Orissa, but in the sister Department of Telecommunication, the Chief General Manager, Telecom, has not implemented the same. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. Departmental respondents in their counter have opposed the prayers of the applicant. They have admitted that the applicant was initially appointed on 17.8.1951 as an unapproved Clerk and he was exempted from the recruitment examination as per order issued on 7.10.1952 and he was treated as an approved Clerk on 7.10.1952. The departmental respondents have stated that according to the circular dated 12.4.1978 relied upon by the applicant himself seniority of all persons appointed to the cadre during the period from 22.6.1949 to 21.12.1959 may be revised on the basis of length of service in the grade except in the cases of categories mentioned below. In the first category are persons who were initially appointed as Clerk, Sorter, etc., on ad hoc basis as unapproved candidates and were subsequently exempted from passing the recruitment examination by virtue of their having put in a particular period of service. In the second category come persons who have failed to pass the confirmation examination within the period and chances prescribed in the rules. In the third category come persons who are transferred from one Circle to another under Rule 38. As regards the circular at

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Annexure-3 providing benefit of promotion to LSG and fixation of pay in respect of officials in the cadre Clerk, Sorter, etc., appointed between 22.6.1949 and 21.12.1959, the respondents have stated that this circular specifically provides that pay of those employees who on the basis of their revised seniority assigned as per instruction dated 12.4.1978 are considered suitable for promotion to LSG from a date later than 4.1.1972, fixation of pay in their cases should be notionally made from 4.1.1972 and accordingly pay in the promotional post should be refixed from the date of their actual promotion. It is stated that this circular regarding notional fixation of pay applies only to those of the Clerks appointed between 1949 and 1959 who have not been promoted to LSG cadre by 4.1.1972 and have been adjudged suitable for promotion thereafter. The applicant having been promoted to LSG cadre from 1.12.1966 and having been confirmed in the cadre on 1.3.1969, his case is not covered under the above circular. The departmental respondents have further stated that the seniority list at Annexure-4 is of Time Scale Clerk and there the applicant has been correctly shown senior to respondent nos. 3 and 4 in pursuance of later portion of paragraph 2 of the circular dated 12.4.1978. But as respondent nos. 3 and 4 got promotion to LSG cadre from 27.2.1965 and 22.1.1966 and as the applicant got such promotion from 1.12.1966, his seniority was not required to be corrected. It is stated that on the date of announcement of the judgment by the Hon'ble Supreme Court on 4.1.1972, both the applicant and respondent nos. 3 and 4 had been promoted to the next higher cadre of LSG and such promotion was given to the applicant prior to 4.1.1972 and therefore, it was

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not necessary to refix his date of promotion. It is further stated that the representations of the applicant have been considered and correctly rejected and there is no merit in the claim of the applicant to refix his seniority in the cadre of LSG above respondent nos. 3 and 4. On the above amongst other grounds the departmental respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has reiterated his prayer in the OA. It is not necessary to record all the averments made by the applicant in his rejoinder as these will be taken note of wherever necessary while considering the submissions made by the parties.

5. The admitted position is that originally seniority of Time Scale Clerks used to be fixed not on the basis of their initial date of appointment and length of service, but from the date of confirmation. In pursuance of the decision of the Hon'ble Supreme Court as also the decision dated 14.8.1974 of the Hon'ble High Court of Orissa and the decision dated 2.1.1974 of the Hon'ble High Court of Madras, the seniority of persons appointed from 22.6.1949 to 21.12.1959 was ordered to be refixed on the basis of their length of service and not on the basis of their confirmation in the circular dated 12.4.1978 (Annexure-2). Both the parties rely on this circular and therefore, paragraph 2 of the circular is extracted in full:

22. The seniority of all persons appointed to the cadres referred to above, during the period from 22.6.1949 to 21.12.1959 may be revised except in the

cases of the categories mentioned below on the basis of length of continuous service in the grade as well as service in an equivalent grade in accordance with the instructions issued in Ministry of Home Affairs Office Memorandum No.30/44/48-Apptts. dated 22.6.1949 (reproduced in Director General's General Circular No.23 dated 5.12.1949):-

- a) The persons who were initially appointed as Clerks, Sorters, Telephone Operators on an ad hoc basis as un-approved candidates and subsequently exempted from passing the recruitment examination by virtue of their having put in a particular service limit on a particular date.
- b) Persons who failed to pass the confirmation examination within the period and chances prescribed in the rules.
- c) Persons transferred from one Circle to another from one arm (sic) to another etc. under Rule 38 of P&T Manual Vol. IV after having given a declaration prescribed in the rule ibid.

The seniority of the categories of persons mentioned above as an exception to the general principle may continue to be fixed in the following manner:-

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- (1) The seniority of the exempted category persons may be fixed by counting their length of service in the grade from the date on which they were exempted from appearing in the recruitment examination.
 - (2) The persons who failed to pass the confirmation examination within the prescribed period and prescribed number of chances may be fixed from the dates of their passing the confirmation examination in the special chance or from the date of their being exempted from passing the confirmation examination as per the note(2) below Rule 254 of P&T Manual Volume IV.
 - (3) The seniority of transferees under Rule 38 of P&T Manual Vol.IV is to be fixed according to the provisions of the Rule ibid as ammended from time to time and as it existed at the time of transfer of a particular employee."

From the above portion extracted from the circular dated 12.4.1978 relied upon by the applicant himself, it is clear that seniority of Time Scale Clerks appointed between 22.6.1949 and 21.12.1959 was to be determined on the basis of length of service and not on the basis of their date of confirmation except in the cases of three categories mentioned in paragraph 2. The applicant's case is squarely covered under clause (a). He was appointed as an unapproved candidate and was subsequently exempted from passing the recruitment examination for having put in one year of service by 1.10.1952. For these three categories the second portion of paragraph 2 of the circular lays down how their seniority has to be fixed. In case of unapproved TS Clerks, who have later on been exempted from passing the recruitment examination, seniority has to be fixed by counting their length of service from the date they were exempted from passing the recruitment examination. Accordingly, the applicant's seniority was rightly counted from the date he was exempted from passing the recruitment examination, i.e., 7.10.1952, and in the seniority list of Time Scale Clerks (Annexure-4) he was shown senior to private respondent nos. 3 and 4. The applicant does not make any grievance of this. His grievance is that even though he is senior to respondent nos. 3 and 4 at the level of Time Scale Clerk, in the next promotional post of LSG he has been promoted from 1.12.1966 while respondent nos. 3 and 4 have been promoted from 27.2.1965 and 22.1.1966. It is necessary to note that the decision of the Hon'ble Supreme Court came on

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4.1.1972 and the dates of promotion of the applicant and private respondent nos. 3 and 4 to LSG cadre were prior to this date. Accordingly, going by the prevailing rule of seniority prior to the decision of the Hon'ble Supreme Court, respondent nos. 3 and 4 were promoted to LSG cadre on 27.2.1965 and 22.1.1966 whereas the applicant was promoted on 1.12.1966 as he was junior to them at that time. After the decision of the Hon'ble Supreme Court and issue of the circular dated 12.4.1978, the applicant was shown senior to respondent nos. 3 and 4 in the basic grade of Time Scale Clerk. The sole question for consideration is whether on the basis of his seniority above private respondent nos. 3 and 4 in the Time Scale Clerk cadre determined in accordance with the circular dated 12.4.1978, the applicant is entitled to be promoted to LSG cadre from 27.2.1965, as claimed by him. Here both the parties have relied on the circular dated 7.8.1978 (Annexure-3). In view of this, it is relevant to quote the following therefrom:

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"I am directed to invite a reference to the instructions issued in this office letter of even number dated 12.4.1978 regarding fixation of seniority of officials in the operative offices appointed during the period from 22.6.1949 to 21.12.1959 and preparation of revised gradation lists and to say that the question of giving benefit in the matter of fixation of pay, to such employees as are promoted, or are deemed to have been promoted to LSG cadre from a date later than 4.1.1972 in pursuance of the instructions contained therein, has been further examined by Government in the light of decision conveyed in Department of Personnel and Administrative Reforms' Office Memorandum No.20011/1/77-ESTT(D) dated 13.4.1978 as amended vide that Department's corrigendum of even No. dated 16.6.1978(copy enclosed) and the following decisions have been taken.

The President has been pleased to decide that the pay of those employees who on the basis of their revised seniority in the cadre of Clerks, Sorters, Telephone Operators etc. assigned as per instructions issued in D.G. P&T letter No.45/1/74-SPB II dated 12.4.1978 are considered by the DPC suitable for promotion to LSG from a date later than 4.1.1972, may be notionally fixed w.e.f. 4.1.1972 and their pay on the date of actual promotion fixed accordingly under FR 27 provided the appointing authority satisfies itself in each case that the employee in question would have been considered for promotion at the appropriate time, had he been assigned his rightful seniority ab initio, viz., what is sought to be assigned to him under the instructions of 12.4.1978. This benefit will, however, not be admissible if the employee concerned is not found suitable for promotion to the LSG by the DPC when his suitability for promotion w.e.f 4.1.1972 is considered on the first occasion. The arrears arising out of such notional fixation of pay w.e.f 4.1.1972 or the later date, as the case may be, would however be admissible from the actual date of promotion only. The benefit of this pay fixation will not entitle the employees to any further benefits such as seniority in the grade to which he is promoted, etc."

From this circular itself relied on by the applicant it is clear that a decision was taken to give benefit of notional pay fixation to those of the Clerks recruited between 1949 and 1959 who were found suitable for promotion to LSG from a date later than 4.1.1972, i.e., the date of decision of the Hon'ble Supreme Court. In their case pay fixation was ordered to be made from 4.1.1972, but it was made clear that they will be entitled to financial benefits from the date of actual promotion and that they will not have any claim of seniority. As the applicant and private respondent nos. 3 and 4 were all promoted to LSG Cadre prior to 4.1.1972, the applicant is not covered under this circular dated 7.8.1978. In any case, this circular merely provides for notional pay fixation from 4.1.1972 whereas the applicant has been getting actual pay of LSG from 1.12.1966. We, therefore,

hold that the applicant's case is not covered under the circular dated 7.8.1978.

6. The next question for consideration is that after refixation of seniority on the basis of the circular dated 12.4.1978, the applicant was admittedly senior to private respondent nos. 3 and 4 in the grade of Time Scale Clerk. The question is whether on the basis of his seniority above private respondent nos. 3 and 4 in the rank of Time Scale Clerk, the applicant is entitled to be promoted to the level of LSG from 27.2.1965. The relevant portion of paragraph 3 of the circular dated 12.4.1978 is quoted below:

"3. The promotions and confirmation made in the LSG prior to 4.1.1972 will not be affected consequent on revision of seniority in the manner mentioned above...."

As the decision of the Hon'ble Supreme Court came on 4.1.1972, the departmental respondents have correctly decided to implement the decision from that date and we find no illegality in their stand that promotion given to LSG cadre prior to that date will not be disturbed. This contention of the applicant is also held to be without any merit.

7. The applicant has urged that the benefit he is claiming in this O.A. has been allowed in the Postal Department, but the same has been denied in the Telecommunication Department. We have gone through and examined the circulars issued by the Director-General, P&T, when the two Departments were under the same Ministry, and these circulars are the ones relied upon by the applicant and on the basis of these, we find no

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illegality in the action of the departmental respondents in rejecting the claim of the applicant.

8. The next contention of the petitioner is that even in the Telecom Department the relief claimed by the applicant has been allowed to Telephone Operators but denied to the Clerks. In support of this, the applicant has relied on the letter dated 26.12.1977 issued by the General Manager, Telecom, Orissa, Bhubaneswar (Annexure-12). In this letter it has been ordered that one K.C.Behera, Officiating Junior Supervisor, is ordered to be deemed to have been promoted to the cadre of LSG Monitor (now Junior Supervisor) on the basis of seniority-cum-fitness with effect from 29.11.1971. From this letter itself it is clear that earlier K.C.Behera was promoted to the cadre of LSG Monitor, later on redesignated as Junior Supervisor, sometime after 29.11.1971 and because of the decision of the Hon'ble Supreme Court and the circular dated 12.4.1978 (Annexure-2) his promotion was ante-dated to 29.11.1971. From this letter it does not appear when K.C.Behera was initially promoted, whether it was before 4.1.1972, i.e., the date of judgment of Hon'ble Supreme Court or after 4.1.1972. The applicant admittedly was promoted to LSG cadre in 1966 prior to 4.1.1972 and we have extracted paragraph 3 of the circular dated 12.4.1978 laying down that promotion and confirmation made to LSG cadre prior to 4.1.1972 will not be disturbed consequent on revision of seniority list of the Clerks and others appointed between 22.6.1949 and 21.12.1959. In view of this, the case of K.C.Behera does not provide any support to the prayer of the applicant.

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9. The last point of the petitioner is that according to law as laid down in Maharashtra Engineering Case, if a person is appointed on ad hoc basis and his ad hoc appointment is continued uninterruptedly followed by regularisation, the period of ad hoc service will count towards his seniority. In this case, seniority of the applicant in the grade of Time Scale Clerk has been counted from the date of his exemption from passing the recruitment examination as laid down in the circular dated 12.4.1978, the relevant portion of which has been extracted by us. In any case, in the rank of Time Scale Clerk he has been shown senior to private respondent nos. 3 and 4, and in view of this, on the basis of law as laid down by the Hon'ble Supreme Court in Maharashtra Engineering Case he cannot claim refixation of his seniority in LSG Cadre.

10. In view of our above discussion, we hold that the application is without any merit and the same is rejected. No costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)

22.10.2001
VICE-CHAIRMAN

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