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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

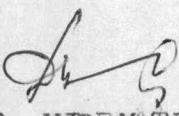
Original Application No.476 of 1991

Cuttack this the 1st day of ^{Dec} November, 1995.

DAYANIDHI SAHOO	APPLICANT
VRS.			
UNION OF INDIA & 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? *yes*


(D.P. HIREMATH)
VICE-CHAIRMAN


(N. SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 476 of 1991

Cuttack this the 1st day of November, 1995

CORAM:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE CHAIRMAN

AND

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Dayanidhi Sahoo, aged about 46 years,
son of Sri Balabhadra Sahoo of village
and Post-Tulasipur, Dist-Cuttack at present
working as U.D.C., S.B.C.O, Cuttack GPO.

APPLICANT

By the Applicant Mr. D.P. Dhal Samant, Advocate

Versus

- 1) Union of India represented by the Secretary in the Department of Posts Dak Bhawan, New Delhi, PIN-110 001.
- 2) Chief Postmaster General, Orissa Circle, Bhubaneswar, Pin-1.
- 3) Senior Superintendent of Post Offices, Cuttack City Division, Cuttack.
- 4) Sri Padmanava Ransing, Supervisor, SBCO, Cuttack GPO, Po-Cuttack-1 through Sr. Postmaster, Cuttack, GPO.
- 5) Sri Pankaja Moharana, UDC, SBCO, Anugul, HO, Po-Anugul through Supdt. of Posts, Dhenkanal.
- 6) Sri Narayan Gouda, UDC, SBCO, Aska H.O., PO-Aska through Supdt. Posts, Aska Division, Aska, Dist-Ganjam.
- 7) Sri Gatikrushna Behera, Supervisor, SBCO, Bargarh HO through Sr. Supdt. of Posts, Sambalpur.
- 8) Sri Narayan Sahoo, UDC, SBCO, Khurda HO through Sr. Supdt. of Posts, Puri Dist. Puri. ... Respondents

By the Respondents : Mr. Aswini Kumar Mishra, Sr. Panel St. Counsel (Central)

By Respondent No.4 : In person.

MR. N. SAHU, MEMBER (ADMINISTRATIVE): In this application filed under section 19 of the Administrative Tribunals Act, 1985 on 18.11.1992, the applicant challenges the action of the Respondent No.2 in not permitting him to appear in the Savings Bank Account Control Organisation, Supervisor Examination held on 29.11.1987 for filling up the post of Supervisor against 1/3 quota. The applicant was promoted as Upper Division Clerk in the said S.B.C.O. in the year 1976 and he was working till the year 1987 when Respondent No.2 issued a notification calling for applications from eligible UDCs completing five years of service in UDC cadre to appear in the examination to be held on 29.11.1987.

2. Applicant's grievance is that Respondent Nos.4 to 8 both inclusive, junior as per the gradation list (Sl. Nos. 34 to 38) as on 1.7.1986, were permitted to appear in the said examination ignoring his claim. The applicant's seniority is at Sl. No. 33 in the said gradation list. His representation, filed in time, was not answered. By letter dated 4.2.1988, it was stated that only 10(ten) times the



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vacancies for promotion to L.S.G. Supervisor against 1/3rd quota will be called for the purposes of the examination. Another representation was filed on 6.2. 1988 (Annexure-4). In this representation, the applicant wanted to know the cut off date from which this new criterion was evolved. He further mentioned that Sl. Nos. 34 to 38 though juniors to the applicant, were permitted to appear in the examination ignoring his claim. He drew the attention in this regard to the letters of the Director General P & T No. 51/9/76-SPB-I dated 26.11.1976, No. 6/40/76-SPB-II dated 8.3.1978, No. 6-2/79-SPB-II dated 21.10.1981 and No. 1-1/83-SB dated 26.2.1982 and also No. 1-1/87-SB dated 20.2.1987. These letters spell out the eligibility of UDCs of SBCO. In letter dated 24.12.1981 of the Director General of Posts, no limit of number of candidates who have completed five years of service and eligible to sit for a competitive examination has been mentioned. The applicant submitted that he rendered 22 years of service in the Department out of which he rendered 12 years of service as Upper Division Clerk. This representation was not answered. He submitted that one Shri Padmanabh Kansingh, Junior to the applicant, OP No. 4 UDC, SBCO, after passing the examination, was promoted to the Post of Supervisor, SBCO against 1/3rd.

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posted in SBCO, Cuttack, GPO by the order of the Postmaster General, Orissa dated 22.7.1988 where the applicant was working as UDC. It is submitted that the applicant is senior to Shri Ransingh both in the LDC cadre and the UDC cadre. He submitted that he felt consistently insulted and humiliated for working under a junior who got promotion because the applicant was deprived from sitting in the examination. Under the codified Rules in page 234 of the Book "Post Office Small Savings Scheme Part- IV" procedure for S.B. Central pairing and internal checking organisation-1988 edition under the heading "b" Conditions for eligibility for appearing in Supervisor/Head Clerks, SBCO an Upper Division Clerk working in SBCO/CCO rendering five years continuous service as Upper Division Clerk with satisfactory service record of work and conduct will be eligible to appear in the examination(Annexure-14).

3. It is submitted in the counter-affidavit that the selection to the grade of Supervisor in L.S.G. cadre is filled in from amongst the Upper Division Clerk cadre to the extent of 2/3rd vacancies of seniority-cum-fitness through a Departmental Promotion Committee and 1/3rd vacancies through a departmental competitive examination. For the year 1987, there was only one vacancy in the cadre.

[Signature]

for which notification was issued on 9.7.1987. Including applicant, 38 candidates have applied to appear in the said examination to be held on 29.11.1987. In para-6 of the counter-affidavit, it is stated that only 10(ten) candidates are required to be allowed to appear in the examination as per their seniority and Shri Dayanidhi Sahu, the applicant, who also applied for such examination was not allowed to appear because as per seniority his name could not come within the first ten senior candidates. The seniority of the candidates was determined basing on their regular appointment in the Upper Division Cadre. The date of regular appointment of the applicant was stated to be 15th July, 1979 and therefore, he was not allowed to appear in the said examination.

4. A counter was filed on behalf of the Respondent No.4. This respondent no.4 is working as Supervisor in the Lower Selection Grade in the SBCO at Cuttack, GPO. This respondent was selected in the said examination. He contests the claim of the applicant as his senior to Respondent No.4. It is stated that the application is barred by limitation. It is further stated in the counter affidavit that the applicant suppressed some essential and relevant facts; that he filed an Original Application No.320 of 1988 before this Tribunal which was dismissed as time barred. I

which was dismissed as time barred. It is further stated that in the SBCO against 1/3rd quota of vacancies there was a competitive examination for the vacancies arising with effect from 1.1.1981. This is a qualifying examination for the vacancies upto 31st of December, 1980. Those working in SBCO and pairing unit who have put in five years of continuous service as UDC with satisfactory service record of work and conduct will be eligible to appear in the said examination. There is a gradation list of UDC (permanent) of SBCO which is a circle gradation list. Admittedly, the applicant is shown at Sl. No. 33 whereas respondent no. 4 Shri Padmanav Ransing is shown at Sl. No. 36 in the said gradation list. There is no comment in the counter affidavit of respondent no. 4 as to why this seniority list was not followed. The applicant was promoted to the post of Upper Division Clerk on adhoc basis with effect from 23.12.1977 but not from 1976. In Col. 6 of the gradation list even if it appears that the date of confirmation of the applicant as UDC Chandinicuk is from 27.2.1981, we notice that Shri Padmanav Ransing, respondent no. 4 has become UDC in Bhubaneswar GPO with effect from 23.2.1982 and Shri N. Sahoo has become UDC w.e.f. 1.3.1983. The counter-affidavit is silent as to why these juniors were selected in the examination and not the applicant.

5. We have perused the records of OA 320 of 1988 and we are satisfied that the contentions raised

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there and adjudicated by this Tribunal have no bearing on the main point for consideration in this case.

5. There is another point in the conditions with regard to eligibility. There is no whisper in the counter-affidavit that the service record of the applicant is not satisfactory. Under Clause-2 restricting the number of candidates to ten times the number of vacancies is inconsistent with rule No.1 which confers unrestricted eligibility to all those who completed five years of service. Once eligibility criteria are fixed, there is no point in further restricting the number of candidates. Clause No.II in Memo No.51/9/76-SPB-I is inconsistent and fetters the right of the persons who have completed five years of service as UDC and who are eligible to appear in the examination. No justification has been given for depriving the applicant although he is senior. This infringes Articles 14 and 16 of the Constitution. His representation before the date of examination was not answered satisfactorily. The Respondents have arbitrarily and unconstitutionally deprived the applicant from appearing in the examination and therefore, denied him the right to be considered.

6. Another development has taken place.



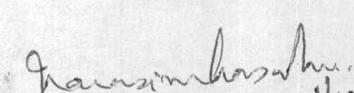
The Postal Department has introduced a scheme called Biennial Cadre Review under which whenever completed 26 years of service shall be promoted to Higher Selection Grade Cadre. The applicant states that he has been promoted to H.S.G. cadre on the basis of the aforesaid scheme as he has already completed more than 26 years of service although by the time, the application is filed i.e. on 22.5.1992, the Advocate submitted that he had not received any posting order on his promotion to H.S.G. II.

7. We are of the opinion that a great injustice has been done to the applicant by depriving him to appear in the examination although he was qualified and eligible. This infringes Articles 14 and 16 of the Constitution. There is no satisfactory explanation as to why his juniors were allowed to appear and he was not. The gradation list which is made as Annexure-1 for the year 1986 has not been denied. The respondents have not placed on record any other gradation list which would prove that the applicant was junior to ten candidates mentioned in para 6. If the date of regular appointment of the applicant is 15.7.1979, it is not clear as to why the gradation list of 1.7.1986 was not amended. We therefore, hold that the refusal to permit the



applicant to appear in the competitive examination is unconstitutional. Having said that we do not want to disturb the selection of candidates in the 1987 examination who have been selected, posted and promoted after such a long time. We, however, direct the Chief Postmaster General, Bhubaneswar to permit the applicant to sit in a competitive examination for this grade i.e. coming up in this year or in the next year to determine his basic eligibility in this regard. If he qualifies in this examination, he should be considered to be promoted as Supervisor from the date his juniors were promoted and all benefits should be granted to him accordingly. In the result the application is allowed. No costs.


(D.P. HIREMATH)
VICE-CHAIRMAN


(N. SAH U)
MEMBER (ADMINISTRATIVE)

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