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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 513 OF 1991

Cuttack, this the 3rd day of April, 1997

Bhagaban Bhanja Applicant

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?

KM

(K. M. AGARWAL)
CHAIRMAN

S. Som
S. SOM
VICE-CHAIRMAN
3/4/97

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 513 OF 1991
Cuttack, this the 3rd day of April, 1997

CORAM:

HONOURABLE SRI JUSTICE K.M.AGARWAL, CHAIRMAN
AND
HONOURABLE SRI S.SOM, VICE-CHAIRMAN

...

Bhagaban Bhanja, Chargeman II,
Equipment Wing, Proof & Experimental
Establishment, Chandipore, Balasore

....

Applicant

-versus-

1. Union of India, represented through
the Scientific Adviser to the
Minister of Defence, Directorate General
Research & Development, Directorate of Armaments(R & D II)
2. The Director, Armament Research & Development Establishment,
P.O-Armament, Pashan, Pune-411 021
3. R & D Organisation, Sena Bhawan, New Delhi-11.
4. The Commandant, Proof & Experimental Establishment,
Chandipore, Balasore
5. Mr. S.C. Giri, Chargeman, Gr.I
6. Mr. H.N. Padhiary, Chargeman, Gr.I
7. Mr. P.C. Dey, Chargeman, Gr.I
8. Mr. B.N. Behera, Chargeman, Gr.I
9. Mr. K.M. Saik
10. Mr. M.M. Apte
11. Miss. S. Sobha

Sl.5 to 11 all of Proof & Experimental Establishment,
Chandipore, Balasore

.... Respondents

Advocates for applicant - M/s B.K. Sahu, K.C. Sahu
& R.P. Das.

Advocate for respondents - Mr. Ashok Mohanty,
Sr. Central Govt. Standing
Counsel.

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O R D E RS.SOM, VICE CHAIRMAN

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Bhagaban Bhanja, Chargeman II in Proof and Experimental Establishment, Chandipur, Balasore. In this application, he has prayed for correcting the seniority list of Chargemen Grade-II dated 1.8.1988 (Annexure-1) in which respondent nos.7,9,10 and 11 have been shown senior to him. He has also prayed for a direction to respondent nos.1 to 3 for promoting him to the post of Chargeman Grade-I with effect from September, 1988. The facts of this case fall within a small compass and can be briefly stated.

2. The applicant was appointed in Proof & Experimental Establishment as Technical Supervisor III on 13.3.1972 and was promoted to the next higher post of Chargeman II on 30.11.1982. In 1986, according to the applicant, the post of Technical Supervisor III was redesignated as Chargeman II and a common seniority list of Chargemen II was prepared in 1988. In this list, which has been impugned in this application, respondent nos.7,9,10 and 11 have been shown senior to him. The applicant's claim of seniority over these four respondents is based on the fact that he was promoted to the post of Chargeman II on 30.11.1982 whereas respondent nos.7,9,10 and 11 were directly recruited in the post of Chargeman II on 5.3.1984, 6.10.1983, 18.9.1983 and on 14.6.1988 respectively. Against this seniority list the applicant submitted a representation on 23.8.1988 to respondent no.2 and followed it up by another representation on 3.8.1990 to respondent no.1. It seems that four other persons, besides the applicant, also represented about their position in the seniority list and all these representations including the representation of the applicant

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were rejected in letter dated 30.1.1989 (enclosure to Annexure-4) on the ground that the seniority has been correctly fixed in accordance with the instructions of the Department of Personnel and Training. It is further stated by the applicant that on 15.9.1988 respondent nos.5,6 and 8, who were placed below him in the impugned seniority list, and respondent no.7, who was placed above him incorrectly according to the applicant in the impugned seniority list, were promoted to the posts of Chargeman I. The second prayer of the applicant is for promotion to the post of Chargeman I with effect from 15.9.1988 when the above respondents got the promotion.

3. The official respondents in their counter have pointed out that in Defence Research and Development Organisation, posts of Chargeman II were filled up one-third by direct recruitment and two-third by promotion, failing which by direct recruitment, at the relevant point of time. The relative seniority between direct recruits and promotees is decided by rotation of vacancies amongst the slots meant for direct recruits and promotees. This method of calculating relative seniority between direct recruits and promotees is according to a set of general principles for determination of seniority of civilians in Defence Services circulated by Ministry of Defence in their Memorandum No.10(1)/60/D(Appts.) dated 11.3.1965. The respondents in their counter have asserted that seniority of the applicant as Chargeman II has been correctly fixed according to these principles. It is further submitted that Chargeman I is a selection post to be filled up on the principle of merit-cum-seniority from amongst Chargemen II and the applicant was considered along with others by the Departmental Promotion Committee

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and he was not promoted whereas respondent no.7, who is a direct recruit, and respondent nos.5,6 and 8, who are promotees and were junior to the applicant in the impugned seniority list, were given promotion. As the Departmental Promotion Committee had considered the case of the applicant and not promoted him, his prayer for promotion to the rank of Chargeman I with effect from 15.9.1988 has been resisted by the official respondents.

4. We have heard Sri B.K.Sahu, the learned lawyer for the applicant, and Sri Ashok Mohanty, the learned Senior Standing Counsel on behalf of the departmental respondents. The private respondents though noticed have not appeared..

5. We find that the applicant in his representation dated 23.8.1988 (Annexure-2) prayed for correction of the seniority list on the basis of length of service. His representation was rejected on 30.1.1989 in letter enclosed to Annexure-4. He should have come to the Tribunal within one year thereafter, i.e. by January 1990, but he has filed this application only on 17.12.1991.
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The application is, therefore, beyond the period of limitation. But as incorrect showing of seniority would affect the applicant for many years to come, we decided not to reject the application on the technical point of limitation, but to hear and decide it on merits.

6. Taking up the first question regarding correction of the seniority list, it is seen that the relative seniority between promotees and direct recruits has been worked out in accordance with paragraph 6 of the general principles for determination of seniority of civilian in Defence Services, referred to earlier. Paragraph 6 is quoted below:

"6. Relative seniority of Direct Recruits and promotees:

The relative seniority of direct recruits and

of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively, in the Recruitment Rules."

It is fairly conceded by the learned lawyer for the applicant that in the impugned seniority list promotees and direct recruits have been shown in accordance with the principles laid down in paragraph 6 quoted above. It is urged by the learned lawyer for the applicant that paragraph 6 is illegal and for determination of seniority between promotees and direct recruits, length of service in the concerned Grade should be the sole determining consideration. In this application, he has not, however, made any prayer for striking down the above paragraph 6. The learned lawyer for the applicant relied on decision of Hon'ble Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others, A.I.R. 1990 S.C. 1607, and an earlier decision of the Hon'ble Supreme Court in A.N.Pathak and others v. Secretary to the Government, Ministry of Defence and another, Writ Petition No.1889 of 1978, decided on 12.2.1987. He submitted that in the case of Direct Recruit Class-II Engineering Officers' Association (supra) it was laid down that if it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. It was further observed by the Hon'ble Supreme Court in the above case that where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure

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prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date. It was further observed that if the quota rule is prescribed by an executive instruction and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative. Applying the above principles to the facts of this case, it was urged by the learned lawyer for the applicant that as the direct recruits joined much later than the applicant, a promotee, it must be taken that the quota rule has not been followed and therefore, the applicant should not be pushed down below the later direct recruits. In A.N.Pathak's case (supra) the Hon'ble Supreme Court struck down the seniority list of Senior Technical Officers in Directorate of Production and Inspection, Naval, in the Department of Defence Production, and the rule on the basis of which the seniority list was drawn up, on the grounds that the rule is violative of Articles 14 and 16 of the Constitution of India and the rule worked to the detriment of the promotees; for promotion to higher post a direct recruit who joined service much later and did not have five years service required for promotion would be placed above a promotee who was working but did not have five years of minimum service in that grade. In the facts and circumstances of this case, the principle laid down in Direct Recruit Class- II Engineering Officers' Association's case (supra) is not applicable. In the present case, it cannot be said that there has not been any recruitment in direct recruit quota for a number of years. It is seen that while the applicant was promoted as Chargeman II in November, 1982, respondent no.9 was directly recruited to that post on 6.10.1983 and respondent no.10 on 18.9.1983. It is obvious that appointment of promotees

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and direct recruits cannot be made on the same day. The promotees are already available in the organisation and as soon as the promotion process is over orders can be issued promoting them. For direct recruits, however, an examination has to be held and the successful candidates have to be appointed on the basis of results in the examination. In this case, we find that some of the direct recruits have been appointed to their slots within one year of the appointment of the applicant by promotion, and the other two direct recruits have been appointed in the next year. It is also not the case of the applicant that promotees were taken in as Chargeman II in excess of their quota. That being so, the conditions laid down by the Hon'ble Supreme Court in Direct Recruit Class-II Engineering Officers' Association's case (supra) do not obtain here. As regards A.N.Pathak's case (supra), the facts are quite different. In that case, the Hon'ble Supreme Court took into account the fact that by showing the promotees appointed earlier below the later direct recruits, their chances of promotion were affected. Moreover, in the rule struck down in A.N.Pathak's case (supra), there was apparently an inequitous provision that even though a promotee has completed his period of probation, he cannot be confirmed till the later direct recruits placed above him complete their period of probation and are due for confirmation. The facts of that case are thus widely different from the facts here and, therefore, we hold that the principle laid down in A.N.Pathak's case (supra) is not applicable in the facts and circumstances of this matter. It is also seen from Annexure-R-1 to the counter that the principle laid down in paragraph 6 quoted earlier is more or less on the same lines as the general principles for determination of seniority in Central Services circulated by the Ministry of Home Affairs as early as 22.12.1959.

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Paragraph 6 of these principles is similar to the paragraph quoted earlier in accordance with which the seniority of the applicant vis-a-vis the direct recruits has been fixed. It would thus be seen that the rule applicable for determination of seniority of civilians in Defence Services is not an isolated dispensation. It is in line with the general principles for fixation of seniority in Central Services. When quota has been fixed for two categories of appointees as in this case and a person is appointed to a post on promotion, it would not be open for him to claim that he should hold a post in the direct recruitment quota which is lying vacant. On the above consideration, we hold that this prayer of the applicant is without any merit.

6. As regards the second prayer regarding promotion to the post of Chargeman I from 15.9.1988, it is noted that the applicant's case was considered along with others and three promotee officers, who are his juniors according to the impugned seniority list, were promoted to the posts of Chargeman I. He can have, therefore, no grievance so far as these three, who are respondents 5, 6 and 8, are concerned. As regards respondent no.7, it has been urged by the learned lawyer for the applicant that because of his seniority wrongly shown above the applicant, he has been promoted. It is difficult to accept the above contention because promotion to the post of Chargeman I is made by a process of selection where merit is the primary consideration subject to the consideration of seniority. It cannot, therefore, be held that respondent no.7 has got promotion to the rank of Chargeman I only because of his seniority. In any case, we have already held that the seniority list has been correctly determined.

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7. In the result, we find no merit in this application which, therefore, fails and is rejected. There shall be no order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

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VICE-CHAIRMAN
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