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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 118 OF 1992.

Cuttack this the 18<sup>th</sup> day of March, 1998.

SHRI N.K.SENAPATI.

....

APPLICANT.

versus.

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 No Central Administrative Tribunal or not?

  
(SOMNATH SOM)  
VICE-CHAIRMAN  
18.3.98

  
(S.K. AGARWAL) 18/3/98  
MEMBER (JUDICIAL)

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(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 118 OF 1992.

Cuttack this the 18<sup>th</sup> day of March, 1998.

CHOIR A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

AND

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

...

SHRI N.K. SENAPATI,  
aged about 45 years,  
S.S.P.Os (Hqrs.)  
Office of S.S.P.Os,  
Sambalpur Division,  
Sambalpur-768 001.

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APPLICANT.

By legal practitioner:- M/s. P.V. Ramdas, B.K. Panda,  
D.N. Mohapatra, Advocates.

-Versus-

1. Union of India represented by its  
Secretary, Ministry of Communications,  
Government of India, New Delhi.
2. Member (P.O.),  
Postal Board,  
Department of Posts,  
Dak Bhawan, New Delhi.
3. Chief Postmaster General,  
Orissa Circle, Bhubaneswar,  
District-Puri.

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RESPONDENTS.

By legal Practitioner : Mr. Aswini Kumar Mishra,  
Learned Senior Panel Counsel  
(Central).



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O R D E R

MR. S.K. AGARWAL, MEMBER(JUDICIAL) :-

This is an application, under section 19 of the Administrative Tribunals Act, 1985 with the prayer that Respondent No.2 be directed to pass reasoned orders on the representation of the applicant, vide Annexure-6 within a stipulated period and alternatively, the case of the petitioner for his confirmation and promotion be considered by a Review D.P.C.

2. The short facts of this case, as stated by the applicant, are that the applicant is a Postal employee who appeared and passed the recruitment test for the post of Inspector of Post Offices, held in the year 1974. The applicant, alongwith 10(ten) others were declared successful and the applicant was appointed to the said post in the year 1974. Petitioner's position, in the merit list of IPOs, of the year 1974 was at Sl.No. 5 in the Orissa Circle and there were seven officials who ranked below the applicant. According to the applicant, there was no departmental proceeding pending against him and no adverse remark/entry in his CCR. It is stated that on the recommendation of the Departmental Promotion Committee, some of the officials, who were holding the post of IPO, were confirmed vide letter dated 5-10-1983 of the

Postmaster General, Orissa, at Annexure-1 and this confirmation took effect from 01/03, 1983. The name of the petitioner, did not find place in the said list at Annexure-1. Since the case of the petitioner for confirmation was ignored, the petitioner filed a representation to the Postmaster General, Orissa Circle, Bhubaneswar, vide Annexure-2 dated 30.11.1983. Later on, the petitioner, was also confirmed in the post of IPO by an order of the then Postmaster General, dated 26.11.1984 and he was confirmed w.e.f. 1.3.1984, vide order at Annexure-3. It is further averred by the petitioner that because of late confirmation, some of his juniors, have been shown senior to him and the petitioner was denied the adhoc promotion to the post of ASPO on account of his wrong seniority, while the case of one Shri B. Nar Mahallik was considered and given promotion on adhoc basis by the then Postmaster General vide order dated 31.12.86, at Annexure-4, who was junior to the applicant. The applicant, made a representation on 22.12.1987 to the Chief Postmaster General highlighting the injustice that was done to him. But the Chief Postmaster General did not respond to his request. The petitioner, was, subsequently, promoted to the post of A.S.P.O. in the Circle Office letter dated 4.12.1989 but he had been shown below his juniors in the promotional post. It is stated by the petitioner,

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petitioner that he was discriminated. Therefore, since the Chief Postmaster General did not remedy the injustice caused to the applicant, the applicant in April, 1991 sent a petition to the Member Postal Board, New Delhi vide Annexure-6, but till date, there is no response. Therefore, this application has been filed with the aforesaid prayer.


3. Counter was filed by the Respondents in which it was stated that the applicant is not entitled to any reliefs sought for. It is stated that as per Rule 32-E of the P&T Manual, Vol. IV, the seniority of an official in the cadre to which he belongs should be fixed according to the date of the permanent appointment to that cadre. It is further stated that the case of substantive appointment of an official of IPOs cadre is being considered through the Departmental Promotion Committee at the Circle level. The Departmental Promotion Committee was held on 13.9.1983 for considering the cases of substantive appointment of IPOs in the Circle. The name of the applicant was empaneled and put up to the said D.P.C. for consideration. The DPC considered the case of the applicant for his substantive appointment in the IPOs cadre and did not find fit for confirmation in the said grade. However, the applicant, was subsequently, found



fit for confirmation in the cadre during 1984. Since some of the officials junior to the applicant were confirmed earlier to the applicant, they were made senior in the gradation list of Inspectors of Post Offices of Orissa Circle according to Annexure-R/1. Promotion to the cadre of Assistant Superintendent of Post Offices, in the Circle, has been made, as per the seniority in the gradation list in the Inspectors cadre, as per Annexure. The applicant having been not confirmed in the IPOs cadre in the year 1983, he became junior to all those who were confirmed, as per Annexure-1 to the application. Therefore, on the basis of the averments made in the counter, it was requested to dismiss the Original application filed by the applicant with cost.

4. We have heard the learned counsel for the applicant Mr. P.V. Ramdas, and learned Senior Panel Counsel, Shri Aswini Kumar Mishra, appearing on the behalf of the Respondents and perused the whole records.

5. Learned counsel for the applicant has argued that the Departmental Promotion Committee has ignored the candidature of the applicant for confirmation with effect from 1.3.1983 without any basis in the meeting held on 13.9.1983. In view of this a review D.P.C. should again consider the






case of the applicant for the post of I.P.O. with effect from 1.3.1983. He has further submitted that the determination of seniority on the basis of date of confirmation is also not proper. He has referred A.I.R. 1990 SC 1607 (Direct Recruits Class II Engineering Officers' Association & Others vs. State of Maharashtra & Others). He has also referred to Swamy's News at page 497. On the other hand learned senior counsel Shri A.K. Mishra appearing on behalf of the respondents has submitted that the D.P.C. has considered the case of the applicant for confirmation to I.P.O. along with others in the meeting held on 13.9.1983 and did not find the applicant suitable for confirmation. He has also submitted that Rule 32-E of Appointments and Promotions General Rules specifically provided that seniority shall be determined according to date of his permanent appointment to that cadre. Therefore, the departmental authorities did not commit any wrong in determining the seniority of the applicant on the basis of date of his confirmation.

6. In the counter it has been stated that the case of the applicant was considered by the Departmental Promotion Committee on 13.9.1983, but the D.P.C. did not find him suitable. It is admitted that on the representation of the applicant D.P.C. again met ~~and~~ to consider the case of the applicant

and found him suitable for confirmation with effect from 1.3.1984 and on the basis of the recommendation of the said D.P.C., order was issued to confirm the applicant with effect from 1.3.1984. It is also admitted that the applicant filed representation on 22.10.1987 which was replied and the applicant also filed representation to the Member, Postal Board, which was forwarded to the concerned authority for consideration.

7. The applicant has made very specific averment that his position in the merit list at the time of appointment in the year 1974 was at Sl. No.5. It has also been made ~~xx~~ clear that no departmental inquiry was pending against the applicant and no adverse remarks were ever communicated to him. In the counter also nothing has been mentioned regarding the adverse materials against the applicant which were available before the D.P.C. for consideration in the meeting held on 13.9.1983. Therefore, it can be safely said that no adverse material was available before the D.P.C. on 13.9.1983 and on the basis of above all, it can be said that the D.P.C. has ignored the confirmation of the applicant on 13.9.1983 without any basis. The applicant, thereafter<sup>is</sup> continuously agitating his grievance and the D.P.C. later on found him suitable for confirmation with effect from 1.3.1984. Why the D.P.C. did not find the applicant suitable from 1.3.1983; no specific reason/basis





has been assigned for the same and no material has been produced before this Tribunal by the respondents which was made basis of ignoring the claim of the applicant for confirmation with effect from 1.3.1983. We are, therefore, of the opinion that a review D.P.C. should meet to consider the grievance of the applicant again.

8. As regards determination of seniority on the basis of confirmation, Rule 32-E of Appointments and Promotions General Rules provides as under :

"32-E. Subject to any special rules prescribed for any particular service, the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment to that cadre. When this date happens to be the same in the case of two or more officials, seniority should be determined according to the following principles:

(a) In cadres to which recruitment is made through an examination.

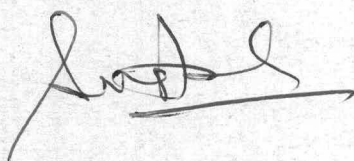
(i) If the examination is competitive, seniority should be fixed according to the order of merit in the examination. Where recruitment is made partly from departmental candidates and partly from outsiders, the former should always rank senior to the latter.

(ii) If the examination is qualifying, seniority should be fixed according to the position of the official on the waiting list.

(b) In cadres to which recruitment is made by promotion :

(i) If it is on the basis of pure selection seniority should be fixed according to the order of performance; and

(ii) If it is on the basis of seniority subject to rejection of the unfit, seniority should be fixed according to the position of the official in the cadre from which promoted."



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9. On the basis of the said rule, the seniority of the applicant has been determined according to date of his permanent appointment to the cadre.

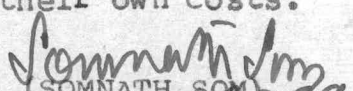
10. We have perused the AIR 1990SC 1697(Direct Recruits Class II Engineering Officers' Association and Others v. State of Maharashtra & Others) and Swamy's News at page 497 and also perused the whole record.

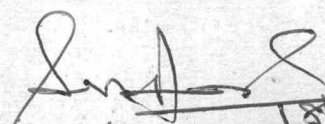
11. In Indian Administrative Service(SCS) Assn. v. Union of India, the Hon ble Supreme Court has observed as under:

"... there is no vested right to seniority and it is variable and defeasible by operation of law. In A.K. Shatnagar v. Union of India this Court held that seniority is an incident of service and when rules prescribe the method of computation, it is squarely governed by such rules."

12. In the instant case the seniority of the applicant has been determined according to Rule 32-E of Appointments and Promotions General Rules. Therefore, we are not inclined to accept the arguments of learned counsel for the applicant to determine the seniority of the applicant from the date of his appointment.

13. We, therefore, direct that a review D.P.C. shall consider the case of the applicant for confirmation with effect from 1.3.1983 within a period of thirty days from the date of receipt of this order. The applicant's seniority will be determined according to rules on the basis of decision of the D.P.C. with regard to his confirmation with effect from 1.3.1983. Looking to the facts and circumstances of the case, parties to bear their own costs.

  
(SOMNATH SOM)  
VICE-CHAIRMAN  
18/3/98  
Mohanty/C.M.

  
(S.K. AGARWAL)  
18/3/98  
MEMBER (JUDICIAL)