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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

O.A.NO. 231 OF 1992

Cuttack, this the 2nd day of February, 1999

Shri Umesh Ch. Parida 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 NO Central Administrative Tribunal or not?

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN 2/2/99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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CORAM:

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

.....

Shri Umesh Chandra Parida, aged about 49 years, son of late Hadibandhu Parida, Village-Kulakalapada, P.O-Kalpada, District-Cuttack, at present Supervisor SBCO, Kendrapara H.P.O., Dist.Cuttack Applicant.

Advocates for applicant - M/s S.Kr.Mohanty & S.P.Mohanty.

Vrs.

1. Union of India, represented by its Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General,Orissa,Bhubaneswar.
3. Assistant Director, Office of the Chief Post Master General,Orissa,Bhubaneswar.
4. Sri B.C.Swain, at present Supervisor S.B.C.O., Balasore H.P.O., Balasore.
5. Sri Brundaban Mohanty, at present Supervisor, S.B.C.O., Angul H.P.O,Dist.Dhenkanal..... Respondents

Advocates for respondents - Mr.S.B.Jena,
A.S.C. for Respondents
1 to 3;
&
M/s Devanand Mishra,
A.Deo & D.K.Sahoo
for Respondent 4.

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of

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Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order 17.10.1991 at Annexure-4 declaring B.C.Swain (respondent no.4) as senior to the applicant. The applicant has also prayed for a declaration that he is senior to respondent nos.4 and 5. The third prayer is for restoring his seniority as was fixed in order dated 18.10.1984 at Annexure-2/2.

2. Short facts of this case, according to the applicant, are that the applicant and respondents 4 and 5 are Lower Selection Grade (LSG) Supervisors in SBCO/ICO(SB)/CPU. It is stated that one gradation list is maintained for the staff of Savings Bank Control Organisation (SBCO), Internal Check Organisation (Savings Bank) ICO(SB), and Circle Pairing Unit (CPU). According to the applicant, in the gradation list of 1975 for Upper Division Clerks (UDC) the applicant was shown senior to respondents 4 and 5. His serial was 5, and serial no. of respondent no.4 was 10, and that of respondent no.5 was 9. This gradation list was revised in 1980 and again in 1986, and in both these gradation lists the applicant was shown senior to respondents 4 and 5 in the UDC cadre. In the gradation list of UDC as revised in 1986, serial no. of the applicant was 10, respondent no.4 was 15 and respondent no.5 was 14. It is further stated by the applicant that at that time rules for promotion from UDC to LSG Supervisor laid down that two-thirds of the vacancies shall be filled up on the basis of seniority-cum-fitness amongst persons having minimum five years of service as UDC and the remaining one-third was to be filled up by selection on the basis of qualifying examination and CRs.

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This qualifying examination was changed to competitive examination with effect from 1981. It is further stated that selection to one-third quota starts from 1st April each year. For the one-third vacancies to be filled up through examination, number of candidates eligible to appear has been restricted to ten times the number of vacancies. It is further stated that rules provided that once an officer has qualified in the examination, he will always be taken as qualified and will not be required to appear again for being eligible for consideration. It is further stated that one-third quota vacancies are to be filled up on the basis of qualifying examination and in order of seniority from amongst those who actually qualified in the examination. It was decided by the departmental authorities that for vacancies arising from 1.1.1981 onwards the examination for 1/3rd quota of LSG Supervisors would be a competitive examination instead of a qualifying examination and unabsorbed candidates of earlier examinations held in 1975, 1976, 1978 and February 1981 will be no more on the list. This has been provided in Rule 33 dealing with LSG Examination for promotion through one-third quota. Copy of this rule is at Annexure-1. The applicant appeared at the qualifying examination held in February 1981 for the vacancies of 1979 and 1980 and was the only person to be qualified in the examination. Respondent nos.4 and 5 had appeared at the qualifying examination held on 10.12.1978 for the vacancies of 1977 and 1978 and were declared qualified in the year 1979. Thus the applicant, respondent no.4 and respondent no.5 became qualified for the vacancies that arose in LSG

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Supervisors cadre in 1979 and 1980 for the applicant and 1977 and 1978 for the two respondents. The applicant was appointed on 3.11.1982 to an LSG post, but he was shown against two-thirds quota of 1982 though he had qualified against the one-third quota. Respondent no.5 Brundaban Mohanty was appointed to LSG post in the same order dated 3.11.1982 (Annexure-2), but he was shown against one-third quota for a vacancy of 1980. Respondent no.4 B.C.Swain was recruited to LSG post in the order dated 11.11.1983 (Annexure-2/1) against the one-third quota for a vacancy of 1980. The applicant felt aggrieved with the above position and represented to Chief Post Master General, and considering his representation, the Chief Post Master General issued revised order dated 18.10.1984 at Annexure-2/2 in which the applicant was shown against one-third quota for 1980 instead of two-thirds quota of 1982 as in the order dated 3.11.1982 (Annexure-2). Respondent no.4 was shown in this order at Annexure-2/2 as an appointee against two-thirds quota of 1983 instead of one-third quota of 1980 as earlier shown in the order dated 11.11.1983 at Annexure-2/1. Being aggrieved by this order dated 18.10.1984 at Annexure-2/2, respondent no.4 B.C.Swain approached the Tribunal in OA No.31/88 in which the applicant was made respondent no.3. OA No.31/88 was disposed of in order dated 30.1.1989 after hearing the learned counsel for the petitioner who is respondent no.4 before us and the learned Senior Standing

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Counsel for the departmental authorities. The present applicant before us, who was respondent no.3 in OA No.31/88, was not heard even though he had appeared through his counsel. This is because the name of the learned counsel for respondent no.3 in that case was not in the cause-list. OA No.31/88 was disposed of by quashing the orders fixing seniority between B.C.Swain and U.C.Parida (the present respondent no.4 and the applicant before us) and with a direction to the Chief Post Master General to give both of them personal hearing and pass orders fixing their seniority strictly in accordance with law. Against this order, Review Application No.3/89 was filed by U.C.Parida, the present applicant before us on the ground that his counsel was not heard. But the Tribunal disposed of the Review Application by observing that as they have directed the Chief Post Master General to give personal hearing to both B.C.Swain and U.C.Parida, the interest of the review petitioner is not adversely affected and he would be free to approach the Tribunal, if he is aggrieved by the final order passed by the Chief Post Master General with regard to interse seniority between him and B.C.Swain. The review application was disposed of accordingly in order dated 14.3.1989. Thereafter Chief Post Master General gave personal hearing to the applicant and respondent no.4 on 12.9.1991. Both of them also submitted written representations stating their cases and after considering the entire facts and circumstances of the case, the Chief Post Master

General in his order dated 17.10.1991 cancelled the order dated 18.10.1984 at Annexure-2/2 and revived the order dated 3.11.1982 (Annexure-2) and the order dated 11.11.1983 (Annexure-2/1). It was ordered that B.C.Swain will rank senior to the applicant U.C.Parida and in the gradation list B.C.Swain will be shown below Brandaban Mohanty (respondent no.5) and applicant U.C.Parida will be shown below one B.D.Acharya. This is the order which has been impugned in this O.A. The applicant's case is that he should have been shown against one-third quota of LSG Examination as he was a qualified candidate. But he has been arbitrarily shown against two-thirds seniority-cum-fitness quota and respondent nos.4 and 5 have been given seniority above him illegally. That is how, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have mentioned that SBCO had LDC, UDC and Supervisors in LSG and HSE cadres prior to 1.8.1991. Vacancies in the cadre of LSG Supervisors were filled up by promotion from the cadre of UDC against one-third vacancies by selection on the basis of qualifying examination, subsequently made competitive examination with effect from 1981. The remaining two-thirds vacancies were to be filled up on the basis of seniority-cum-fitness. It is stated that Director-General, Posts in his letter dated 21.10.1981 changed the rules for selection of one-third quota of Supervisors through examination. This examination was treated as competitive examination with effect from 1981. It was also laid down in this circular that qualified but unabsorbed candidates of earlier examinations held in 1975,

1976, 1978 and February 1981 will be no more on the list.

They have either to wait for their turn on the basis of seniority-cum-fitness or they have to appear at the competitive examination again. It was also laid down that candidates who have qualified in the qualifying examination will not be restrained from appearing at the competitive examination. The respondents have pointed out that the applicant qualified himself in the examination held on 15.2.1981. At that time this was a qualifying examination and not a competitive one. He had qualified for promotion to the cadre of Supervisor under one-third quota of vacancies of the year 1979 and 1980. Respondent nos.4 and 5 had qualified in the qualifying examination of 1978.

The D.P.C. meeting was held on 30.9.1982. In this meeting, respondent no.4 and the applicant could not be approved for the Supervisors cadre against the one-third quota vacancies. But as the applicant was senior to respondent nos. 4 and 5, he was approved for promotion to Supervisor cadre against two-thirds quota for the 1982 vacancies as per his seniority. This was done in the same meeting of the D.P.C. on 30.9.1982. The departmental respondents have stated that subsequently the Directorate's letter dated 21.10.1981 was modified and it was laid down that the officials who have qualified in the examinations held prior to 1982 would also be absorbed against the one-third quota vacancies relating to the years 1981 and 1982 in accordance with the procedure that was obtaining prior to issue of the Directorate's letter dated 21.10.1981.

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The D.P.C.meeting held on 13.10.1983 considered promotion of officials to Supervisors cadre against one-third quota. Respondent no.4 B.C.Swain was the only approved candidate available in the list of qualified officials in the examination and was considered for promotion to Supervisors cadre against one-third quota vacancy for the year 1980. Subsequently, this was modified through a corrigendum dated 18.10.1984(annexure-2/2) in which the applicant was put in place of B.C.Swain (respondent no.4) against the one-third quota vacancy of 1980 and B.C.Swain was placed against two-thirds quota of vacancy of 1983. The respondents have further stated about B.C.Swain approaching the Tribunal in OA No.31/88 making the present applicant as respondent no.3 in that O.A., the decision of the Tribunal in OA No.31/88, the Review Application No.3/89 filed by the present applicant, and the order of the Tribunal thereon. It is not necessary to mention these matters in detail because they have only repeated the averments made by the applicant. It has been stated that in accordance with the direction of the Tribunal, the Chief Post Master General heard B.C.Swain and U.C.Parida personally, considered their written representations, and ordered strictly in accordance with rules that B.C.Swain would rank senior to the applicant U.C.Parida in the cadre of Supervisor, S.B.C.O. The departmental respondents have further stated that the applicant qualified in the examination for one-third quota in the year 1981 and respondent nos.4 and 5 qualified in the examination of the year 1978. In both these years the examination was a qualifying examination. The relative position of the officials before the D.P.C. held on 30.9.1982 was Brundaban Mohanty (respondent no.5) followed by B.C.Swain (respondent no.4) followed by U.C.Parida (applicant). In the D.P.C. meeting

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Brundaban Mohanty and B.C.Swain were approved against one-third quota vacancies of 1980, and the applicant was approved against two-thirds quota vacancy of 1982 as per his seniority in the UDC cadre. It is stated that the applicant qualified in the year 1981 whereas respondent nos.4 and 5 qualified in 1978 and therefore, the applicant could have been considered for promotion against one-third quota only after respondent nos.4 and 5 as officials empanelled for promotion to LSG Supervisors against one-third quota according to the year of passing and according to their interse seniority for each year of examination. The position of qualified officials is not maintained on the basis of interse seniority of qualified officials of several examinations clubbed together. In view of this, it is stated by the departmental respondents that Chief Post Master General has rightly fixed the seniority of B.C.Swain over the applicant. On the above grounds, the departmental respondents have opposed the prayers of the applicant.

4. We have heard Shri S.P.Mohanty, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records.

5. The cases of the applicant and respondent nos. 4 and 5 were considered in the DPC meeting held on 30.9.1982. On the basis of meeting of the DPC and its recommendation, the order dated 3.11.1982 at Annexure-2 was issued. In this order Sukdev Rout, who is not before us, and Brundaban Mohanty (respondent no.5) were given promotion against one-third quota

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of vacancies for the year 1979 and 1980 respectively. Brundaban Mohanty had qualified in the examination held in 1978 whereas the applicant had qualified in the examination held in 1981. Therefore, the name of the applicant was below Sukdev Rout and Brundaban Mohanty and he could not be considered against the one-third quota of 1979 and 1980, by which time he had not qualified. Therefore, Brundaban Mohanty was rightly given promotion against one-third quota in the order dated 3.11.1982 against a vacancy of 1980. The petitioner can have no claim of getting promotion against a 1980 one-third quota vacancy when he had not qualified. Therefore, his prayer for getting seniority above Brundaban Mohanty (respondent no.5) is held to be without any merit.

6. The second aspect of the matter is the position of the applicant vis-a-vis B.C.Swain (respondent no.4). In the rank of UDC the applicant was senior to respondent no.4 B.C.Swain and by his seniority, he was due to be promoted and was actually promoted against a two-thirds quota vacancy of 1982 in the same order dated 3.11.1982 and on the basis of the meeting of the same DPC on 30.9.1982. In a subsequent meeting of the DPC held on 13.10.1983, the case of B.C.Swain (respondent no.4) was considered. By that time the applicant had already been promoted to LSG Supervisor cadre under two-thirds quota in the order dated 3.11.1982. B.C.Swain (respondent no.4) was considered for promotion against one-third quota vacancy of 1980. B.C.Swain (respondent no.4) had qualified in the examination held in 1978 and the applicant had qualified in the examination held in 1981. The Rules provide that

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the names of the officials who have qualified in an examination are to be arranged in order of interse seniority. The respondents have pointed out that this applies to one examination and different officials who have qualified in examinations held in different years are not clubbed together and their names are not arranged in order of their interse seniority. Thus, B.C.Swain (respondent no.4) having qualified in the examination held in 1978 would naturally rank above the applicant for the one-third quota vacancy because the applicant had qualified in the examination held in 1981. Therefore, in the DPC meeting held on 13.10.1983 for the one-third quota vacancy of 1980, B.C.Swain alone could have been considered and he was so considered. As he was placed above the applicant because of his having passed the qualifying examination in an earlier year, the applicant could not have gone over B.C.Swain for the one-third quota of vacancy. Moreover, B.C. Swain was promoted in the one-third quota vacancy of 1980. Even though the applicant had also qualified for 1980 vacancy, but his examination in which he qualified was in 1981 whereas B.C.Swain qualified in the examination held in 1978. Therefore, B.C.Swain was given promotion against one-third quota in a vacancy of 1980 in the DPC meeting held on 13.10.1983 by which time the applicant had already been promoted against the two-third quota. Had the applicant not been promoted against a two-thirds quota vacancy by that time, even then B.C.Swain (respondent no.4) would have had a prior claim over the applicant for the one-third quota vacancy of 1980 because he had qualified in the examination earlier. In view of the above,

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we find nothing wrong in the order at Annexure-4 fixing the seniority of B.C.Swain (respondent no.4) above the applicant.

7. In the result, therefore, the Original Application fails and is dismissed but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
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