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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 320 of 1992

Date of Decision: 27.5.1994

Bishnu Charan Swain

Applicant (s)

Versus

Union of India & Others

Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? N.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? N.

VICE-CHAIRMAN

MEMBER (ADMINISTRATIVE)

27 MAY 94



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Respondents

For the applicant

M/s. Devanand Misrra  
Deepak Mishra  
R.N.Naik, A.Deo  
B.S.Tripathy,  
P.Panda,  
Advocates

For the respondents

Mr.Ashok Mishra,  
Sr.Standing Counsel  
(Central)



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JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN) : In this application, Shri Bishnu Charan Swain, Supervisor, Savings Bank Control Organisation, Balasore Head Post Office in Balasore Postal Division, has prayed for a direction to be issued to the Chief Postmaster-General and other Respondents to promote him from 1980, and to confer on him all consequential promotional benefits from the date on which one Shri M.D. Panda was promoted, and finally, to grant him the arrears of the differential in salary-scales from the date of such promotion. His grievances are that:

- although he was promoted in 1980, he has not been given the benefit(s) flowing therefrom;
- his pay has not been fixed properly - in fact it has not been fixed so far;
- while the initial order of his promotion indicated the year of his selection as 1980, the same was later changed to 1984; and
- while the Respondents reconsidered his case on the basis of his representation, as directed by this Tribunal in O.A. No. 31/88, he was not given the resultant promotional benefits.

2. It is stated in the petition that Shri Bishnu Charan Swain, the applicant, and one Shri Umesh Chandra Parida, were working as UDCs in Savings Bank Control Organisation, before they were promoted to supervisory cadre. The applicant appeared at what is generally referred to as 1/3rd Quota Examination for promotion on 10th December, 1978, was declared successful, and promoted thereafter, on 11th November, 1983, against the 1/3rd Quota of 1980. Shri Umesh Parida appeared at a similar examination in 1981, was also declared successful, but was promoted against the 2/3rd quota of 1982. The applicant complains that, although he appeared at the examination earlier to Shri Parida, and was earmarked for promotion against 1980 quota, the authorities did not promote him in



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time despite the fact that a vacancy was available to absorb him in a promotional post.

3. While this was the existing situation, the applicant's promotion was altered to his disadvantage by an order issued by the Respondents who declared that he now stood promoted against the 1/3rd quota of 1983 instead of against the 1/3rd quota of 1980 as ordered earlier.

4. Aggrieved by this decision, the applicant approached this Tribunal (O.A. No. 31/88). The Tribunal by its order dated 30th January, 1989, quashed the orders of the Respondents which altered the date of the applicant's promotion to his detriment, and directed the opposite party to reconsider his case on the basis of his representation, after giving him a personal hearing.

5. In compliance with the above-mentioned directions of the Tribunal, the Chief Postmaster-General duly gave a personal hearing to the applicant and his case was reviewed. As a result of this the original seniority of the applicant was duly restored.

6. It is the applicant's grievance that, although his seniority was thus restored, he has not received any consequential benefit of pay-fixation. The twin-grounds on which he bases his complaint are, that:

- When his promotion was restored from 1980, his pay in the promotional post ought also to be refixed from the same year; and
- Shri U.C. Parida and M.D. Panda, who are junior to him, are seen to be in receipt of more pay than him because the applicant's seniority was arbitrarily and rudely altered by the Respondents without any reason.

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7. The respondents concede the veracity of all salient events as narrated by the applicant. They, however, proceed to explain certain issues, clarify some points and also disclose a few facts not revealed or only adequately delineated in the application.

8. It is averred on behalf of the Respondents that the examination passed by Shri Swain is essentially a qualifying one, and promotional posts are offered to the successful candidates strictly in order of their seniority in the feeder cadre of UDCs. Shri Umesh Parida, whose case is specifically referred to in the application, was senior to the applicant, and had, therefore, to be promoted earlier. Furthermore, Shri Parida also qualified in a similar examination that was held two years prior, i.e. 1978, to the one cleared by the applicant.

9. Against the 1/3rd quota of 1980 a total of five candidates succeeded in the qualifying examination, including the applicant whose number was the fifth and last. The remaining four successful candidates were absorbed against the four available vacancies since all of them were also senior to the applicant, having been appointed as UDCs prior to him. Next, before the turn of the applicant came up for promotion, the Director-General of Posts, by a policy decision, ordered that the names of all officials who qualified in the said examination prior to 1981 should be deleted from the list. This decision was, however, later modified. As a result of these developments, the date of applicant's promotion had to be ordered from 1983.

— H. S. J. A. —



10. Be that as it may, the case of the applicant was duly reviewed and he was also personally heard by the Chief Postmaster-General, as directed by this Tribunal, and his original seniority was restored as a special case. Orders of his promotion and posting were issued on 11th November, 1983, and the applicant was relieved with directions to proceed to **Balasore** Head Post Office where a vacancy awaited him. The official <sup>h</sup> ~~close~~, however, to remain on leave and assumed the duties as Supervisor only on 9th May, 1984. His pay in the promotional post was drawn and paid from the same date.

11. The Respondents state that the applicant is junior both to Shri Umesh Parida and Shri M.D. Panda who were in any case promoted against the 2/3rd quota of 1982 and 1981, respectively. Since the applicant succeeded against a 1/3rd quota of a particular year, he may not claim parity or compete with officials who were chosen under a different quota for a different year.

12. Having explained the position thus, the Respondents submit that the applicant is not really entitled to any of the two reliefs claimed by him because -

- there is no evident connection between his case and that of Shri M.D. Panda or Shri U.C. Parida, as explained above; and
- he is entitled to higher pay in a promotional post only from the actual date on which he joined the post.

15. We have examined the facts of the case and taken due note of the arguments advanced by the parties.

— 1.25 —

16. And the facts are fairly straightforward. Five officials, S/Shri U.N.Mohapatra, P.S.V.S.Narayan, Sukadev Rout, B.C.Mohanty and B.C.Swain (the applicant) qualified for the 1/3rd quota examination of the year 1978. S/Shri U.N. Mohanty and P.S.V.S.Naraya, were, however, promoted to the supervisory cadre against 2/3rd quota on account of their seniority. (it may incidentally be mentioned that the promotions against 2/3rd quota are based on seniority-cum-fitness, while those against 1/3rd quota result from subject to overall fitness and in order of seniority of the qualified candidates in UDC cadres as and when vacancies become available in the supervisory cadre). Of the remaining three officials, S/Shri Sukadev Rout and B.C.Mohanty were subsequently absorbed on the same basis. By the time the next DPC met in September, 1992, 4 vacancies were available for promotions, of which two were reserved for Scheduled Castes. Against the remaining two vacancies so earmarked for Other Communities, Sri Sukadev Rout and B.C.Mohanty, being qualified and senior were promoted in their turn. Shri U.C.Parida, who passed the qualifying examination under 1/3rd quota along with the applicant, was also promoted in his turn under the 2/3rd quota of 1982, on the strength of his seniority in the U.D.C. cadre. Incidentally, it is seen that Shri U.C.Parida, M.D.Panda, and the applicant were promoted as UDCs on 1.3.1971, 17.3.1969 and 13.9.1972, respectively. Thus, the applicant ranked junior-most to others in terms of his seniority in the UDC cadre. While the others got their promotion in their turn under 2/3rd quota on the basis of their seniority, the applicant could not be so promoted because his turn for promotion under 2/3rd quota had not come by the time Shri Parida, although



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Signature

qualified in the same 1/3rd quota examination in 1978, was promoted. Thus, considered from whatever angle, there was nothing incorrect about the promotion of any of the other officials named in the application. The fact simply is that, due to a combination of lack of seniority for promotion under 2/3rd quota and <sup>the</sup> lack <sup>a</sup> of vacancy for promotion under 1/3rd quota, Shri B.C. Swain did not get his chance for promotion in his turn in either of the two quotas before the others.

17. The earlier grievance of the applicant that the year of allotment was arbitrarily changed by the Respondents has since been rectified by the latter in compliance with the orders passed by this Bench in O.A.31 of 1988. The official remained on leave for some months thereafter before joining the promotional post. He has been in receipt of the due emoluments in the post from the date he joined at Balasore Head Post Office. This being the situation, no other remedy or relief is available to him and the prayers made by him in this original application have to be disallowed. They are hereby accordingly disallowed.

18. However, before we part with the case, we would like the respondents to examine *suo motu*, as a matter of abundant caution, if and whether the applicant would have got his promotion to supervisory cadre under 2/3rd quota as per his turn on any date prior to the date on which he actually joined his present appointment in Balasore Head Post Office. If such scrutiny reveals

4.5.1.1



(16)

that Shri Swain would in the normal course have become entitled to a promotion under 2/3rd quota on any date prior to his assuming the present appointment, his seniority should be taken back and fixed to such date and he should get his promotional emoluments from that date. If, on the otherhand, it is concluded that the applicant would not have got his promotion under 2/3rd quota until after his date of joining his present post, no further relief will be due to him. This aspect may be checked within thirty days of the date of receipt of a copy of this judgment and necessary follow-up action if and as necessary, be taken accordingly. In any case, Respondent No.2 will be well-advised to apprise the applicant of the result of this check in writing as soon as it is completed.

19. Thus, the original application is disposed of.  
No costs.

VICE-CHAIRMAN

*B.K. Sahoo*  
27.5.94

MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal  
Cuttack Bench Cuttack  
dated the 27.5.1994/ B.K. Sahoo

*T. Sahoo*  
27 MAY 94