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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 607/92 & 673/93
Cuttack this the 14th day of March, 2000

IN O.A. No. 607/92

P.K.Saran

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

IN O.A. No. 673/93

D.Pati

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

14.3.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)



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ORIGINAL APPLICATION NOS.607/92 & 673/93
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CORAM:

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

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IN O.A.607/92

Sri P.K.Saran, S/o. Sri Rama Chandra Saran, Senior
Stenographer, Heavy Water Project(Talcher), Department of
Atomic Energy, PO: Vikrampur, Dist: Dhenkanal

By the Advocates : ... Applicant
Mr.Biswajit Mohanty

-Versus-

1. Union of India represented by the Secretary,
Department of Atomic Energy/Chairman, Atomic Energy
Commission, Anusakti Bhawan, Chatrapati Shivaji
Maharaj Marg, Bombay-400039
2. Chief Executive, Heavy Water Board, Vikram Saravhai
Bhawan, Anu Shakti Nagar, Bombay-400049
3. General Manager, Heavy Water Project(Talcher), PO:
Vikrampur, Dist: Dhenkanal
4. Dhobei Pati, Jr.Stenographer, Heavy Water
Project(Talcher), Deptt. of Atomic Energy, PO:
Vikrampur, Dist: Angul

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Respondents

By the Advocates : Mr.B.Dash,
Addl.Standing Counsel
(Central)
(For Res. 1 to 3)

IN O.A.673/93

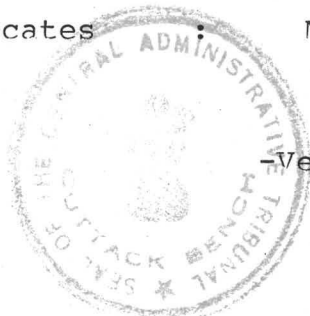
Sri Dhobei Pati, Son of Late Banchhanidhi Pati, Junior
Stenographer, Heavy Water Project(Talcher), Department of
Atomic Energy, PO: Vikrampur, Dist: Angul

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Applicant

By the Advocates : M/s.Ashok Mohanty,
P.R.Dash, T.Rath
D.Nayak

-Versus-



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1. Union of India represented by the Secretary, Department of Atomic Energy/Chairman, Atomic Energy Commission, Anusakti Bhawan, Chatrapati Shivaji Maharaj Marg, Bombay-400039
 2. Chief Executive, Vikram Sarabhai Bhawan, Anu Shakti Nagar, Bombay-400049
 3. General Manager, Heavy Water Project(Talcher), PO: Vikrampur, Dist: Angul
 4. Administrative Officer, Heavy Water Project(Talcher), PO: Vikrampur, Dist: Angul
 5. Shri P.K.Saran, S/o. Sri Rama Chandra Saran, Senior Stenographer, Heavy Water Project(Talcher), Department of Atomic Energy, PO: Vikrampur, Dist: Angul

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Respondents

By the Advocates

:

Mr.B.Das
Addl.Standing Counsel
(Central)
(For Res. 1 to 4)

Mr.B.Mohanty
(Res. 5)

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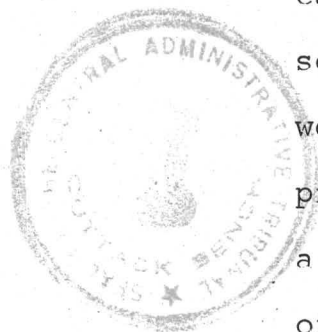


ORDER

MR.G.NARASTIMHAM, MEMBER(JUDICIAL): These two Original Applications being interlinked are being disposed of through this common order. Applicant P.K.Saran in O.A. 607/92 is Respondent No.5 in O.A. 673/93. Respondent No.4, Dhobei Pati, who was subsequently impleaded in O.A. 607/92 as an intervenor is the applicant in O.A. 673/93. Both of them were Junior Stenographers under the departmental respondents. Hence for the sake of convenience while P.K.Saran will be referred as applicant, Dhobei Pati as private respondent in this common order.

2. Facts not in controversy are as follows :

The applicant was appointed as Junior Stenographer on 14.7.1983 and prior to him private respondent was appointed as such on 17.11.1981. Promotional avenue of Junior Stenographer to the Senior Stenographer is that 50% of the vacancies will go to the departmental candidates. Out of this 50%, 25% is meant for Limited Departmental Competitive Examination and the other 25% is on the basis of Speed Test from amongst the eligible candidates having six years of experience on the seniority-cum-fitness basis. On 24.7.1991 applications were called for from amongst the eligible candidates for promotion to the post of Senior Stenographer by appearing a speed test for assessing their suitability (Annexure-3 of O.A. 607/92). On 22.9.1991 the test was conducted. Applicant and the private respondent participated in that test. On 23.9.1991, result of the test was published (Annexure-4) of Original Application No. 607/92. Three candidates were declared to have passed and while under Sl. No.1 name of the applicant found place, under Sl.



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No.2, name of the private respondent found place. Another candidate by name Shri G.C.atpathy is at Sl. No.3. These three candidates were directed to appear before the D.P.C. on 25.9.1991. After interview, applicant was selected and appointed on officiating basis vide order dated 28.9.1991(Annexure-5 of O.A. 607/92), as Senior Stenographer in a temporary capacity with effect from 26.9.1991 until further orders. By order dated 1.10.1992(Annexure-6 of O.A. 607/92) probation period of the applicant as Sr.Stenographer was over and his first annual increment was sanctioned. On receiving representation from the private respondent the Department intimated the matter in February, 1992 that the test conducted in September, 1991 was Limited Departmental Competitive Examination test and not under seniority-cum-fitness. Thereafter on 21.11.1992(Annexure-8 of O.A. 607/92) the applicant was ordered to be reverted to the post of Stenographer(Junior) on the ground that he had not passed the written examination prescribed for the post of Senior Stenographer. On 25.11.1992 under Annexure-9(O.A. 607/92) applications were called to fill up this post of Senior Stenographer by Limited Departmental Competitive Examination from amongst Junior Stenographers, who had completed a minimum period of three years of continuous service in that Grade as on 1.1.1993 prescribing two papers, i.e. speed test and written test.

2. The applicant prays for quashing his reversion order under Annexure-8 and for direction to respondents not to hold any written test as contemplated under Annexure-9. He also prayed for stay operation of the order of



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reversion under Annexure-8 as an interim measure. On 3.11.1992 this Original Application was admitted and the reversion order was stayed. Thereafter the private respondents appeared as an intervenor and moved a petition for vacation of the stay order. He was allowed to ^{be}implead ^{as} respondent, but the stay order is still in force vide order dated 17.11.1993.

3. The private respondent filed O.A. 673/93 on 12.11.1993 praying for quashing the order of promotion dated 28.9.1991 of the applicant to the post of Senior Stenographer and for further direction to the Department to promote him to the post of Senior Stenographer with effect from 26.9.1991 on the basis of speed test conducted against seniority-cum-fitness quota. There is further prayer that notice dated 25.11.1992 calling for applications for holding Limited Departmental Competitive Examination from the eligible Stenographers having three years of service as on 1.1.1993 be quashed and that the reversion order of the applicant to be sustained.

4. The main stand of the Department is that the test conducted in September, 1991 was in fact a Limited Departmental Competitive Examination and by oversight written examination could not be conducted. This mistake was detected only after the private respondent submitted representation. Since the applicant was promoted to the post of Senior Stenographer without passing the written test, the order of reversion was passed, and to fill up that vacancy notice was circulated calling upon the eligible Stenographers to appear in the Limited Departmental Competitive Examination. These facts are not in controversy.



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5. The stand of the applicant is that he, the private respondent and another Junior Stenographer appeared in the speed test conducted in response to notification dated 24.7.1991 (Annexure-3 of O.A. 607/92) and in the speed test, he stood first and thereafter all of them appeared before the D.P.C. and the D.P.C. selected him, obviously because he stood first in the speed test. At first by order dated 28.9.1991 he was appointed to officiate as Senior Stenographer with effect from 26.9.1991 until further orders and subsequently in order dated 1.10.1992 his probation period was closed and his first annual increment was sanctioned with effect from 1.9.1992. In other words, he was confirmed as Sr. Stenographer with effect from 1.9.1992. As he was continuing as Senior Stenographer in substantive capacity, he could not have been reverted, except after an inquiry after serving charges on him and giving him a reasonable opportunity of being heard in respect of those charges, as contemplated under Article ³¹¹~~309~~ of the Constitution.

6. There being no complaint or allegation of misconduct against him, question of framing charges would not arise, and at any rate, reversion order was not on account of any finding in a disciplinary proceeding initiated against him, but on account of the fact that he had not passed the written test and as such, such reversion order being contrary to mandatory provision under Article 309 of the Constitution needs to be quashed.

7. The private respondent in his O.A. 673/93 takes the plea that the test conducted was speed test on the seniority-cum-fitness basis and therefore, he being senior to applicant and further not being unfit,

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Promotion of the applicant to the post of Senior



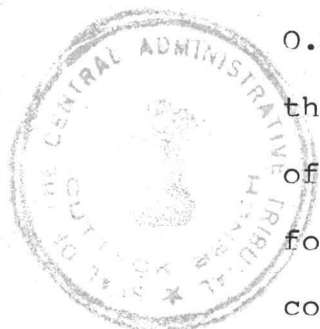
20 promotion of the applicant to the post of Senior Stenographer is contrary to law and as such the same should be quashed and consequently he should be promoted with retrospective effect, i.e. w.e.f. 26.9.1991.

8. We have heard Shri Biswajit Mohanty, learned counsel for the applicant, Shri B.Das, learned Addl.Standing Counsel appearing for the departmental respondents and Shri Ashok Mohanty, learned senior counsel appearing for the private respondent. Also perused the records as well as notes of argument filed by the applicant and the private respondent. It is the case of the Department, as already indicated that the test conducted during September, 1991 was in fact Limited Departmental Competitive Examination and that after receipt of representation of the private respondent, they could discover the mistake that written test by oversight was not conducted. This stand appears to be not correct. Because, while rejecting representation of the private respondent through order dated 26.2.1992 under Annexure-12 of O.A. 673/93, it was mentioned that though in the first circular dated 24.7.1991 the words were wrongly used as "**seniority-cum-fitness**", but on 27.8.1991, the same was corrected and displayed on the Notice Board as usual for the information of all concerned stating that the test conducted will be as per Limited Departmental Competitive Examination. In other words, the error, as alleged by the Department was notified by them on 27.8.1991 itself and the same was corrected through notice of that date and certainly not after receiving representation of the private respondent, i.e.,
/after promotion of the applicant to the post of Senior



21 Stenographer. Further question arises if indeed this error was noticed and rectified through notice dated 27.8.1991 then why in the publication order dated ²³⁻⁹⁻⁹¹ ~~28.3.1991~~ of the result of the speed test (Annexure-4) of O.A. 607/92 the candidates including the applicant and private respondent were directed to appear before the D.P.C. straight without being directed to appear at the written test. Therefore, it comes to this, no such notice dated 27.8.1991 was circulated rectifying the so called error which is still apparent from the fact that a copy of that notice was not annexed by the Department to their counter. We are also not convinced that the test conducted in September, 1991 was really a test under Limited Department Competitive Examination and not a speed test on the basis of seniority-cum-fitness, because had it been so, the notice dated 27.9.1991 (Annexure-3) of O.A. 607/92, would ^{have} ~~not~~ specifically contained a condition that Stenographers (Junior) who have completed three years of continuous service on a fixed date would be eligible for the test, because Stenographers of three years of continuous service would be eligible to appear in such Limited Departmental Competitive Examination. On the other hand in that notice dated 24.7.1991 it has been clearly mentioned that a test would be conducted amongst the Stenographers who have completed six years of continuous service as on 1.7.1991 in order to assess the suitability for promotion to the post of a Senior Stenographer. We are, therefore, convinced that the test conducted was speed test basing on seniority-cum-fitness.

7. There is no dispute that as Junior Stenographer private respondent is senior to the applicant. Even



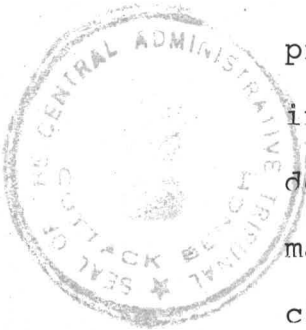
22 assuming the selection and promotion of the applicant in that test was contrary to departmental instructions, question arises whether after a gap of more than two years, the private respondent can appear before this Tribunal and challenge for quashing that promotion order, moreso, when the applicant was confirmed and already sanctioned yearly increment. Under Section 21 of the Administrative Tribunals Act read with Section 20 of that Act, the period of limitation is one year from the date on which the aggrieved order has been passed, and in case a representation has been made and six months period expired without any order having been passed on such representation, then limitation of one year runs from the date of expiry of the said period of six months. Here Annexure-12 reveals that representation of the private respondent made on 11.2.1992 was rejected on 26.2.1992. Hence this respondent could have approached this Tribunal for quashing the promotion order within one year from 26.2.1992, i.e. by 26.2.1993. However, this application about has been filed on 17.11.1993, i.e. after nine months period of limitation. It is true that Proviso of Section 21 gives discretion to the Tribunal to entertain an application beyond the period of limitation provided the Tribunal is satisfied that there was sufficient cause for not approaching the Tribunal within the period of limitation. The Tribunal will have the scope to be satisfied ^{provided} ~~that~~ there are materials before it explaining delay with a prayer for condoning delay, and ^{such} an application of condonation of delay must also be supported by an affidavit as required under Rule-8(4) of the C.A.T.(Procedure) Rules, 1987. No such application has



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been filed seeking condonation of delay. We are aware that on 17.12.1993 the then Single Bench admitted this Original Application(O.A.673/93). This does not mean through this order of admission, the delay in filing this Original Application was condoned, especially in the absence of any application for condonation of delay and discussion about the delay factor. The Apex Court in **Ramesh Ch.Sharma vs. Udham Singh Kamat** reported in 1999(2) SCSLJ 249 held that time barred application challenging the order of any promotion could not have been decided by the Tribunal on merits overlooking the statutory provision under the Proviso of Section 21 of the A.T.Act, in the absence of any application for condonation of delay. Further in **State of Himachan Pradesh vs. Tara Dutt** reported in 1998 AR SCW 4413 the Apex Court held that discretion to condonation of delay has to be exercised judiciously and on well recognised principles and it must be through a speaking order indicating the satisfaction of the Court/Tribunal that delay was satisfactorily explained. This observation was made with reference to Section 473 of Cr.P.C. by clarifying that no inference can be drawn that the delay was condoned simply because the Court had taken cognizance of the offence. The same analogy, in our view, can be applicable with reference to Section 21 of the A.T.Act. We are, therefore, of the view that this O.A. filed by the private respondent is barred by limitation and no relief can be granted on this application.

There are other aspects which need to be considered as contended by the learned counsel for the applicant. The applicant was ordered to be reverted while continuing as



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Senior Stenographer in a substantive capacity on the ground that he did not appear in the written test prior to his promotion as Senior Stenographer. We have already held that the test conducted in September, 1991 was not Limited Departmental Competitive Examination test, but a speed test based on seniority-cum-fitness. Even assuming it was Limited Departmental Competitive Examination, can the applicant be reverted for not passing the written test when he was not asked to appear in the written test? The answer would be no. If indeed the Department could detect this error in February, 1992 itself while disposing of the representation of the private respondent, then they could/should not have closed the probation period of the applicant as Senior Stenographer and allowed increment by order dated 1.10.1992(Annexure-6 of the O.A.607/92), i.e. 10 months after the detection of so called error. We have, therefore, no hesitation to hold that the reversion of the applicant in order dated 21.11.1992(Annexure-8) of O.A. 607/92 being contrary to mandatory requirement under Article 311 of the Constitution cannot be sustained under law. We, therefore, quash this order of reversion.

9. For the reasons discussed above, we quash the order of reversion dated 21.11.1992(Annexure-8) and consequently notice dated 25.11.1992(Annexure-9) of the O.A. 607/92 and Annexure-21 of O.A.673/93 as prayed by the private respondent. In the result O.A. 607/92 is allowed and O.A. 673/93 is allowed in part to the extent of quashing notice dated 25.11.1992 for holding Limited Departmental Competitive Examination for the post of Senior Stenographer and we disallow the other reliefs



23 prayed for in that O.A. There shall however, be no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.3.2000

B.K. SAHOO



14.3.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)