

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 342 OF 1995.
Cuttack, this the 05th day of August, 2002

JADUMANI KHATUA. APPLICANT.

- Versus

UNION OF INDIA & ORS. 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 Central Administrative Tribunal or not? No.

S.K. Hajra
(S.K. HAJRA)
MEMBER (ADMN.)

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 05/08/2002

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 342 OF 1995.
Cuttack, this the 05th day of August, 2002.

C O R A M:

THE HONOURABLE MR. S.K. HAJRA, MEMBER (ADMINISTRATIVE)

AND

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL).

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JADUMANI KHATUA, Aged about 44 years,
Son of Sri Bal Krishna Khatua,
At present working as Junior Clerk
In the office of the Central Institute
of freshwater Aquaculture, Kausalyaganga,
PO: Bhubaneswar, Dist: Khurda.

APPLICANT.

By legal practitioner: M/s. J. Sengupta, S. Natia, Advocates.

- versus -

1. Secretary, I.C.A.R.,
Krushibhaban, New Delhi-1.
2. Director, C.I.F.A.,
Kausalya Ganga, PO: Bhubaneswar,
Dist: Khurda.
3. Sunakar Nandi, Aged about 32 years,
working as Senior Clerk, C.I.F.A.,
Kausalyaganga, PO: Bhubaneswar,
Dist: Khurda.

RESPONDENTS.

By legal practitioner: Mr. Ashok Mohanty,
Senior Counsel for the Railways.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :

Both Applicant and Respondent No.3 were Sub-staff/Group 'D' staff in the Establishment of Central Institute of Freshwater Acquaculture (in short 'C.I. F.A') at Kausalyaganga (Bhubaneswar) ; where the Applicant joined on 10-06-1977 and the Respondent No.3 joined on 17-07-1988. Thus, the Applicant was senior to the Respondent No.3 by 10 (ten) years. Later, they both were taken to higher posts of Junior Clerk as against the 5% of the vacancies set apart for Sub-staff/Group 'D' staff of the establishment and their names were put in the gradation list of Junior Clerks; wherein the name of the Respondent No.3 was placed at Sl.No.7 and the name of the Applicant was placed at Sl. No.8 among the Junior Clerks; although the Applicant joined as Junior Clerk about a month before the Respondent No.3. Relevant entries made in Sl.Nos. 7& 8 of the gradation list (of Junior Clerks) as at Annexure-3 reads as follows;

Sl. No.	Name & Designation	Date of birth.	Date of initial Appointment in C.I.F.A.	Date of appointment in the present grade of Jr.Clerks.
xx	xxx	xxx	xxx	xxx
7.	Sunakar Nandi	18-04-1963	17.7.1988	17-08-1988
8.	Jadumani Khatua	03-09-1951	10.6.1977	09-08-1988
xx	xxx	xxx	xxx	xxx

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2. Basing on the above said entries in the gradation list (Annexure-3), the Respondents granted promotion to the Respondent No.3 (on the basis of seniority, as maintained in the gradation list in question) from the rank of "Junior Clerk" to the rank of "Senior Clerk" as seen under Annexure-5 dated 08-01-1995. Therefore, the Applicant challenged his placement (below the Respondent No.3) in the gradation list in question (Annexure-3) by filing representations; which were turned down by the Respondents under Annexure-4 dated 16/19.12.1994. The ground set forth in the said Annexure-4, dated 16/19.12.1994, for placing the Applicant next below (in the gradation list under Annexure-3) the Respondent No.3, was as follows:

"Even though he has joined earlier, his name has been shown next to Sri Indramani Muduli, Sri Banamali Behera, and Sri Sunakar Nandi based on the panel prepared by the Selection Committee at the time of appointment to the post of Junior Clerk".

3. In the above premises, the Applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985. A counter has been filed in this case, by the Respondent Department to which a rejoinder has also been filed by the Applicant. Despite notices, the Respondent No.3 has not chosen to appear and contest this case.

4. Undisputedly, the Applicant, having joined as a sub-staff in C.I.F.A. (Kausalyaganga) Bhubaneswar on

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10-06-1977 is Senior to the Respondent No.3, in Group-D establishment by ten years; as the Respondent No.3 joined as a Sub-staff on 17-07-1988.

5. It is the stand of the Respondent Department that even though the Applicant joined as a Sub-staff/ Group D staff 10(ten) years prior to the Respondent No.3, he having been placed below the Respondent No.3 (in the Selection process undertaken to fill-up the Group C/ Junior Clerk posts) he was named below the Respondent No.3 in the gradation list of the Junior Clerks at Annexure-3 dated 03-08-1994 and, that, therefore, the Respondent No.3 being placed as Senior to the Applicant, had rightly been granted promotion (as Senior Clerk) under Annexure-5 dated 09-01-1995.

6. At the hearing, Mr. Aswini Kumar Mishra, appearing on behalf of the Applicant took two limbs of argument; firstly, he took a point that since both the Applicant and Respondent No.3 came to 5% of the vacancies of "Junior Clerk" from Group-D posts; their recruitment (to Junior Clerk posts) was to be done by the principle of "Seniority subject to elimination of unsuitables"; for which a selection was taken, in which both (the Applicant and Respondent No.3) were found suitable and since both of them were found suitable (on going through a suitability test) for Group-C/Junior Clerk posts, they were to maintain their actual seniority in the feeder cadre in the higher

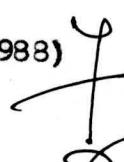
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post and, in fact, that was maintained while giving them orders. While the Applicant, being senior in feeder cadre, was promoted on 09-08-1988; the Respondent No.3, being rank junior (ten years) in the feeder cadre, was promoted on 17-08-1988. It is the stand of the Advocate for the Applicant that even if, in the process of suitability test, the Respondent No.3 was found better than the Applicant, he was not available to be placed above the Applicant at the stage of getting promotion as against the posts reserved for Sub-staff.

7. In order to substantiate his stand, the Advocate for the Applicant has placed before us the judgment of the Hon'ble Supreme Court of India rendered in the case of B. V. SIVAIAH AND OTHERS VRS. K. ADDANKI BABU AND OTHERS reported in AIR 1998 SC 2565 and that of Hon'ble High Court of Orissa rendered in the case of KRUSHNA CHANDRA MISHRA VRS. BALASORE GRAMYA BANK AND OTHERS reported in (1993)1 ATT (HC) 194; wherein it has been told that while granting promotions, of the present nature, to the suitables full regard should be given to the seniority.

8. Applicant, in the present case, was senior to the Respondent No.3 and both of them, having been found suitable, were granted promotions one after the other (the Applicant was granted promotion first on 09-08-1988 and the Respondent No.3 was granted promotion later on 17.8.1988)



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by keeping their seniority (in feeder cadre) in mind. That being the position; their names should have been placed in the gradation/seniority list of Junior Clerks (Annexure-3) in accordance with the principle of 'Seniority subject to elimination of unsuitables'.

9. Since none among the Applicant and Respondent
un-
No.3 were found suitable in the feeder cadre, the Applicant
ought to have been placed above the Respondent No.3, in
the gradation/seniority list (Annexure-3) and, as such, he
should have been given further promotion as Senior
Clerk before granting such promotion to the Respondent
No.3.

10. Now, let us examine the rival stand of the Respondent Department as given out in Annexure-4 dated 16/19.12.1994. As it appears, the Respondent Department conducted a test in order to fillup the post of Junior Clerks jointly of the open market candidates(sponsored from the Employment Exchange) and the in-service candidates like the Applicant and the Respondent No.3; which they should not have done. Apparently, confusion started from that point. It is well settled position of law that while fixing inter-se-seniority among the new entrants, their inter-se-merit in the select list drawn at the stage of recruitment are to be reckoned. While putting the names of directly recruited Junior Clerks in the gradation/

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seniority list (Annexure-3), the Respondent Department looked to their position in the select list drawn in the selection process. Apparently, while doing that, the Respondent Department have applied the same principle for the Applicant and Respondent No.3; which they should not have done. The placements given to the inservice candidates like the Applicant and Respondent No.3 in the selection process was not to supersede the seniority in the feeder cadre; as discussed in the previous paragraphs. Therefore, the stand of the Respondent Department, as raised in Annexure-4 dated 16/19.12.1994, for the Applicant and Respondent No.3 can not be sustained and the same is hereby over-ruled/set-aside/quashed.

11. By placing materials on record, the Advocate for the Applicant has raised the second limb of his argument that in the selection process there were written, typing and viva-voce tests; where the Applicant secured higher marks than the Respondent No.3; details of which are given below:

APPLICANT:

52 marks in written test ~~X~~ (82.6)
30.6 marks in typing test ~~X~~
35 marks in viva-voce test
117.6 marks in total.

RESPONDENT NO.3.

48 marks in written test ~~X~~ (99)
51 marks in typing test ~~X~~
16 marks in viva-voce test
115 marks in total.

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12. To this, the stand of the Respondent Department is that viva-voce test was not available to be taken (which was taken by only one member of the Selection Committee) and, therefore, by excluding the marks awarded in the said viva-voce test, the Respondent No.3 secured higher marks than the Applicant in the selection process, in question.

13. We have already said that the Departmental candidates of the feeder cadre (like the Applicant and Respondent No.3) ought not to have been put together with the open market candidates (sponsored by the Employment Exchange) in the selection process (while open market candidates were required to face stiff competition in the elimination process; the in-service/Departmental/feeder cadre candidates were to face a suitability test only). Now that both the Applicant and Respondent No.3 having been found suitable (and none of them were found unsuitable) were taken to Junior Clerk posts and, as stated in the previous paragraphs herein; they are to maintain their seniority in Junior Clerk cadre as was available to them in their feeder cadre and, therefore, it is not necessary to deal with the issue as to whether viva-voce test was necessary or not in the selection process; although it is well settled point that a selection board has always the full liberty to regulate its procedure (by limiting their discretion to the minimum) in ^{the} absence of any prohibition in the statute book for recruitment.

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14. In the result, therefore, this Original Application is allowed. The order under Annexure-4 dated 16/19.12.1994 is hereby quashed and, as a consequence, the Respondents are directed to treat the Applicant to be senior to the Respondent No.3 in the cadre of Junior Clerk and to grant him necessary promotions with effect from the date his junior, the Respondent No.3, was granted promotion as Senior Clerk within a period of 90 (ninety) days from the date of receipt of a copy of this order. In the circumstances, there shall, however, be no order as to costs.


(S. K. HAJRA)
MEMBER (ADMINISTRATIVE)


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
05/08/2002

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