

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.577 OF 1995
Cuttack this the 4th day of October/2001

L. Khandual ... 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
 14.10.2001

4.10.01
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.577 OF 1995
Cuttack this the 4th day of October/2001

CORAM:

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

...

Sri Laxmidhar Khandual, aged 58 years
Son of Late Narasingha Khandual, Vill/PO
Nuagaon, Dist-Nayagarh - at present Deputy
Post Master, Nayagarh Head Post Office,
Nayagarh

Applicant

By the Advocates

M/s.S.Kr.Mohanty
S.P. Mohanty
P.K. Lenka

-VERSUS-

1. Union of India represented by its Secretary,
Department of Posts, Dak Bhawan, New Delhi-1
2. Senior Superintendent of Post Offices,
Puri Division, Puri-752001
3. Director of Postal Services, Headquarters,
Office of the Chief Post Master General,
Orissa, Bhubaneswar
4. Chief Post Master General, Orissa Circle, Bhubaneswar
5. Member (Personnel) of Postal Board, Dak Bhawan
New Delhi-110001
6. Sri B.K.Mangaraj (HSC-II), Post Master, Nayagarh
Head Post Office, Nayagarh
7. Sri Shankar Prasad Hota (HSG-II), Assistant Post
Master, Bargarh Head Post Office, Dist-Bargarh
8. Sri Ghasiram Das (HSG-II), Post Master,
Bargarh Head Post Office, Dist-Bargarh

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Respondents

By the Advocates

Mr.U.B.Mohapatra
A.S.C.

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this application filed
on 26.9.1995 for refixing seniority between the applicant and
private respondents in H.S.G. II cadre, while the applicant
initially joined as Postal Clerk in November, 1958, private

8

respondents joined so in May, 1957. However, applicant was promoted to L.S.G. Cadre against 1/3rd quota earlier than the private respondents, who, got promotion later against 2/3rd quota.

2. The grievance of the applicant is that in the Draft Gradation List dated 14.10.1981 of L.S.G. Cadre of Orissa Circle (Annexures-5 and 5/1) private respondents were shown above him. Though he submitted objection on 18.11.1981, and subsequent reminders, he did not receive any response. He and private respondents were promoted to H.S.G.II cadre on 1.10.1991. But in the Circle Gradation List of H.S.G.II, as corrected upto 1.7.1993 (Annexure-10) respondents were shown above him and by order dated 25.8.1995 (Annexure-II) private respondents and two others were promoted to the cadre of H.S.G. I and the case of the applicant was ignored. His representations dated 30.8.1985 (Annexure-11/1) to the Chief Post Master General and of dated 15.9.1995 (Annexure-12) to the Director of Postal Services have not been responded. So also his memorial to the Board (Annexure-9). Hence this application for consideration of gradation list under Annexure-5/1 and 10 and for his promotion to the cadre of H.S.G.I from the date his juniors were promoted.

3. Private respondents though duly noticed have not responded. The Department in their counter oppose this prayer. According to them in view of the common judgment dated 4.1.1972 of the Apex Court in Civil Appeals 1845/1846 of 1968 and 50/69 (Annexure-III of Annexure-R/1) holding that employees employed on regular basis after the issue of Office Memorandum dated 22.6.1949 but before issue of O.M. dated 22.12.1959 are

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9
guided on the basis of length of service in that grade irrespective of the dates of confirmation and pursuant to instruction of the Director General, Posts in letters dated 7.10.1972 (Annexure-R/1) and 12.4.1978 (Annexure-R/2), revised gradation list of Postal Clerks as on 1.1.1977 (Annexure-R/3) issued as per the Directorate letter dated 12.4.1978. Since private respondents entered service earlier than the applicant, they were shown above him, that is, while the applicant figured at Serial No.543, respondent No.7, 8 and 6 figured at Serial Nos. 369, 370 and 372, respectively. The applicant having not represented to the competent authority against their re-fixation or not having challenged in Court/Tribunal, it is presumed he accepted the same. He cannot ^{therefore} indirectly ⁱⁿ reopen this issue in this application filed after a lapse of 18 years and on this ground alone application is barred by limitation. On the basis of re-fixation, private respondents were treated to have been promoted to the cadre of L.S.G. in 1975 against 2/3rd quota and the applicant against 1/3rd quota in the same year and as per rule persons getting promotions under 2/3rd quota become senior to those getting promotions under 1/3rd quota if the year of promotion is one and the same. Accordingly private respondents became senior to the applicant in the gradation list of L.S.G. as on 1.1.1977, circulated in the Circle vide P.M.G.'s letter dated 8.2.1985 (Annexure-R/4). Even against this list, the applicant neither represented nor filed any case. Though on the same day, that is, on 1.12.1991, the applicant and private respondents were promoted to H.S.G.II cadre, the respondents being senior to the applicant in the L.S.G. cadre, became senior to him in H.S.G.II Cadre also.

In the gradation list of H.S.G.II as on 1.7.1993 (Annexure-R/5) in between the respondents and the applicant, name of seven employees find place. Respondents were considered for promotion to H.S.G. I cadre against five vacancies by the D.P.C. The position of the applicant being at Serial No.8 of the list, he could not get promotion. Lastly the Department deny the applicant's filing any objection on 18.11.1981. They also deny that he having submitted representation to the Postal Board because no such letter was forwarded through proper channel.

4. No rejoinder has been filed.

5. We have heard Shri S.P.Mohanty, the learned counsel for the applicant and Shri U.B.Mohapatra, the learned Addl. Standing Counsel for the Department. Also perused the notes of arguments of the applicant.

6. The main contention of the applicant is that the decision of the Apex Court is not applicable in his case. Assuming due to wrong interpretation of that decision seniority in the clerical cadre was refixed showing the respondents 6 to 8 senior to him under Annexure-R/3 dated 12.4.1978, the fact remains that he did not represent to the higher authorities as against this. He even did not challenge the same in any Court of Law. This is clear from the fact that he did not file any rejoinder refuting this averment in the counter. Similarly there is no denial through rejoinder to the version in the counter that while respondents 6 to 8 were shown promoted to the L.S.G. cadre against 2/3rd quota of the year 1975 and the applicant against 1/3rd quota of the same year and as per rule the respondents were shown senior to him in the gradation list as on 1.1.1977 (Annexure-R/4)

and that he having not challenged the same in time. There is no dispute that he along with respondents 6 to 8 were promoted to H.S.G.II cadre on the same year on completion of 26 years of service from the basic cadre under B.C.R. scheme. The respondents being senior to the applicant in the gradation list of clerks (Annexure-R/3) and also in the gradation list of L.S.G. officials (Annexure-R/4) naturally became senior in the H.S.G.II cadre also. It is too late for the applicant to indirectly reopen the seniority issue right from the level of clerical level in his application filed on 26.9.1995 thereby trying to unsettle the settled and long standing seniority.

7. We are not inclined to accept the version of the applicant that he represented on 18.11.1981 which has been strongly denied in the counter, in the absence of any annexures to that effect. Even assuming he represented so in 1981, the fact remains, he didnot challenge the seniority in Court/ Tribunal intime after waiting for a reasonable time. As to his representation to the Postal Board (Annexure-9) the same is not ^{merit} through proper channel as is apparent from that annexure, even if such a representation has in fact been made and as such it has no significance.

8. Applicant does not deny that the D.P.C. considered promotion to H.S.G. I cadre as against five vacancies and that his position in the list was at Sl. No.8. Hence, he cannot have any grievance on this score.

9. In the result, we do not see any merit in this Original Application which is accordingly dismissed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//