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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK



ORIGINAL APPLICATION NO. 714 OF 1995
Cuttack this the 27th day of September/2000

Sachidananda Khuntia

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

27-9-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.714 OF 1995
Cuttack this the 27th day of September/2000

CORAM:

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

...

Sachidananda Khuntia
At present working as
Assistant,
Central Rice Research Institute
Cuttack-753006(Orissa)

...

By the Advocates

Applicant

M/s.Budhadev Routray
A.K.Mohanty
B.Sarangi
B.Parida
S.S.Kanungo
A.K.Baral

-VERSUS-

1. Union of India represented through the Secretary, Ministry of Agriculture Department of Agricultural Research and Education (DARA) and Director General I.C.A.R., Krushi Bhavan, New Delhi 1
2. Director, Central Rice Research Institute Cuttack-753006, Orissa
3. Senior Administrative Officer Central Rice Research Institute, Cuttack
4. Sri B.Narendra Rao
Ex-Senior Administrative Officer,
Central Rice Research Institute at Cuttack,
at present working as Senior Administrative Officer, Central Institute of Agricultural Engineering, Nabibag, Bersat Road, Bhopal - 38, Madhya Pradesh
5. Duryodhan Sahu, Asst.(Cashier)
Central Rice Research Institute,
Cuttack (illegally promoted to the post of Superintendent)

...

By the Advocates

Respondents

Mr.Ashok Mishra,
(RES. 1 to 4)
Mr.S.K.Mohapatra
(Res.5)

...



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ORDER

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In the Office of Director, Central Rice Research Institute, Cuttack (Res.2), a vacancy in the cadre of Superintendent arose on 1.6.1995 due to promotion of one B.K.Samal, a Superintendent to the post of Assistant Administrative Officer. This vacancy was filled up on 14.6.1995 by promoting Shri Duryodhan Sahu (Res.5) an Assistant and a successful candidate in the Limited Departmental Competitive Examination (in short L.D.C.E.) held from 15.5.1995 to 17.5.1995. The applicant, an Assistant under Respondent No.2 challenges this promotion on the ground that he being the senior most Assistant was to have been promoted by direct promotion as ^{against} that ^{which} vacancy, pertains to the direct promotion quota as per recruitment rules.

2. Under the recruitment rules dated 28.8.1985 (in short Rules) under Annexure-1, normally two modes of promotion to the post of Superintendent are prescribed. There are other modes in case candidates are not available from these two modes. For disposal of this Original Application we are concerned with these two modes only. The first mode is by direct promotion from the Assistants having five years of service in that Grade as against 66.2/3% of vacancies. The rest 33.1/3% of vacancies are to be filled up through other mode, i.e., through L.D.C.E. confined to the Assistants and Stenographers having not less than three years of service in these Grades as on 1st of January of the year in which the examination is held. The two modes are to be adopted on rotation basis, i.e. promotion, L.D.C.E., promotion, promotion, L.D.C.E. and so on.

3. Applicant and Respondent No.5 on promotion joined as Assistants on 26.6.1990. In the Gradation List dated 1.4.1992

(Annexure-5) of Assistants, while the applicant was at Sl.No.10 Respondent No.5 at Sl. No.11. In the year 1993, Shri L.N.Khuntia at Sl. No.5 retired and Shri A.D.Anal at Sl. No.6 expired. Shri B.N.Mishra at Sl. No.1 was directly promoted to the post of Superintendent with effect from 6.5.1993. Similarly Shri P.C. Mohapatra at Sl. No.2 was directly promoted in December/93. Shri A.L.Das at Sl. No.3 was promoted through L.D.C.E. in July, 1994.

By Office Order No.30 dated 31.3.1995(Annexure-4), four Assistants, i.e. B.K.Samal, R.C.Mishra, G.Soren and S.K.Mathur were promoted direct on the recommendation of the D.P.C. held on 18.2.1995 and 22.2.1995. Again in another Office Order No.31 dated 31.3.1995 (Annexure-3) Basudev Behera was promoted through L.D.C.E. held on 8th, 9th and 10th November/1994. Similarly by order No.50 dated 23.5.1995, Miss K. Omana, a Stenographer was promoted through L.D.C.E., which was held from 15.5.1995 to 17.5.1995 (Annexure-7). Thereafter on 31.5.1995 Shri B.K. Samal was relieved from the post of Superintendent due to his further promotion to the cadre of Assistant Administrative Officer. The consequential vacancy arose on 1.6.1995 is now under controversy.

The facts mentioned in this para are not in controversy.

4. The case of the applicant is that six vacancies were available by 31.3.1995. Out of the six one was filled up by Basudev Behera through L.D.C.E. and four by B.K.Samal, R.C. Mishra, G.Soren and S.K.Mathur by direct promotions. The sixth one was left out and subsequently filled up by Miss K. Omana through L.D.C.E. on 23.5.1995. Accordingly the next promotion was to have been made by direct promotion to fill up the

consequential vacancy of Shri Samal. But the then Senior Administrative Officer (Res.4 by name) due to extraneous considerations illegally and hurriedly promoted Respondent No.5 through L.D.C.E. mode on 14.6.1995, i.e., two days prior to his handing over the charge of that seat.

5. The Departmental Respondents filed one counter and Res.5 a separate counter. The facts averred in these counters are that the vacancy against which Shri B.D.Behera was promoted through L.D.C.E. held in November, 1994 occurred on 18.10.1994. Another vacancy also occurred on 18.10.1994. This was filled up by Shri B.K.Samal by direct promotion. Thereafter the next vacancy occurred on 1.11.1994 was filled up by Shri R.R.Mishra by direct promotion. Hence the next vacancy occurring on 1.1.1995 was set apart for L.D.C.E. which was held in May, 1995 and Miss K.Omana being at the top amongst the successful candidates was promoted against that vacancy. Though the applicant applied to appear in this L.D.C.E., ultimately did not appear. Respondent No.5, however, participated in this L.D.C.E. and cameout successful and was placed in the panel, prepared in May, 1995. Validity of such a panel is for six months and it can be extended upto one year by the competent authority. The next two vacancy, occurring in 2.2.1995 were filled up by Shri G.Soren and S.K.Mishra by direct promotion. This being so the vacancy arising on 1.6.1995 was filled up by Respondent No.5, who was in the L.D.C.E. panel prepared in May, 1995. Allegation of extraneous consideration was specifically denied.

6. Applicant filed rejoinder denying that Respondent No.5 cameout successful in the L.D.C.E. held in May, 1995. However, there is no denial as to the dates and modes of promotions. The

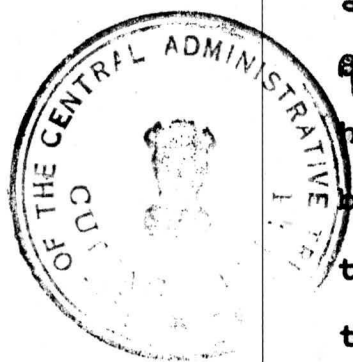
other aspects of the rejoinder are more or less in argumentative form.

6. We have heard Shri B.Routray, the learned counsel for the applicant, Shri Ashok Mishra, learned Special counsel appearing for the departmental respondents and Shri S.K.Mohapatra learned counsel appearing for Respondent No.5. Also perused the records.

7. The only point for determination is whether the promotion of Respondent No.5 through L.D.C.E. mode as against the vacancy arose in 1.6.1995 was legally justified.

8. As required under the Recruitment Rules, Respondent No.5 had already three years of experience in the Grade of Assistant by 1.1.1995 and was therefore, eligible to sit for the L.D.C.E. that had taken place in May, 1995. We are ^{not} inclined to accept the statement of the applicant in the rejoinder that Res. No.5 failed in that L.D.C.E., because, though he could have mentioned this vital assertion in the Application under Section 19 of the A.T.Act, for the reasons best known he did not mention so. On the other hand it has been categorically mentioned in the counters that his name was in the panel of successful candidates of that examination and this is the reason for his promotion. We have no hesitation to hold that this version in the counter as correct.

9. Vacancy with reference to a post means : a post lying unoccupied : as has been observed by the Constitution Bench of the Apex Court in Para-6 of R.K.Sabharwal's case reported in 1995 AIR SCW 1371. Necessary determination of roster quota depends on the date(s) from which the post is lying unoccupied, i.e., the date on which the vacancy arose and not the date of



issue of promotion order.

As earlier stated, the averment in the Application that A.L.Das at Sl. No.3 in the Gradation List of Assistants was promoted through LDCE in July/94 has not been denied in the counters. Pleadings of both sides are silent that between the promotions of A.L.Das in July/94 and promotions of five Assistants in order dated 31.3.1995 (Annexures-3 & 4) any other promotions to the Grade of Superintendent had taken place. Hence in the absence of any such averment it is presumed that after the promotion of A.L.Das through LDCE mode in July/94, no other Assistants and/or Stenographer was promoted till 31.3.1995. Since Shri A.L.Das was promoted through L.D.C.E., the next vacancy would have to be filled up by direct promotion. The counter of the Department reveals that next two vacancies occurred on 18.10.1994 and Shri B.D.Behera was promoted through L.D.C.E. against one of those vacancies and Shri B.K.Samal, against another by direct promotion.

In Para-5 of the counter of the departmental respondents a Table of promotions finds place. At the top promotion of Shri B.D. Behera through LDCE as against the vacancy occurring on 18.10.1994 was mentioned. After mentioning so, then next two vacancies, i.e. one occurring on 18.10.1994 and the other on 1.11.1994 shown to have been filled up by Shri B.K.Samal and Sri R.C.Mishra, respectively by direct promotion. Thereafter promotion of Miss K.Omana, as against the vacancy occurring on 1.1.1995 through LDCE has been shown. Under Miss K. Omana promotions of G.Soren and S.K.Mathur by direct promotions were shown as against vacancies occurring on 2.2.1995. After mentioning the sequences in this Table promotion of Res. 5 through L.D.C.E. mode as against the controversial vacancy occurring on 1.6. 1995 was justified.




It is thus clear that after the promotion of Shri A.L. Das through L.D.C.E. mode in July/1994, two vacancies occurred on 18.10.1994. Hence, as per the Recruitment Rules two vacancies were to have been filled up by direct promotion only. The next vacancy occurring on 1.11.1994 was to have been filled up through L.D.C.E. mode. Thereafter the vacancies occurring on 1.1.1995 and 2.2.1995 were to have been filled up by direct promotion. Then the another vacancy occurring on 2.2.1995 was to have been filled up through L.D.C.E. In other words, as per this sequence, Miss K.Omana was to have been promoted against the vacancy occurring on 2.2.1995 through L.D.C.E. mode and this promotion should have been shown below the promotion of Shri S.K.Mathur. In other words, the last vacancy, prior to the vacancy arising on 1.6.1995, as per rules, was to have been filled up through L.D.C.E. promotion, i.e. by Miss K.Omana. We have therefore, no hesitation to accept the contention of the applicant that the vacancy arising on 1.6.1995 should have been set apart for direct promotion quota. Thus the promotion of Respondent No.5 as against the vacancy occurring on 1.6.1995 through L.D.C.E. being contrary to the recruitment rules cannot be legally sustained.

We, therefore, hold that promotion of Respondent No.5 a successful candidate of L.D.C.E. held in May/95, as against the consequential vacancy of Shri B.K.Samal occurring on 1.6.1995 ^{and} being not according to law is quashed. As the applicant was the senior most Assistant in the Gradation List by then and as he had completed five years of service as Assistant by June/95, when the vacancy occurred, we direct the departmental respondents to consider his promotion through a Departmental Promotion

Committee as against this vacancy occurring on 1.6.1995 with consequential service benefits. This exercise shall be completed within a period of 60(Sixty) days from the date of receipt of copy of this order.

In this result, Original Application is allowed, but without any order as to costs.

 *Somnath Som*
(SOMNATH SOM)
VICE-CHAIRMAN

27.9.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//