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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 202 OF 1998

Cuttack, this the 31st day of January 2001

Sri Babaji Charan MallickApplicant

Vrs.

Union of India and others ... 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*

31.1.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
31.1.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

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

.....
Sri Babaji Charan Mallick, aged about 39 years, son of
G.Ch.Mallick, at present working as Binder Grade-I, Postal
Printing Press, Rasulgarh Industrial Estate Bhubaneswar,
District-Khurda

.....
Applicant

Advocates for applicant - M/s Ganeswar Rath
S.N.Mishra
A.K.Panda

Vrs.

1. Union of India, represented by Secretary, Communication-cum-Director General of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
3. The Director of Postal Services (Headquarters), C/o Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
4. Manager, Postal Printing Press, Rasulgarh, Industrial Estate, Bhubaneswar, District-Khurda.
5. Sri B.B.Rout, son of not known, Binder Grade-I, Postal Printing Press, Rasulgarh, Industrial Estate, Bhubaneswar, District-Khurda.
6. R.K.Behera, son of not known, Binder Grade-I, Postal Printing Press, Rasulgarh Industrial Estate, Bhubaneswar, District-Khurda.
7. Pramod Kr.Prahraj, son of late Dusasan Prahraj working as Binding Assistant, Postal Printing Press, Mancheswar, Bhubaneswar, District-Khurda.

Advocates for respondents-Mr.B.K.Nayak

ACGSC

&

M/s K.C.Kanungo
S.Behera
for R-7

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for a direction to Manager, Postal Printing Press

(respondent no.2) to rectify the seniority list of Binders Grade-II by fixing the seniority in order of merit in the interview conducted by the Selection Committee. The second prayer is for a direction to respondent no.4 to review promotion of six Binders Grade-II to Binders Grade-I with regard to interse seniority list and promote eligible officials, if any, who have been ignored in such promotion on the basis of wrong seniority list drawn up communitywise. The third prayer is for a direction to respondent no.4 to convene DPC to get the applicant approved for promotion to Binder Grade-I in pursuance of his correct position in the interse seniority list. The fourth prayer is for circulating correct interse seniority list of Binders Grade-II. The next prayer is for quashing the reversion order dated 24.3.1999 (Annexure-8) of the applicant from the post of Binder Grade-I to Bindery Assistant with consequential service benefits.

2. The applicant has stated that in this O.A. he challenges the gradation list of Binders Grade-II prepared by the respondents and the action of the respondents in not promoting him to the post of Binder Grade-I with effect from 20.11.1997 when he has been officiating in that post on ad hoc basis from 1.7.1995. His case is that he was initiallyn appointed as Binder Grade-II in the Postal Printing Press on 20.1.1987. The Postal Printing Press was established in 1986 with thirty posts of Binder Grade-II, six posts of Binder Grade-I and three posts of Section Holder (Binding). Posts of Section Holder (Binding) and Binders Grade-I were promotional posts from Binders Grade-I and Binders Grade-II respectively. A

Selection Committee meeting was held in 1986 for selection of Binders Grade-I and Binders Grade-II. No candidate was selected for Binder Grade-I and 22 candidates were selected for the post of Binder Grade-II. Of these, 10 were OC candidates, 6 SC and 6 ST candidates. The applicant has enclosed the proceedings of the Selection Committee at Annexure-2 and has stated that the list prepared by the Selection Committee in 1986 is not in accordance with the rules and the names of selected candidates have not been arranged in order of their merit in the interview, but the list has been drawn up communitywise. In other words, after first 10 OC candidates, 6 SC candidates have been placed, and below them 6 ST candidates have been placed. A gradation list was accordingly prepared in the cadre of Binders Grade-II showing the selected candidates communitywise. The applicant has enclosed the relevant portion of the gradation list at Annexure-3. The applicant's name appears against serial no.2 of the SC list. He states that according to his information, amongst three categories together, he should have been placed at serial no.6. It is furtherstated that six posts of Binder Grade-I fell vacant in 1993. Applying the 40 point rosters, 6 Binders Grade-II were given promotion of which 4 belong to OC community and one each from SC community and ST community. As the applicant was no.2 amongst the SC community he was not promoted. The applicant has stated that this promotion was not given on the basis of the correct seniority list but on the basis of communitywise seniority list and therefore the promotion was not correctly done. Later on two posts of Section Holder (Binding) were filled up amongst the six Binder Grade-I and consequently two posts of Binder Grade-I

fell vacant. The applicant and one Manoj Kumar Patnaik, an unreserved candidate were given ad hoc promotion as Binder Grade-I from 1.7.1995. According to the applicant, the ad hoc promotions were given against roster point No.7 for UR community and point no.8 for SC community respectively. The ad hoc promotion of two Binders Grade-I B.B.Rout and R.K.Behera as Section Holders (Binding) was approved by DPC in October 1996 and two clear vacancies in the rank of Binder Grade-I arose from 5.10.1996. Subsequently, another vacancy occurred in the post of Binder Grade-I. As there were three vacancies and the applicant was already officiating on ad hoc basis as Binder Grade-I from 1.7.1995, these three vacancies should have been filled up against point nos.7,8, and 9 of 40 point rosters. DPC met on 4.11.1997 even though vacancies arose on 5.10.1996. In the meantime with effect from 2.7.1997 the vacancy based roster was replaced by post based roster. The DPC selected two Binders Grade-II for promotion to Binder Grade-I against the quota reserved for UR community but kept the selection of the applicant in abeyance. They noted that as per the revised roster, point nos.7,8 and 9 are to be filled up by SC, UR and UR candidates. As SC community candidate was adjusted against point No.1 of the old roter, the vacancies against roster point nos.7,8 and 9 had to be filled up by UR candidates only. But in the meantime the SC candidate at point no.1 as per the old roster has been promoted and SC community is not represented. The DPC further observed that in case point no.7 goes to UR community, SC community will not be represented in view of the post based roster. Hence the DPC decided not to fill up one post and sought further

clarification from the Directorate. The minutes of this DPC have been enclosed by the applicant as Annexure-7 to his MA No.273 of 1999. The applicant has stated that during the pendency of the OA and before receipt of clarification from the Directorate, as sought for vide Annexure-7, the applicant has been reverted from the post of Binder Grade-I to Binder Grade-II, now redesignated as Bindery Assistant, in the impugned order dated 24.3.1999. In the context of the above, the petitioner has come up with the prayers referred to earlier.

3. The departmental respondents have filed counter opposing the prayers of the applicant. Counter has also been filed by Shri P.K.Prahari, intervenor-respondent no.7. Private respondent nos.5 and 6 B.B.Rout and R.K.Bhera were issued with notice but they have not filed any counter. The departmental respondents have filed additional counter and the applicant has filed rejoinder.

4. The departmental respondents in their counter have mentioned that with effect from 31.10.1989 the posts of Binder Grade-II and Bindery Assistant were merged into one cadre of Bindery Assistant with the pay scale of Rs.950-1500/-.. Therefore, the cadres of Section Holder (Binding) and Binder Grade-I are now promotional cadres for Binder Grade-I and Bindery Assistant respectively. The departmental respondents have stated that the select list for the cadre of Binders Grade-II was prepared in 1986 and this was in order and no illegality was committed. It is stated that the select list was prepared in order of merit and accordingly the names of the selected candidates were placed in the gradation list as per the select list which was the merit list. The gradation list of Binders Grade-II

(Bindery Assistants) was published on 1.7.1990 and was brought to the notice of the applicant who signed on it on 30.7.1990. He had not made any representation about the gradation list at any time and therefore, cannot be allowed to challenge the same before the Tribunal after a lapse of seven years. It is further stated that the action taken by the departmental authorities for promotion to Binder Grade-I has been based strictly on rules and procedure, and no illegality has been committed. It is stated that the because of ~~dealy~~ in regular appointment to the post of Binder Grade-I through DPC, in order to manage the work and run the Press smoothly, respondent no.4 had given ad hoc promotion to the applicant and two others on the basis of 40 point vacancy based roster. The DPC could not meet immediately due to administrative reasons. The departmental respondents have stated about the change of roster system from vacancy based roster to post based roster with effect from 2.7.1997. They have also mentioned that roster point no.7 was for SC community. Though the applicant belongs to SC community, he could not get promotion as the number of vacancies was 6. However, keeping in view the case of the applicant, one post was kept vacant till receipt of further clarification from the Directorate. It is stated that the applicant was given promotion on ad hoc basis for a period of one year. The other candidates, who are senior to the applicant, were pressing hard to give promotion and their cases were required to be considered as per rules. It is further stated that the last gradation list of Binders Grade-II (Bindery Assistants) was published on 1.1.1996. The applicant did not submit any objection regarding incorrectness of the

seniority list. As regards delay in holding the DPC meeting, it is stated that due to non-availability of SC/ST member due to leave or otherwise, DPC meeting was delayed. It is stated that there was also procedural/administrative delay. When the DPC met on 4.11.1997, the applicant's case could not be considered due to his ineligibility as per the post based roster. In the additional counter the departmental respondents have mentioned that the clarification sought for from the Chief Post Master General has been received and has been enclosed at Annexure-R/1 and it has been ordered by the Chief Post Master General that roster point may be recalculated on the basis of post based roster and the post should be filled up in accordance with rules. On that basis the departmental respondents have opposed the prayers of the applicant.

5. Private respondent no.7 in his counter has stated that a seniority list maintained since 1987 cannot be challenged after a lapse of 11 years from the year of recruitment and 8 years from the date of publication of the gradation list and the settled position should not be allowed to be disturbed. He has also stated that after introduction of post based roster with effect from 2.7.1997 the applicant has no claim for consideration of his promotion to the post of Binder Grade-I as one SC candidate presently holds the post of Binder Grade-I. It is furtherstated that respondent no.7 is much senior to the applicant and is waiting to be promoted to the post of Binder Grade-I and the applicant cannot claim promotion over his head. On the above grounds, respondent no.7 has opposed the prayers of the applicant.

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6. The applicant in his rejoinder has denied that the gradation list was circulated to him. The applicant has also stated that as he has been holding the promotional post of Binder Grade-I on ad hoc basis for more than a year, he could not have been reverted without initiating disciplinary proceeding against him. In this connection, he has referred to Government of India instructions. On this and other averments which will be referred to while discussing the submissions made by the learned counsel of both sides, the applicant has reiterated his prayers in the OA.

7. This matter was taken up on 9.1.2001 when the learned lawyers were abstaining from court work for more than a month and going by the decision of the Hon'ble Supreme in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, 2000 AIRSCW 4093, it was not possible to postpone the matter. Therefore, after perusing the record, the matter was closed on that day. We, therefore, did not have the benefit of hearing the learned counsel of both sides. We had given opportunity to the learned counsel of both sides to file written note of submission if they so like by 25.1.2001, but no such written submission has been filed.

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8. From the above recital of pleadings of the parties it appears that the present controversy has two aspects. The first is seniority of the applicant in the rank of Binder Grade-II, later on redesignated as Bindery Assistant, and the second inter-related aspect is his promotion from Binder Grade-II to Binder Grade-I. As regards the first, the applicant's stand is that in the minutes of the Selection Committee, which selected the applicant along

with other candidates belonging to UR, SC and ST categories, the names of selected persons were set down categorywise and not in order of merit. In other words, first all the General Category candidates were mentioned and thereafter SC candidates and thereafter ST candidates. The respondents have denied this and have stated that the Selection Committee arranged the selected candidates in order of merit. The applicant has himself enclosed the minutes of the Selection Committee and in this it has been mentioned clearly that the candidates were selected in order of merit. This Selection Committee meeting has taken place in 1986. Thereafter the gradation list was also drawn up in the order mentioned in the minutes of the Selection Committee. The departmental respondents have pointed out that the gradation list of Binders Grade-II showing the name of the applicant according to the order mentioned in the minutes of the Selection Committee was circulated on 1.7.1990 and this was brought to the notice of the applicant who signed the same on 30.7.1990. This specific averment of the respondents that the applicant has seen the seniority list and signed the same on 30.7.1990 cannot be displaced by a bland denial of the applicant in his rejoinder. In view of this, it must be held that the gradation list has been circulated in 1990. Law is well settled that the established seniority cannot be challenged after long delay. The applicant having approached the Tribunal only in 1998, his prayer for changing the gradation list cannot be entertained. Moreover, the respondents have stated in their counter that the Selection Committee has drawn up the list in order of merit. From the minutes of the Selection Committee enclosed by the applicant himself we find that they have specifically written that the

names of the candidates have been arranged in order of merit. In view of this, the first prayer of the applicant to rectify the seniority list of Binders Grade-I is held to be without any merit and is rejected.

9. The second aspect of the matter is the applicant's promotion to the level of Binder Grade-I. Admittedly, the applicant along with one Manoj Kumar Patnaik was given ad hoc promotion for a period of one year to the post of Binder Grade-I with effect from 1.7.1995. It is also the admitted position that the applicant was reverted by terminating his ad hoc promotion in order dated 24.3.1999. That is to say that the applicant had continued as Binder Grade-I on ad hoc basis for over four and half years. The applicant has challenged this on various grounds which are discussed below.

10. The first point made by him is that although regular vacancies occurred on 5.10.1996 after ad hoc promotion of two Binders Grade-I was regularised by the DPC in their meeting held on 5.10.1996, the DPC actually met on 4.11.1997. In between occurrence of vacancies on 5.10.1996 and holding of meeting of DPC on 4.11.1997 the system of reservation was changed with effect from 2.7.1997 from vacancy based roster system to post based roster system. The departmental respondents in their counter have pointed out that the DPC meeting was delayed due to non-availability of SC/ST member either due to leave or otherwise and also because of procedural and administrative delay. As the DPC meeting actually took place after the post based roster system was brought into force, the DPC was bound to fill up the vacancy on the post-based roster system. The departmental respondents have pointed out that the

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applicant and two others were given promotion on ad hoc basis as per 40 point vacancy based roster. But according to the post based roster, point no.7 was meant for SC community candidate and as the vacancies were only six, the applicant was not due to be promoted on the basis of the revised roster system. Along with his MA No.273 of 1999 the applicant has enclosed a copy of the proceedings of the DPC meeting held on 4.11.1997 at Annexure-A/7. The applicant has also quoted the relevant portion of the minutes of this DPC in paragraph 4.11 of his OA. The DPC noted that according to the post based roster system, point nos.7, 8 and 9 need to be filled up by SC, UR and UR candidates respectively. As SC community candidate was adjusted earlier against point no.1 of the old vacancy based roster, point nos.7,8 and 9 were to be filled up by UR candidates only. But in the meantime the SC candidate ^{who} has been promoted against point no.1 of the vacancy based roster point, has been further promoted and there is no representation of SC community in the cadre of Binders Grade-I. In view of this, the DPC decided not to fill up one post and sought further clarification from the Directorate. Along with their additional counter the departmental respondents have enclosed the letter dated 15.3.1999 clarifying that the roster point should be recalculated on the basis of post based roster. After this clarification the applicant has been reverted from his ad hoc post in the impugned order dated 24.3.1999 at Annexure-8. It has been urged by the applicant that as the vacancies arose prior to coming into force of the post based roster, for filling up of the posts the previous vacancy based roster should have been followed even though selection was being made after the post based

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roster came into force with effect from 2.7.1997. This has been urged on the basis of well settled position of law that a vacancy must be filled on the basis of recruitment rules which were in force when the vacancy occurred and when recruitment process was undertaken. In the instant case, the recruitment process was undertaken after the post based roster system came into force. Moreover, the Hon'ble Supreme Court dealing with a case of representation of SC and ST candidate, reported in 1997(2) AISLJ 97, Vice-Chancellor, University of Allahabad and others v. Dr. Anand Prakash Mishra and others, have held that recruitment must be done on the basis of extant rules. In view of this, the contention of the applicant that even after coming into force of the post-based roster, the vacancies occurring prior to 2.7.1997 should have been filled up on the basis of vacancy based roster is held to be without any merit and is rejected.

11. So far as continuance of the applicant as Binder Grade-I on ad hoc basis for a period of four and half years is concerned, law is well settled that ad hoc appointment does not confer any right on an incumbent to continue in the post. In the instant case, persons senior to the applicant are there due to be promoted. The applicant was given ad hoc promotion on the basis of the then existing vacancy based roster. But at the time of regular appointment, the post based roster having come into force, the applicant has to wait for his turn according to the post based roster. In view of this, the prayer of the applicant to quash the order of his reversion is held to be without any merit and is rejected.

12. Along with his petition the applicant has enclosed certain Government of India circulars which lay

down the method of promotion to non-selectin post. The admitted position is that in such cases where promotion is to be given by way of non-selection to a higher post, seniority will be the guiding factor and it has only to be seen if the incumbent is fit for promotion or not. These circulars are not relevant for the purpose of the present controversy which centres round the interse seniority and roster point.

13. One point, however, requires to be stated in this connection. The departmental respondents have stated that according to the new post based roster, roster point no.7 is meant for SC and as the cadre of Binders Grade-I consists of six posts, the applicant could not be considered. Along with their counter the respondents have enclosed the post based roster showing that the 7th vacancy at the time of initial recruitment is for SC community incumbent. This roster, shown in the table, is not applicable to the petitioner's case at all. The claim of the petitioner is for promotion from Bindery Assistant to Binder Grade-I whereas the roster enclosed by the respondents is for direct and initial recruitment only. This is also borne out by the fact that in this roster reservation has been provided for OBC candidates whereas OBC has no reservation in promotional category of posts. In view of this, it is clear that the stand taken by the departmental respondents in holding that in the post based roster, point no.7 goes to SC community candidate cannot be accepted. Unfortunately, neither side in this case has enclosed the circular providing for post based roster and the roster table. In view of this, it is not possible for us to take a view as to what point in the promotional post would, if at all, be

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meant for SC community candidate. We note that the Chief Post Master General in his order dated 15.3.1999 has directed recalculation of roster point as per post based roster. We direct that the departmental authorities, more particularly respondent no.4 should recalculate the reservation, if any, to be provided to SC community in the promotional post according to the post based roster system within a period of sixty days from the date of receipt of copy of this order and work out the entitlement, if any, of the applicant for being promoted to Binder Grade-I on the basis of his SC status.

14. With the above observation and direction, the OA is disposed of. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
31.1.2001
VICE-CHAIRMAN

January 31, 2001/AN/PS