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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 707 OF 1998
Cuttack, this the 17th day of November, 2000

.....

Purna Chandra Naik ... Applicant

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.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17.11.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.707 OF 1998
Cuttack, this the 17th day of November, 2000

CORAM:

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

.....
Purna Chandra Naik, aged about years, son of late Guru Charan Naik, working as HSG-II, Sorting Assistant in the office of the S.R.O., R.M.S., Bhubaneswar, District-Khurda.....
Applicant

Advocates for applicant - M/s G.Rath
S.N.Mishra

Vrs.

1. Union of India, represented by Director General of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Director of Postal Services (Headquarters), Office of the Chief Post Master General, Orissa Circle, Bhubaneswar.
4. Senior Superintendent, R.M.S."N"Division, Cuttack, Dist.Cuttack....
Respondents

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quashing the order dated 22.8.1997 at Annexure-4 promoting Sudarshan Acharya and Rushi Chandra Sethi to HSG-I. The second prayer is for promoting the applicant to the cadre of HSG-I from the date Sudarsan Acharya was promoted with all consequential benefits. Before proceeding further it is to be recorded that during hearing, Shri G.Rath, the learned counsel appearing for the petitioner submitted that he does not press his prayer for quashing Annexure-4. He also submitted that his prayer is for promotion from the date Rushi Chandra Sethi was so

promoted and not for quashing the promotion of Rushi Chandra Sethi.

2. It is admitted by both sides that on 30.6.1997 two vacancies arose at the level of HSG-I. It is also the admitted position that one vacancy was meant for General Category and the other for SC category. In the General Category vacancy Sudarsan Acharya was promoted in order dated 22.8.1997 (Annexure-4) and as Sudarsan Acharya is senior to the applicant who belongs to ST category, the petitioner has no grievance against promotion of Sudarsan Acharya against General Category vacancy. Admittedly, Rushi Chandra Sethi is junior to the applicant. The applicant has stated that in place of Rushi Chandra Sethi he should have been promoted on grounds indicated in the petition and urged by the learned counsel for the petitioner in course of hearing.

3. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. After hearing in this case was over, the petitioner has filed an affidavit stating that the petition was filed on 30.12.1998 and as by that date Rushi Chandra Sethi had retired from service, he was not made a respondent in the OA.

4. The applicant has mentioned in paragraph 4.4 of the OA the seniority position of Sudarsan Acharya, the petitioner and Rushi Chandra Sethi along with names of other persons who are in between. The relevant positions of these persons are not disputed by the respondents. It is also the admitted position that between Sudarsan Acharya and Rushi Chandra Sethi, there are eight persons including the applicant. Of these one Loknath Mallik belonging to SC category had retired prior to the meeting

of the DPC and therefore, followin is the admitted disposition of the concerned persons:

Official in service	Corresponding serial in gradation list	Name of official	Community
1	30	Sudarsan Acharya	OC
2	33	Purna Chandra Nayak	ST
3	34	Rangadhar Rath	OC
4	37	J.C.Tripathy	OC
5	44	K.K.Mishra	OC
6	45	Balaram Sahoo	OC
7	46	Madhusudan Satpathy	OC
8	47	N.C.Mishra	OC
9	50	Rushi Chandra Sethi	SC

Thus, admittedly Rushi Chandra Sethi occupies the 9th position. The controversyin this case is that according to the petitioner, for two vacancies persons coming within the zone of consideration should have been eight and therefore, Rushi Chandra Sethi should not have been brought into the zone of consideration and should not have been given promotion. The applicant's case is that zone of consideration should have been eight and if Rushi Chandra Sethi would not have been considered, then there being no SC candidate, the vacancy meant for SC category should have been carried forward and in the resultant vacancy the applicant, who is at serial no.2 in the seniority list, should have been considered for promotion even though he is an ST candidate.

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5. The respondents have pointed out in the counter and this has also been submitted by Shri S.B.Jena the learned Additional Standing Counsel appearing for the respondents during hearing that according to the relevant instructions, for SC and ST candidates for two vacancies, the zone of consideration was ten and therefore, Rushi Chandra Sethi occupying the ninth position, according to the seniority list and belonging to SC category, was rightly considered and given promotion. Thus, the sole point for consideration in this case is whether in the context of the above facts, the zone of consideration for two ~~SC~~ vacancies should have been eight or ten. The respondents have relied on Department of Personnel & Training's O.M. dated 22.4.1992 (Annexure-10) in which in paragraph 2 it is mentioned that the intention is to have an extended zone of five times the number of vacancies in all cases where adequate number of SC/ST candidates are not available. This Office Memorandum itself gives in a tabular form that for two vacancies, the normal zone of consideration is eight whereas zone of consideration for SC/ST vacancies is ten. The learned counsel for the petitioner has submitted that this circular is inapplicable to the instant case of promotion because in the subject of circular, as mentioned on the top, is "Clarification of Zone of Consideration by selection for Scheduled Castes and Schedules Tribes". It is submitted by the learned counsel for the petitioner, Shri G.Rath that nature of promotion to HSG cadre is non-selection and this clarification applies only to cases where promotion is by way of selection and therefore, this circular is not

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applicable to the instant case. We are unable to accept this logic because from the subject heading it cannot be held that this extended zone of consideration for SC and ST candidates applies only where the promotional post is to be filled up by way of selection and not when the promotion is non-selection, i.e., seniority subject to fitness. This stand is logically unacceptable because the extended zone of consideration has been provided where there is insufficiency of availability of number of SC and ST candidates for promotion and it will be illogical to hold that this extended zone of consideration will not apply where promotion is to be made on the basis of seniority subject to elimination of unfit or in other words where seniority is more important consideration. The circular also does not make any distinction between promotional post to be filled in by way of selection or non-selection so far as the extended zone of consideration is concerned. Moreover, in earlier circulars of 24.12.1980 and 2.5.1983, the gist of which has been printed in Swamy's Compilation and has been enclosed by the petitioner at Annexure-8 it is no doubt provided that for selection post normal zone of consideration would be eight for two vacancies and it is further mentioned in paragraph 3(c) that where adequate number of SC/ST candidates are not available within the normal field of choice of eight for two vacancies, field of choice may be extended to five times the number of vacancies, i.e., to ten. These circulars have been further clarified in Department of Personnel & Training's O.M. dated 12.10.1990 at Annexure-9 which also deals with promotion by way of

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selection. So far as non-selection posts are concerned, the applicant has enclosed at Annexure-12 the gist of relevant instructions as printed in Swamy's Compilation (page 55) in which it is provided that where promotion is on the basis of seniority subject to fitness number of zone of consideration is not applicable and if according to the points in the roster the posts are reserved for SC and ST, then separate lists should be drawn up of the eligible SC and ST officers and may be arranged in order of their interse seniority. In other words, for promotion to the post to be filled up on the basis of seniority subject to fitness an SC vacancy has to be filled up by an SC candidate irrespective of the consideration as to whether he comes within the zone of consideration or not. Therefore, the contention of the learned counsel for the petitioner that Rushi Chandra Sethi did not come within the zone of consideration, being in ninth position, is held to be without any merit.

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6. Moreover, even for the sake of argument if it is accepted that Rushi Chandra Sethi was not within the zone of consideration, then also the petitioner could have been promoted because in paragraph (4) of the relevant instructions printed at page 55 of the Swamy's Compilation it has been mentioned that if the number of eligible candidates belonging to SCs and STs found fit for promotion falls short of the number of vacancies reserved for them during the year, action for dereservation should be taken, subject to carry forward of reservation to three

subsequent recruitment years and exchange of vacancies between SC and ST in the final year of carry forward. In view of this, even if SC vacancy would have been dereserved, then a General Category candidate would have been entitled to be promoted. But as this is a hypothetical situation, in view of our findings above, we hold that Rushi Chandra Sethi had been rightly considered for the SC vacancy because the post being one to be filled up on the basis of seniority subject to fitness, the concept of zone of consideration does not apply so far as SC and ST candidates are concerned.

7. In consideration of all the above, we hold that the O.A. is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
17/11/2000
VICE-CHAIRMAN

November 17, 2000/AN/PS