

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 333 OF 1999
Cuttack, this the 18th May, 2001

Subash Chandra Behera

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 Soni
(SOMNATH SONI)
VICE-CHAIRMAN
18.5.2001

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 333 Of 1999
Cuttack, this the 18th day of May, 2001.

CORAM:

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

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Sri Subash Chandra Behera, aged about 35 years,
son of Kandha Behera, resident of A/197, Sector-16,
Rourkela
at present working as U.D.C.,
E.P.F.Organisation, Sub-Regional Office (SRO), Rourkela
..... Applicant

Advocates for applicant - M/s K.C.Kanungo
S.Behera
R.N.Singh

Vrs.

1. Union of India, represented by its Secretary, Ministry of Labour, Shrama Mantralaya, New Delhi-1.
2. Central Provident Fund Commissioner, 9th Floor, Mayur Bhawan, Connaught Circus, New Delhi.
3. Regional Provident Fund Commissioner, Gr.I., Bhavisyanidhi Bhawan, Unit-IX, Janpath, Bhubaneswar, District-Khurda.
4. Regional Provident Fund Commissioner, Grade-II, Sub-Regional Office, E.P.F.Organisation, 2nd Floor, New Bus Terminus, Rourkela-1, District-Sundargarh.
5. Baidhar Sethi, working as U.D.C., Sub-Regional Office, E.P.F.Organisation, New Bus Terminus, Rourkela-1, District-Sundargarh.
6. Bajun Soren, working as U.D.C., Sub-Regional Office, E.P.F.Organisation, 2nd Floor, New Bus Terminus, Rourkela-1, Dist.Sundargarh.
7. Rabindranath Das, working as UDC, Sub-Regional Office, E.P.F.Organisation, 2nd Floor, New Bus Terminus, Rourkela-1, Dist.Sundargarh.
8. Binod Kumar Toppo, Working as U.D.C., Sub-Regional Office, E.P.F.Organisation, 2nd Floor, New Bus Terminus, Rourkela-1, District-Sundargarh.... Respondents

Advocate for respondents - Mr.S.S.Mohanty

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for a direction to the Regional Provident Fund Commissioner, Bhubaneswar (respondent no.3) and Regional Provident Fund Commissioner, Sub-Regional Office (respondent no.4) to promote the applicant to the post of UDC with retrospective effect from 2.10.1988 with all consequential benefits.

2. Before proceeding further, it is necessary to note that during hearing it was submitted by Shri K.C.Kanungo, the learned counsel for the petitioner that reference to "2.10.1988", i.e., the date from which retrospective promotion is claimed is a mistake and should be read as 4.10.1991. This was strongly objected to by Shri S.S.Mohanty, the learned special counsel for the departmental respondents. On going through the petition we find that in paragraph 7 of the O.A. the petitioner has made specific averment that he should have been promoted from 2.10.1988 to the post of UDC. A similar reference has also been made in paragraph 8. In view of this, we are not prepared to accept the submission of the learned counsel for the petitioner that the figures "2.10.1988" in paragraph 8 of the petition are typographical error for "4.10.1991".

3. Departmental respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. Private respondent nos. 5 to 8, who are working as UDC in Sub-Regional Office at Rourkela under respondent no.4 were issued with notice but they did not appear or file counter.

4. We have heard Shri K.C.Kanungo, the learned counsel for the petitioner and Shri S.S.Mohanty, the learned special counsel for the respondents and have also perused the records. The learned counsel of both sides have also filed written notes of submissions and these have been perused. On our direction the learned counsel for the respondents has also filed a statement indicating the nature of physical handicap of UDCs and we have taken note of the same.

5. For the purpose of considering the petition it is not necessary to go into too many facts of this case. Admittedly the applicant is a physically handicapped person. It is to be noted that he is an orthopaedically handicapped person and was appointed as LDC as per the panel approved on 29.8.1986. Admittedly, he joined on 3.10.1986 as LDC and his probation was satisfactorily completed on 2.10.1988 in the order at Annexure-2. The applicant claims that he should have been given appointment as UDC over the head of his seniors according to the quota for physically handicapped persons. He has filed representations but without any favourable order on regular basis till he was appointed as UDC with effect from 8.4.1999. The applicant has quoted different circulars issued by Government of India from time to time providing reservation for physically handicapped person and on the basis of the above circulars the applicant has prayed for promotion to the post of UDC with effect from 2.10.1988. It is not necessary to refer to the averments made by the departmental respondents in their counter and the applicant in the rejoinder because these will be taken note of at the time of considering the submissions made by the learned counsel of both sides.

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6. It is necessary to note that 3% of the posts in a cadre is reserved for physically handicapped persons, of which ~~1%~~^{each} is reserved for orthopaedically handicapped, visually challenged and hearing impaired persons. Instructions also provide that in case of non-availability of a person having physical disability in one of the categories, the quota can be utilised by giving appointment to physically handicapped person of another category. The respondents have pointed out in their counter and this has not been denied in the rejoinder filed by the applicant that the total number of Group-C posts in the scale equivalent to UDC under the departmental respondents from 1.1.1986 to 31.3.1999 comes to 148 and 3% of the reservation would work out to four posts. The departmental respondents have stated that already four physically handicapped persons are working as UDC and therefore is no scope for giving further promotion to the applicant under physically handicapped quota.

7. Before considering the submissions made by the learned counsel of both sides, it is necessary to note that the learned counsel for both sides have relied on the following decisions:

- (1) Bhey Ram Sharma and others v. Haryana State Electricity Board, AIR 1993 SC 2573; and
- S. Jom. (2) S. Ramanathan v. Union of India and others, 2001 SCC (L&S) 340

and we have perused the same.

8. The first point to be noted in this connection is that even though reservation for physically handicapped persons has been provided by the Government,

originally this was only for initial recruitment. Only in order dated 20.11.1989, copy of which has been printed at pages 596-597 of Swamy's Compilation on Reservations and Concessions (Sixth Edition), provision was made for reservation of physically handicapped persons in Group-C and Group-D posts filled in by promotion. As reservation in promotion has come into force only in 1989, the applicant obviously has no case to claim promotion by way of reservation for physically handicapped from 1988. Moreover, Central Provident Fund Commissioner in his circular dated 4.4.1991 relied upon by the applicant himself in paragraph 7 of the O.A. and enclosed by the respondents along with their counter has provided that a physically handicapped person promoted by virtue of his own seniority may be considered as having been promoted against reservation for physically handicapped. The learned counsel for the petitioner has argued and has also mentioned in his rejoinder that of the four persons already promoted as UDC, who are physically handicapped, two had got their promotion on 6.5.1983, i.e., prior to reservation for physically handicapped persons was introduced in 1986. As regards the other two persons, it has been stated that they have been promoted under the examination quota and not against seniority quota. The applicant's claim is that reservation in promotion should be worked out for seniority quota as well. As we have already noted reservation in promotional post for physically handicapped persons was introduced only in 1989. But while working out such reservation on the basis of total number of posts, which is 148 in this case, obviously the persons who are holding the promotional post and are physically handicapped have to be taken into account. In the case of SC and ST persons, instructions specifically provide

that if a Scheduled Caste or Scheduled Tribe person competes in merit and occupies a high position in the select list, his appointment cannot be taken as against the reserved quota. But there is no such rule in respect of physically handicapped persons. On the other hand, paragraph 2.2 of the circular dated 4.4.1991 specifically provides that a physically handicapped person promoted by virtue of his own seniority can be considered as having been promoted against a reservation quota. In view of this, there being already four persons under physically handicapped quota, the applicant cannot claim that he should go above his seniors and be made UDC from 2.10.1988 when the reservation in promotion was not even there. The applicant in his rejoinder has mentioned that the date "2.10.1988" is a typographical error for "3.10.1988". This also goes to show that the submission of the learned counsel for the petitioner during hearing that the applicant should be allowed promotion to UDC with effect from 4.10.1991 is without any valid ground. As regards the contention of the learned counsel for the petitioner that reservation should be provided in respect of the vacancies of UDC to be filled up according to seniority, there are no rules or instructions to that effect and therefore, this contention is held to be without any merit.

9. The second prayer of the applicant is for declaring him senior to respondent nos. 5 to 8. The applicant has mentioned in his OA that on 30.4.1991 he was given ad hoc promotion to the post of UDC on the basis of his seniority, but the benefit of the circular dated 4.4.1991 was not extended to him. He has further stated

that respondent nos. 5 to 8 have been selected in the approved panel dated 19.8.1985 whereas the applicant has been selected and appointed as per approved panel of 29.8.1986. But according to Government of India instructions dated 6.6.1978, if an offer of appointment lapses and again is revived in public interest and if in the meantime another selection has taken place and some of the selected persons have joined, the persons from the earlier list will be junior to all those who are in the subsequent list. But this principle has not been followed and the departmental respondents have shown private respondent nos. 5 to 8 as senior to the applicant. The departmental respondents have opposed the above prayer of the applicant on the ground that the applicant was given ad hoc promotion to the post of UDC against an examination quota vacancy and such ad hoc appointment cannot be taken into consideration for the purpose of seniority. It is furtherstated that respondent nos. 5 to 8 are senior to the applicant and they were approved for promotion on 19.8.1985 whereas the applicant was in the approved panel of the next year on 29.8.1986. They have furtherstated that the seniority list was published on 21.2.1989 and one month time was allowed to file objection to the draft seniority list. The petitioner did not make any objection and final seniority list was published on 12.7.1989 and the applicant cannot be permitted to question the position in the seniority list after lapse of ten years.

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10. We have considered the above averments of both sides carefully. The circular dated 6.6.1978

relied upon by the applicant, the gist of which has been printed at pages 443 and 444 of Swamy's Compilation on Establishment and Administration, Fifth Edition, does not go to support the case of the applicant. In this circular, in the opening paragraph it has been specifically mentioned that relative seniority of direct recruits appointed on the recommendation of Union Public Service Commission or any other authority is determined by the order of merit in which they are selected for such appointment and persons appointed as a result of an earlier selection are placed above those appointed as a result of subsequent selection. In the instant case the applicant himself has stated that private respondent nos. 5. to 8 were there in an earlier approved panel. He has merely made a bland statement that they have joined after him. He has not made any averment as to when respondent nos. 5 to 8 have joined the post of LDC. In this connection, the learned counsel for the petitioner has referred to Bhey Ram Sharma's case(supra) wherein the Hon'ble Supreme Court have held that in respect of determination of seniority of persons appointed by the same process but at different times, the date of appointment is relevant factor for determining inter se seniority. The law as laid down by the Hon'ble Supreme Court in this case is applicable in respect of those cases where there is no other criterion for fixing seniority. The general rule is that for direct recruits, seniority is determined on the basis of order of merit and not on the basis of date of joining of different candidates as a person holding higher position in the merit list does not become junior to the person of the same batch who occupies

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18

lower position in the merit list but might have joined the post earlier. The other decision in S.Ramanathan's case (supra) relied upon by the learned counsel for the petitioner relates to cadre review of IPS and this decision has no application to the case of the applicant.

11. The applicant has merely stated that the seniority list has been challenged before the Tribunal in other cases, but that does not take away from the averment of the departmental respondents that the seniority list of LDCs showing respondent nos. 5 to 8 as senior to the applicant was circulated inviting objections and representations and the petitioner did not file any representation, and the seniority list was finalised in 1989. In view of this, the petitioner cannot be permitted to challenge the seniority list after passage of more than a decade. This prayer is, therefore, held to be without any merit and is rejected.

12. In the result, the Original Application is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)

18.5.2001
VICE-CHAIRMAN

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