

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO.109 OF 1999.
Cuttack, this the 24th day of November, 2000.

Chandra Sekhar Mohapatra. ... Applicant.
Vrs.
Union of India & 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
24/11/2000

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 109 OF 1999.
Cuttack, this the 24th day of November, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

Chandra Sekhar Mohapatra,
Post Master, Khurda,
Ps:/Dist; Khurda. Pin-55.

... Applicant.

By legal practitioner: Mr. D. P. Dhalsamant, Advocate.

- Versus-

1. Union of India represented through
Chief Postmaster General,
Orissa Circle, Bhubaneswar,
PIN-751 001.
2. Director of postal Services,
Office of the Chief Postmaster General,
Orissa Circle, Bhubaneswar-1.
3. Senior Superintendent of Post Offices,
Puri Division, Puri-1.
4. Sri Bhikari Charan Moharana,
Postmaster Nayagarh,
At/Po/Ps; Nayagarh,
Dist; Nayagarh.
5. Sri Golak Bihari Baral,
Postmaster Keonjhar,
At/Po/Ps; Keonjhar,
Dist; Keonjhar.

... Respondents.

By legal practitioner: Mr. S. B. Jena, Additional Standing Counsel.

...

13

O R D E R

SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for a direction to the Respondents to carry out necessary correction in the gradation list presumably in the light of the averments made by him in the Original Application.

2. Case of the applicant is that he joined the clerical cadre in the Postal Department on 1.8.1962 and the Respondents 4 and 5 joined the Clerical cadre on 15.8.1962. Applicant has stated that the only criteria for fixation of seniority is the date of entry in the grade. He has stated that inadvertently the Departmental Authorities have shown private Respondents 4 and 5 senior to the applicant at Sl.Nos. 261 and 262 whereas the applicant's name has been shown against Sl.No. 264. Applicant has further stated that he has been given to work in HSG grade even though Respondents 4 and 5 are senior to him. Applicant has been making repeated representation for correcting the gradation list. His last representation is at Annexure-4. In the context of the above, he has come up in this Original Application with the prayer referred to earlier.

S. Jena. 3. Respondents have filed counter opposing the prayer of the applicant. It is not necessary to refer to all the averments made by the Departmental Respondents in their counter as these will be referred to while considering the submissions made by learned counsel for both sides.

4. We have heard Mr. D. P. Dhalsamant, learned counsel for the Applicant and Mr. S. B. Jena, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents and have also perused the records. At our instance learned

Additional Standing Counsel has filed a Memo giving some further factual materials with regard to the applicant and also the relevant circular. These have been perused. Private Respondents 4 and 5 were issued with notice. Private Respondent No. 4 has not appeared and filed counter. Private Respondent No. 5 has filed a Memo which is on record.

4. The Memo filed by private Respondent No. 5 has not been served on the learned counsel for the applicant and therefore, this can not be taken into account. Moreover, in order to be included in the pleadings, the Private Respondent No. 5 should have filed the Memo alongwith verification but that not having been done this Memo has not been taken into account.

5. Departmental Respondents in their counter have admitted that the applicant was appointed on 1.3.1962 and private Respondents 4 and 5 were appointed on 15.8.1962. It further appears from the counter that all the three officials were confirmed in the clerical cadre from 1.3.1965. Respondents' case is that applicant and Private Respondents 4 and 5 appeared at LSG cadre examination under 1/3rd quota and in this examination in the merit list Respondents 4 and 5 came above the applicant. Accordingly, promotion was given as per merit list and applicant became junior to the private Respondents 4 and 5.

6. In course of the submission, learned counsel for the applicant has stated that at the time the three of them took the examination under the 1/3rd quota in LSG cadre it was a qualifying examination and therefore, after qualifying in the examination they should have been promoted on the basis of their official seniority in the lower cadre. From the above submissions

it is clear that the applicant wants correction of gradation list in LSG cadre in which he has been shown junior to the Private Respondents 4 and 5. Respondents have pointed out that this gradation list has been prepared in 1989 and has been circulated and seen by the applicant. In token of his seeing the gradation list he has signed on 17.8.1989 in the gradation list. Therefore, it is clear that the applicant has challenged the gradation list after passage of ten years by filing this O.A. There is no explanation for the delay. The representation filed by him at Annexure-4 is in September, 1997 after passage of eight years of circulation of the gradation list. Law is well settled that a settled position in the gradation list can not be allowed to be challenged after long and unreasonable delay which is not explained. Along with the O.A., the applicant has also not filed any application for condonation of delay. On this ground it is held that this O.A. is not maintainable.

7. As regards the contention of the learned counsel for the applicant that when he and private Respondents 4 and 5 took the examination it was qualifying examination, it has been submitted by learned counsel for the applicant that this examination was a competitive one prior to 1977 and again after 1981. Applicant has not indicated in his application in which year he and private Respondents took this examination. In the Memo filed by the Private Respondent it has been mentioned that the applicant passed the qualifying examination in 1977-78. In the circular dated 21.10.1981 it has been clarified that in respect of 1/3rd quota of vacancies arising from 1.1.1981 the post will be filled up by competitive examination and

qualified but unabsorbed candidates of earlier examinations held in 1975, 1976, 1978 and February, 1981 will have to appear once again, for being appointed against 1/3rd quota. Applicant has made no averment as to when he took the examination on the basis of which he was promoted to LSG cadre. Respondents in their counter have mentioned that the applicant and Private Respondents 4 and 5 cleared the examination in the same year but they have not mentioned the particular year when they cleared the examination. In view of our findings that because of the delay, the prayer of applicant to correct the gradation list is not maintainable. It is not necessary for us to pursue this point any further.

8. In the result, therefore, we hold that the application is without any merit and the same is rejected but in the circumstances without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN 2100

KNM/CM.