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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO.109 OF 2000
Cuttack, this the 24 day of August, 2004

Purna Chandra Behera Applicant

Vrs

Union of India and others Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not? 12
2) Whether it be circulated to all the Benches of the Central ✓
Administrative Tribunal or not ?

M.R.Mohanty
(M.R.MOHANTY)
MEMBER(JUDICIAL.)

B.N.Som
(B.N.SOM)
VICE-CHAIRMAN

VS

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO.109 OF 2004

Cuttack, this the 204 day of August, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

Purna Chandra Behera, son of late Hadibandhu Behera, presently working as P.A., S.B.C.O., Khurda Head Post Office, At/Post/Dist.Khurda

..... Applicant

Vrs

- 1) Union of India, represented through its Secretary, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
- 2) Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist.Khurda.
- 3) Director of Postal Services, Bhubaneswar Region, Bhubaneswar, Dist.Khurda.
- 4) Senior Superintendent of Post Offices, Puri Division, Puri

..... Respondents.

Advocates for the applicant

- Mr.D.P.Dhalsamant

Advocates for Respondents

- Mr.J.K.Nayak, ACGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Purna Chandra Behera, presently working as Postal Assistant, Savings Bank Control Organisation (hereinafter referred to as 'SBCO'), Khurda Head Post Office, has filed this Original Application seeking the following reliefs:

"a) This order dated 8.6.1999 under Annexure-3 and order dated 27.12.1999 under Annexure-5 be quashed;

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- b) Direction/directions be issued to Respondents to fix the name of the applicant in the seniority/gradation list below Sl.No.13, i.e., S.P.Pradhan who is a direct recruit of UDC of 1983;
- c) Direction be issued to Respondents to fix the seniority of applicant below the direct recruit UDCs of 1983;"

2. The admitted facts of the case are that the applicant, who is a member of Scheduled Caste community, was directly recruited to the UDC cadre of SBCO in the year 1983. According to the service conditions of direct recruit UDC he was required to pass confirmation examination in three chances which he could not do till 1986. The applicant had applied for appearing in the confirmation examination held in 1989 but was not permitted to appear. Being aggrieved, he had carried the matter in OA No. 249 of 1989 before this Tribunal and the latter by its judgment dated 29.11.1990 directed the Respondents to allow him to appear in the examination and that should he be successful in the examination he should be given the benefit of the examination. In the meantime, the applicant had been reverted to the grade of LDC by order dated 29.6.1991. The applicant had filed another OA No.150 of 1992 praying for declaring him successful in the confirmation examination giving him weightage being a Scheduled Caste candidate and to restore his position in the grade of UDC. Resultantly, his case was reviewed by the Respondents on 5.12.1996 and he was declared successful in the confirmation examination and the order of his reversion to the grade of LDC was cancelled on 27.3.1997. It was also declared that he would be deemed to have passed the confirmation examination held on 5.6.1989. Thereafter by passing an order dated 27.3.1997 (Annexure 2) the earlier order dated

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26.6.1991 regarding his reversion to LDC grade was revoked and he was deemed to have been continuing in UDC cadre from the date of his reversion to LDC cadre. It was also stated that his seniority in the UDC cadre would remain unchanged. By passing another order dated 8.6.1999 (Annexure 3) his seniority was fixed below one Shri U.K.Nanda whose name was appearing at Sl.No.36 of the gradation list circulated on 31.12.1993. It is this order which is the cause of his grievance. He has claimed that his seniority should be placed below Shri S.P.Pradhan whose name appears at Sl.No.13 and who belongs to 1983 batch of direct recruit UDC.

3. The Respondents have contested the prayer of the applicant, being outside the scope of the scheme of confirmation of direct recruit UDC. They have stated that the demand for maintaining original seniority could have been acceptable if the applicant had qualified in the confirmation examination within the stipulated chances and within the prescribed period. In terms of the rules framed by the Department for confirmation of direct recruit, vide Rule 254 of P&T Manual, Vol.IV (Annexure R/4), it is laid down that if an official does not qualify in the prescribed period within stipulated chances or is not exempted from passing the said examination, his seniority will be re-fixed from the date of passing the examination or the date of exemption, as the case may be, as per the provisions contained in Note 2 of Rule 254 of P&T Manual, Vol.IV.

4. We have heard the learned counsel for the rival parties and have perused the records placed before us.

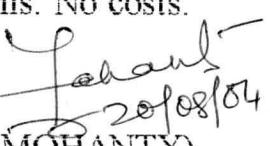
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5. The short point involved in this application is, whether the applicant is entitled to count his seniority on confirmation from the year of his entry into service, i.e., 1983, although he could not clear the confirmation examination within three chances and he was later on exempted from passing the said examination during the year 1996. We have gone into the rule position as contained in Rule 254 of P&T Manual, Vol.IV. The said rule while stipulating that it is mandatory to pass confirmation examination within three chances to maintain the original seniority, it is said that the seniority of an official, who passes examination in the 5th or 6th chance, will count from the date of passing the examination. The learned Additional Standing Counsel for the Respondents, drawing our notice to this provision of the rule, stated that it is not in dispute that the applicant did not pass the examination within three chances and hence his seniority had to be disturbed subsequently when he was declared successful by the Director General, Posts, in 1996 along with the successful candidates of 1989 confirmation examination. The learned counsel appearing for the applicant, on the other hand, submitted that Note 2 below Rule 254 does not apply in this case as the applicant had not appeared in any examination after 1987.

6. We have considered the rival contentions very carefully. We are, however, not impressed by the argument made by the learned counsel for the applicant. It is a fact that the applicant had applied for appearing in the examination held in 1989, but he was not allowed by the Respondents. Being aggrieved, he had brought the matter in OA No. 249 of 1989. The Tribunal

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had directed the Respondents to allow the applicant to take the examination, but he was not successful. He had thereafter again come before the Tribunal in OA No.150 of 1992. He was declared successful by the Respondents after exempting him from appearing in the confirmation examination in the year 1996. As the seniority rule, as laid down in Note 2 of Rule 254 of P&T Manual, Vol.IV, provides that the seniority of an official who passes examination after fourth chance is to be counted from the date of passing of the examination, the prayer of the applicant to count his seniority from the year 1983, when he was recruited, is not covered under the rules. In our judgment in OA No.249 of 1989 we had also observed that if he would be successful in the examination held in 1989, he should be allowed the benefit of examination, i.e., seniority from that year. As the seniority of the applicant was fixed in 1989 in terms of the order issued by Respondent No.2 dated 8.6.1999 (Annexure 3), which follows the rule position as also ratio of our order dated 29th November 1990, we hold that the decision taken by the Respondents by their order dated 8.6.1999 (Annexure 3) in terms of the rule of seniority framed by the Respondent-Department in this regard is unexceptionable and does not require judicial interference. Accordingly, this O.A. fails. No costs.


 20/08/04
 (M.R.MOHANTY)
 MEMBER(JUDICIAL)


 (B.N.SOM)
 VICE-CHAIRMAN