

6

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 166 OF 2000  
CUTTACK THIS THE 22<sup>nd</sup> DAY OF June 2001

Prabodha Kumar Swain

.....

Applicant(s)

- V e r s u s -

The Regional Provident Fund Commissioner  
Orissa, 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

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
22.6.01

*G. Narasimham*  
(G.NARASIMHAM)  
MEMBER(J)  
22-6-01

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 166 OF 2000  
CUTTACK THIS THE 22<sup>nd</sup> DAY OF June 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM  
THE HON'BLE SHRI G.NARASIMHAM

VICE-CHAIRMAN  
MEMBER(J)

....

1. Sri Prabodha Kumar Swain, aged about 38 years,  
S/O Sri Ananda Chandra Swain,  
Permanent Resident of Village: Charitaraf,  
P.O: Samantray pur, P.S: Tihiri,  
Dist: Cuttack,  
At Present residing at Or.No.D/18,  
Sector-4, Rourkela, P.S: Sector-3,  
Dist: Sundargarh,  
Now working as UDC(Spl), Legal Cell,  
Employees Provident Fund Organisation,  
Sub-Regional Office, 2nd Floor,  
New Bus Terminus, Gandhi Road,  
Rourkela-1.

..... Applicant.

By the Advocates

Mr.R.N.Patnaik

- V e r s u s -

1. The Regional Provident Fund Commissioner,  
Orissa, Bhavishyanidhi Bhawan,  
Janapath, Unit No.9, Bhubaneswar.  
Dist: Khurda, Pin-751002.
2. Asst. Provident Fund Commissioner, (Pers)  
Office of the Regional Provident Fund  
Commissioner, Bhavishyanidhi Bhawan,  
Janpath, Unit No.9, Bhubaneswar,  
Dist: Khurda, Pin-751022.
3. The Regional Provident Fund Commissioner,  
Sub-Regional Office, Employee's Provident  
Fund Organisation, IInd Floor,  
New Bus Terminus, Gandhi Road,  
Rourkela-1, Dist: Sundargarh.

..... Respondents

By the Advocates

Shri Ashok Mohanty  
.S.C

.....

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL) : Applicant, Prabodha Kumar Swain, who was appointed as a Lower Division Clerk, in June, 1984 in the Provident Fund Organisation, that is, under Respondent No.1 against a Physically Handicapped Quota, ~~he~~ was promoted on merit to the post of Upper Division Clerk in a Departmental Examination in June 1986. In the gradation list of U.D.C. ~~was~~ published on 17.4.1996 (Annexure-1), he figures at serial no.174. According to him one Shri Chhota Behera figuring at serial no.124 also got appointment in this Organisation against Physically Handicapped Quota. He is senior to him. There is no other <sup>under</sup> employee physically handicapped quota between them in the seniority list. When vacancy arose in the post of Section Supervisor which is a promotional post from the cadre of U.D.C, Chhota Behera was promoted to that post and this promotion according to the applicant was under physically handicapped quota. After continuing in that post for sometime Chhota Behera represented to the Authority for his reversion to the post of U.D.C and on his representation he was reverted to the post of U.D.C. According to the applicant consequent upon the such reversion of Chhota Behera the said post of Section Supervisor which is meant to be filled by a physically handicapped candidate, has to be filled by promoting him as he happens to the next seniormost physically handicapped candidate after Chhota Behera. Accordingly, the applicant represented to the Authority claiming promotion to that post on 11.12.98, 17.2.99 15.4.99 (Annexure-2 series), but Respondent No.1 turn down the

representation in letter dtd.21.4.99 (Annexure-3).

2. The grievance of the applicant is that since the pronouncement of judgement by the Supreme Court in R.K. Sabharwala's case holding the reservation of job should apply to the post and not to vacancies, G.I. Department of Personnel and Training, O.M. dtd.2.7.1997(Annexure-4) issued necessary guidelines in this connection in the maintenance of rosters. Accordingly, the applicant prays for issue of direction to the Respondents to promote him to the post of Section Supervisor with all consequential service and financial benefits.

3. In the counter though facts as such are not denied, the Respondents maintain that as per the order of Government of India Personnel and Training, O.M. dtd.1.4.86 and 20.9.94, it has been stipulated that in case of any reserved vacancy for physically handicapped is filled up by appointment of person from any of the Sub-categories reservation would be deemed to have been utilised in pursuance of the principle of interse exchange and as such promotional post having been filled up by Chhota Behera is deemed to have been utilised and filled, and as such no such post was available for considering claim of the applicant. Further there is no post-based roster in case of physically handicapped <sup>employees</sup>. Pursuant to the circular under Annexure-4 i.e. O.M. dtd.2.7.97 is not applicable in case of physically handicapped persons but in case of SC/ST/OBC and reservation of the physically handicapped person is included within the broader definition of reservation. Thus according to the Respondents the prayer of the applicant is not maintainable.

4. We have heard Shri N.Pattnaik, learned counsel for the applicant and Shri Ashok Mohanty, learned special counsel appearing for the Respondents.

5. Though applicant bases his claim on the judgement of the Constitution Bench of the Apex Court in R.K.Sabharwala's case decided on 10.2.95 ~~and~~ though the Apex Court clarified that the legal position enunciated therein applies prospectively the pleadings are conspicuously silent as to the date of promotion of Chhota Behera to the post of Section Supervisor and also the date of his reversion from that post. However we presume that at least the reversion of Chhota Behera from that post had taken place <sup>after</sup> the pronouncement of the judgement in R.K.Sabharwala case.

6. There is no dispute that in the seniority list of UDC's there is no other physically handicapped employee in between Chhota Behera and the applicant joining in the Provident Fund Organisation under physically handicapped quota as a junior clerk. The applicant was promoted to the cadre of UDC in June 1986 on being declared successful in a Departmental Examination. Chhota Behera was promoted to the U.D.C cadre on 6.5.83 (Annexure-1, the seniority list).

7. The only point <sup>for</sup> ~~of~~ consideration is whether the post-based reservation would be applicable in case of physically handicapped persons. In G.I. Department of Personnel and Training O.M. dtd.20.9.94, xerox copy of which has been filed by the Department, it has been made <sup>clear</sup> that they should not be separate vacancy roster for physically handicapped persons. We may as well quote the relevant portion of the circular as hereunder:

"The Government had under consideration the method of effecting the 3% reservation for physically handicapped persons in the light of the judgement of the Supreme Court in Indira Sawhney case (W.P.No.930 of 1990). The Court has held that reservation for SC/ST/OBCs may be called vertical reservation and the reservation for physically handicapped persons as horizontal reservation. Horizontal reservations cut across vertical reservation (in what is called inter-locking reservation) and the persons selected against the physically handicapped quota have to be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustment and similarly if he belongs to open competition (OC) category he will be placed in that category by making necessary adjustment. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens should remain the same.

In the light of the above-said observations of the Supreme Court, it has been decided that the physically handicapped persons selected under the reservation provided for them should be placed in the appropriate category, viz., SC/ST/OBC/General category depending upon the category to which they belong. For example, if in a given year there are 200 Group 'C' vacancies, the reservation for SCs will be 30, for STs it will be 15, for ObCs it will be 54 and for General category it will be 101. The vacancies reserved for physically handicapped will be calculated as per the instructions on the subject contained in OM, dated 1-4-1986. Suppose the vacancies for the physically handicapped in that year come to 6 and of the physically handicapped candidates selected, 1 belongs to the SC category, then the physically handicapped SC candidate will be adjusted against the 30 SC vacancies, the one physically handicapped ST candidate will be adjusted against the

15 ST vacancies and the 2 physically handicapped, OBC and General category candidates against the 54 OBC and 101 General category vacancies respectively. The roster points will be filled up accordingly. The vacancies reserved for the physically handicapped should be indicated along with the other vacancies so that the physically handicapped candidates can also apply along with the others.

In fact, under O.M. dtd. 2nd July 1997 (Annexure-4) there is no mention at all that for physically handicapped persons, separate post-based roster has to be maintained. The seniority list under Annexure-1 reveals that neither Chhota Behera nor applicant belongs to reserved category that is either SC/ST. Since there is no post based roster for physically handicapped persons, question of applicant getting promotion to the consequential vacancy in the post of Section Supervisor caused on account of reversion of Chhota Behera does not arise because in between Chhota Behera and applicant there are 149 employees senior to the applicant.

8. In the result, we do not see any merit in this Original Application which is dismissed but without costs.

*(Signature)*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*22.6.97*

*22-6-97*  
(G. NARASIMHAM)  
MEMBER (J)