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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 175 OF 2000
Cuttack, this the 18th day of August, 2000

Padmalochan Rai and others Applicants

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)
VICE-CHAIRMAN

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CORAM:

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

-
1. Sri Padmalochan Rai, son of late Bansidhar Rai
 2. Sri Dinabandhu Behera,
son of late Purnachandra Behera
 3. Sri Biswanath Patnaik
s/o late Basudev Patnaik
All are at 124, Kalimandir Road,
Satyanagar, Bhubaneswar-751 007,
District-Khurda Applicants

Advocates for applicants-M/s N.K.Mishra
S.K.Mishra
Sudhir K.Misra
S.S.Mishra
D.N.Mishra
S.N.Dwivedy

Vrs.

1. Union of India, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi-1, represented through the Secretary.
2. Government of India, Department of Personnel & Training, New Delhi, represented through the Secretary.
3. The Chief Labour Commissioner (Central), Shram Shakti Bhawan, Rafi Marg, New Delhi-1.....Respondents

Advocate for respondents - Mr.S.B.Jena
ACGSC

S. Som.

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this Application the three petitioners have prayed for quashing the orders at Annexure-7 series initiating examination for filling up of the vacancies in the post of Labour Enforcement Officer (Central)/LEO(C). The second prayer is for a direction to the respondents to cause necessary amendment in the Recruitment Rules of 1984 for excluding the Stenographers from the zone of

consideration for promotion to the post of LEO(C).

2. The case of the applicants is that they were promoted to the post of Upper Division Clerk (UDC) on different dates ranging from September 1985 to May 1992 and are now working under Regional Labour Commissioner (Central), Bhubaneswar. According to them, the next promotional post for UDC is LEO(C). Earlier such promotion used to be given on the recommendation of Departmental Promotion Committee (DP) from amongst the UDCs, Office Superintendents (O.S.) and Junior Labour Inspectors (JLI) to the extent of 25% of the available vacancies as provided under Labour Enforcement Office (Central) Recruitment Rules, 1958 (hereinafter referred to as "Rules of 1958") which are at Annexure-1. The balance 75% of the vacancies of LEO(C) were being filled up by direct recruitment. Subsequently the post of JLI was abolished and recruitment by promotion was confined amongst UDCs and OSs. In 1984 Labour Enforcement Officer (Central) Recruitment Rules, 1984 (hereinafter referred to as "Rules of 1984") came into force which provided that promotional quota of 25% would be filled up through Limited Departmental Competitive Examination (LDCE). It was also provided that the promotional quota of 25% would be further divided in the ratio of 20:80. 20% of the promotional quota would be filled up from the rank of OSs Grade-I and Grade-II on the basis of seniority and remaining 80% would be filled up through LDCE from amongst UDCs and Stenographers having five years of service and OSs Grade-I and Grade-II. The Rules of 1984 are at Annexure-2. In the context of the above facts, on the grounds mentioned by the applicants in

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the petition they have come up with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicants on various grounds and the applicants have filed rejoinder. It is not necessary to record the averments made by the applicants as also the respondents in the pleadings in support of their respective stands because these will be referred to at the time of considering the submissions made by the learned counsel of both sides.

4. We have heard Shri N.K.Mishra, the learned counsel for the petitioners and Shri S.B.Jena, the learned Additional Central Government Standing Counsel and have also perused the records. The learned counsel for the petitioners has filed written note of submission which has also been taken note of.

5. The first point urged by the learned counsel for the petitioners is that in Chief Labour Commissioner's organisation there are approximately 20 OSs, 153 UDCs and 84 Stenographers. Thus, the UDCs are the largest number. But in spite of that Stenographers and OSs have been given preferential treatment. So far as OSs are concerned, it is stated that they would come under the 20% of the promotional quota by seniority and also would be entitled to take the LDCE. From the above it is clear that the applicant's contention that the Stenographers have been given preferential treatment is not correct. The applicants have incorrectly mentioned in paragraph 4(v) of the petition that like the OSs, Stenographers also can be promoted on the basis of seniority as well as by competing in LDCE. This is not correct so far as Stenographers are

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concerned and therefore it cannot be said that Stenographers have been given preferential treatment. So far as OSs are concerned, they are entitled to compete both in the 20% and 80% out of the 25% promotional quota, but the applicants' grievance is not with regard to OSs. In view of this, this contention is held to be without any merit and is rejected.

6. The next contention of the applicants is that they are becoming UDC after many years of service as LDC whereas the Stenographers who have been allowed to compete along with them under the Rules of 1984 in respect of 80% of the promotional quota are comparatively young and newly appointed. As such, these younger persons are getting an unfair advantage in the competitive examination. This according to the applicants, is borne out from the fact that out of 19 candidates who were successful in LDCE of 1986 only 3 were UDCs and 14 were Stenographers. Presumably, the other two were OSs. In the 1990 Examination out of 16 successful candidates, 5 were UDCs and 11 were Stenographers. Similarly, in the 1995 Examination, out of 17 successful candidates, 5 were UDCs and 12 were Stenographers. We have considered the above submission carefully. In the LDCEs of 1986, 1990 and 1995 UDCs and Stenographers had equal chance for appearing at the examinations and because more number of Stenographers compared to UDCs have come out successful, it cannot be said that UDCs have been denied equal opportunity and inclusion of Stenographers as feeder cadre for promotion through LDCE is discriminatory and violative of Article 14 of the Constitution on this ground alone. This contention is also held to be without any merit and is rejected.

7. The main contention of the learned counsel for the petitioners is that basing on the recommendation of the Fifth Pay Commission, the Department of Personnel & Training in their circular dated 6.8.1999 (Annexure 3 series) had restructured the cadre of Stenographers by providing that Stenographers Grade III, Grade-II and Grade I should be put together and restructured in the ratio of 40:20:20 by all Departments of Government and allowed the replacement scales recommended by the Fifth Pay Commission. In another circular dated 25.5.1998 at Annexure-4 the Department of Personnel & Training have instructed all Departments of Government to amend the Service Rules/Recruitment Rules consequent on adoption of the revised pay scales. It is to be noted that this instruction dated 25.5.1998 does not relate to Stenographers cadre alone. It relates to all the posts where consequential to adoption of the Fifth Pay Commission pay scales Recruitment Rules are required to be amended. In paragraph (iii) of this circular it has been mentioned that pending revision of the Recruitment Rules with reference to the pay scale as approved by the Government, the existing rules for the lower pay scale may not be operated. The applicants have stated that in accordance with the instructions for restructuring of the cadre of Stenographers, Stenographers in the organisation Chief Labour Commissioner have sufficient chances of promotion in their own cadre and therefore the provisions in the Recruitment Rules allowing them to compete along with UDCs against the 80% of the promotional quota have

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become outdated and the Stenographers are getting undue benefit by getting promotion in their own cadre as also by allowing them to compete in the 80% of promotional quota through LDCE along with UDCs and OSs. Secondly it is submitted that as the instruction dated 25.5.1998 provides that pending amendment to the Recruitment Rules, the existing Recruitment Rules for lower pay scales may not be operated. But without amending the Recruitment Rules, the respondents have initiated the steps for holding the LDCE and this is violative of the instruction dated 25.5.1998 of the Department of Personnel & Training.

8. The second of the above two conditions is considered first. The instruction of Department of Personnel & Training not to operate the old Recruitment Rules relates to cases and posts where consequent upon adoption of the Fifth Pay Commission pay scales amendment to Service Rules/Recruitment Rules has become necessary. Even if it is granted for argument sake that Stenographers have been ordered to be restructured by providing them with additional promotional opportunities in their own cadre, then this prohibition of Department of Personnel & Training relates to filling up of the posts of Stenographers in the restructured cadres and does not relate to filling up of the post of LEO(C). This contention of the applicants is therefore, held to be without any merit and is rejected.

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9. As regards the first limb of this argument, the respondents have pointed out in paragraph 9 of their counter that in the Regional Offices of Chief Labour Commissioner(Central) Organisation, no posts such as Stenographers Grade-II, Grade-I and Private Secretary have been created so far. Stenographers are directly recruited as Stenographers Grade-III (Grade-D) and they have no

promotional prospects in their own cadre. Because of this, in the Rules of 1984 a channel of promotion was opened for allowing them to compete along with others in the 80% of the promotional quota of LEO(C). It is submitted by the learned counsel for the petitioners that it is for the departmental authorities to provide promotional prospects for Stenographers in their cadre and because of inaction of the departmental authorities to provide promotional prospects to Stenographers, they cannot be permitted to usurp the promotional chances of UDCs. This contention is also without any merit because of the basic fallacy in the stand of the applicants which has also been mentioned by them in paragraph 4(iii) of the OA that the next promotional post for UDC is LEO(C). This is factually not correct. The promotional post for UDC in their own cadre is OS Grade-II and thereafter to OS Grade-I. Promotion of UDC to LEO(C) under the 80% of the promotional quota cannot be said to be a promotion in their own cadre. Therefore, the applicants cannot claim that 80% of the promotional quota is meant for them and OSs alone because this is not a promotion within their cadre.

10. The applicants have also stated that under the Ministry of Labour there are two sets of organisations, Labour Welfare Organisation and Chief Labour Commissioner Organisation. Normally, the organisational hierarchy in both the organisations under the same Ministry should be same. But whereas in the Labour Welfare Organisation, Stenographers are promoted from Grade-III to Grade-II and further upwards, ⁱⁿ ~~in~~ the Chief Labour Commissioner(Central) Organisation ⁱⁿ ~~in~~ these guidelines have

been given a go-by. It cannot be said that the two organisations under the same Ministry must have the same hierarchical organisational structure because the objective of the two organisations is different and the nature of work is also different and just because in the Labour Welfare Organisation, Stenographers have promotional prospects in their own cadre, it cannot be said that the Stenographers should also be provided promotion prospects in their own cadre in the Chief Labour Commissioner (Central) Organisation. In any case this aspect of giving promotional prospects to the Stenographers in Chief Labour Commissioner (Central) Organisation is not a subject-matter of the present controversy. We have no doubt that Stenographers in Chief Labour Commissioner(Central) Organisation are pressing for their claims for promotion in their cadre. But according to the respondents, in the Regional Offices there is no promotional post for them and even if at some future date some promotional posts are created, this would not by itself disentitle them to compete along with UDCs and OSs for the post of LEO(C), a post which is outside both the cadres.

11. One last point mentioned by the respondents has to be noted. It has been pointed out by the respondents in their counter that LDCE 2000 has been conducted as per the commitment made by the respondents before the Hon'ble High Court of Delhi in CW No. 6532 of 1998. The order dated 18.1.2000 of the Hon'ble High Court of Delhi is at Annexure-D to the counter. Applicant no.1 in the petition before us was writ petitioner no.3 before the Hon'ble High Court of Delhi. That writ petition apparently

was with regard to quota for SC and ST for promotion to LEO(C). In order dated 18.1.2000 their Lordships have noted the submissions of the Department that the petitioners will be entitled to appear at the ensuing examination and in case they qualify in the examination as per rules they will be considered. The Hon'ble High Court of Delhi have noted that they do not find any infirmity in the method adopted by the Department for filling up of the vacancies in the post of LEO(C) from amongst SC and ST. The present applicant no.1 before us was writ petitioner no.3 before the Hon'ble High Court of Delhi in the above case. From the order of the Hon'ble High Court it does not appear that the contentions now raised by the applicants before us were raised before the Hon'ble High Court. Applicant no.1 having taken the examination cannot now be permitted to challenge the Recruitment Rules of 1984 which are more than one and half decades old.

12. In the result, therefore, we hold that the Application is without any merit and the same is rejected. The interim order of stay passed on 11.4.2000 stands vacated. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.8.2000

August 18, 2000/AN/PS