

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 18.5.2001

Learned counsel for the petitioner Shri D.K.Sahoo and his Associates are absent. There is also no request on their behalf seeking adjournment. In view of this the matter cannot be allowed to drag on indefinitely. We have, therefore, heard Shri J.K.Nayak, the learned Addl. Standing Counsel appearing for the Respondents and also perused the records.

In this Original Application the petitioner has prayed for a direction to respondents to promote him to a Group D post in the Department w.e.f. from the date his juniors have been given promotion, with all **consequential**, financial and service benefits, on the grounds urged by him in the Original Application. Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. In any case important facts are not in dispute. The admitted position is that the petitioner is presently working as E.D.M.C., Biraharekrushnapur Branch Office in Puri District w.e.f. 4.1.1997. It is also the admitted position that prior to this, for a period of nine years from 7.2.1981 to 21.3.1990, he had worked as E.D.D.A., Mahura B.O. against a put off duty vacancy of the regular incumbent one Shri Kailash Mallick. On completion of the disciplinary proceedings against Shri Mallick, he was brought back to service and thereby the applicant had to make way for him. The applicant approached the Tribunal earlier in Original Application No.47/94, which was disposed of in order dated 10.2.1994, directing that 'in consideration of the service of the applicant for nine years as E.D.D.A., Mahura, he should be adjusted in someother post '. Accordingly the applicant was appointed to the post, currently held by him w.e.f. 4.1.1997. The applicant has stated that E.D. Agents are

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entitled to be considered for promotion to Group D posts in the Department. But his case has not been considered for such promotion, whereas the cases of S/Shri Bhajan Mallick and Sanatan Jeni, who were brought from Nayagarh to Puri Division, have been promoted to Group D posts. Being aggrieved with this, he has approached the Tribunal with the prayers referred to earlier.

It is not necessary to refer to all the averments made by the respondents in their counter, because, these would be referred to, while considering the submissions made by Shri J.K.Nayak, the learned Addl. Standing Counsel, appearing on behalf of the respondents.

It has been pointed out by the respondents in their counter that S/Shri S.Jeni, D.Jani and Bhajan Mallick belong to Scheduled Tribe communities, whereas the applicant belongs to general category and therefore, he cannot compare his case with the case of Shri S.Jeni. As in the promotional post, reservation for SC/ST has to be maintained, the applicant obviously can have no grievance with regard to promotion of S.T. category persons to the post of Group D when he belongs to general category. Therefore, his grievance with regard to promotion of Shri S.Jeni and other candidates belonging to reserved community is held to be without any merit and the same is rejected.

Respondents have pointed out that amongst the general category persons, the lowest person, who has been promoted to Group D post is one Benudhar Senapati, whose date of appointment is 15.3.1971, much prior to the date of appointment of the applicant. Respondents have taken the stand that for the purpose of promotion, applicant's seniority will count from 4.1.1997 and his earlier period of service from 7.2.1981 to 21.3.1990 cannot be considered for the purpose of adjudging his seniority for promotion to Group D post. We are not able to accept this proposition, because, respondents at Page-3 of their counter, have mentioned that according to D.G.(Posts) instructions, below Rule-4 of EDAs (Conduct & Service) Rules, authorised or unauthorised absence in excess of period of 120 days shall constitute break in service which will result in forfeiture of past service for grant of gratuity. In the instant case,

the applicant did not remain absent unauthorisedly nor even authorisedly. The admitted position is that he was duly appointed as E.D.D.A., Mahura B.O. and had worked as such from 1981 to 1990 and his services were terminated on the reinstatement of the regular incumbent (under put off duty). Therefore, applicant's absence from duties from 1990 onwards cannot be called as unauthorised nor even authorised. ~~Authorised or unauthorised absence has to be from a post held by a person.~~ Respondents have also taken the stand that admittedly from 1990 to 1997, the applicant did not hold any post and because of this, his previous services cannot be taken into account for the purpose of computing his seniority and also the gratuity. In the present petition we are not called upon to consider as to whether petitioner's previous service from 1981 to 1990 will count towards gratuity or not. But we feel that it is legally incorrect on the part of the respondents in not taking into account his past service from 1981 to 1990 on the ground of gap/break in service from 1990 to 1997. This is because, according to D.G. (Posts) instruction, when services of an E.D.Agent are terminated on the grounds which are unconnected with his official conduct and in case such E.D.Agent has completed three years of service his name has to be put in the waiting list and he has to be offered alternate employment. Respondents have not stated that name of the applicant was put in the waiting list and he was offered alternate employment. After termination of services in 1990 the applicant had to approach this Tribunal in an earlier Original Application and had obtained an order, after which he was provided with ^{the} present appointment. In consideration of this, we hold that the applicant is in no way responsible for this gap/break of seven years in service. In view of this, we direct the respondents that while computing his eligibility/seniority for promotion to the post of Group D, applicant's seniority should be counted from the date of his initial appointment in 1990, by discounting the period of gap/break in service from 1990 to 1997. We order accordingly.

However, even if the above seniority is allowed,

the applicant will not be entitled to get the relief prayed for by him, in this Original Application, because, he belongs to general category and Shri Senapati, stated to be the junior most E.D.Agent, of L has got promotion to Group D Post is apparently senior to the applicant as he joined in 1971.

In the result, therefore, we hold that the prayer of the applicant to direct respondents to promote him to the post of Group D, w.e.f. the date his juniors have been so promoted, is ~~held~~ to be without any merit and the same is rejected.

Original Application is thus disposed of with the observation and direction made above, but without any order as to costs.

MEMBER (JUDICIAL)

S. Venkateswaran
VICE-CHAIRMAN
18.5.2001

Free copies of
Final order
dt. 18.5.2001 issued
to counsels for
both sides.

22/5/01

R. M.
S.O(CJ)