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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.331 OF 2001  
Cuttack this the 7th day of Jan. 2005

B. Majhi & Orz. ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches  
of the Central Administrative Tribunal or not ? *Yes*

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

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

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 331 OF 2001  
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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)  
...

1. Bholanath Majhi, aged 45 years, Son of Kariya Majhi, at present working as U.D.C. in the office of Commissioner, Central Excise and Customs, Bhubaneswar-I Commissionerage, Rajaswa Vihar, Bhubaneswar, Khurda
2. Shyamal Son, aged about 41 years, son of S.Ch.Sen, r/o. C.R.Colony, BBSR at present working as UDC in the office of the Commissioner, Central Excise and Customs, Bhubaneswar-I Commissionerate, Rajaswa Vihar, Bhubaneswar
3. Somanath Satpathy, aged 35 years, Son of Lingaraj Satpathy, r/o. EEC, Bhubaneswar-II - at present working as UDC in the office of the Commissioner, Central Excise and Customs, Bhubaneswar-II Commissionerage, Bhubaneswar
4. Birendra Kumar Mohanty, aged 35 years, S/o. Harihar Mohanty, office of C & CE, Bhubaneswar-II Commissionerate, Rajaswa Vihar, Bhubaneswar, Khurda
5. Susamaj Kumar Mishra, aged about 31 years, S/o. Suryamani Mishra, office of C.C. & E., Bhubaneswar-II as U.D.C., Office of the Commissioner, Central Excise & Customs, Bhubaneswar-II Commissionerage, Rajaswa Vihar, Bhubaneswar, Dist-Khurda
6. Purusottam Samal, aged 59 years, S/o. Narayan Ch. Samal, working as UDC, in the office of the Commissioner, Central Excise & Customs, Bhubaneswar-I Commissionerate
7. Bhima Prasad Purudhal, aged 36 years, working in CE and Customs, Bhubaneswar-II as UDC, O/o. the Commissioner, C & E Customs, Bhubaneswar-II Commissionerate
8. Dwarikanath Biswal, aged 39 years, S/o. Darshan Kumar Biswal, working in C.E. & C, Bhubaneswar-II as UDC in the O/o the Commissioner, C.Ex. & Customs, Bhubaneswar-II Commissionerate, BBSR
9. Trilochan Nayak, aged 49 years, S/o. Korla Nayak working as UDC in the office of CE & C, Bhubaneswar-I Commissionerate, BBSR
10. Sribasta Mahapatra, aged 34 years, S/o. Dr. B. Mahapatra working as UDC in the office of CEC, Bhubaneswar-I Commissionerate, BBSR

11. Surya Narayan Acharya, aged 33 years, S/o. Madhusudan Acharya, working as UDC in the office of Commissioner, C.Ex & Customs, Bhubaneswar-I Commissionerate, Rajaswa Vihar, Bhubaneswar
12. Ranjit Das, aged 45 years, S/o. late Sukadev Das working as UDC in the office of Commissioner, C.Ex. & Customs, BBSR-I Commissionerate
13. Debendra Kumar Behura, aged 36 years, son of late Ganeswar Behura, working as UDC office of CEx. and C, Bhubaneswar-I Commissionerate, BBSR
14. Bibhudatta Tripathy, aged 30 years, S/o. Bairagi Ch. Tripathy, O/o. CEx & C, Bhubaneswar-II as UDCA in Commissionerate of BBSR
15. Sisira Kumar Swain, aged 37 years, S/o. Sampad Swain o/o. C Ex & C, Bhubaneswar-II, Dist-Khurda, BBSR-II Commte. BBSR
16. Suresh Kumar Panigrahi, aged 45 years, son of Narayan Panigrahi, working as UDC in the office of the Commissioner, C. Ex & Customs, Bhubaneswar-II Commte
17. Binaya Kumar Swain, aged 36 years, S/o. late Nilakantha Swain, office of the Commr. BBSR-I Commte. Rajaswa Vihar, BBSR
18. Raghunath Behera, aged 34 years, S/o. Krushna Ch. Behera, working as U.D.C. in the o/o. the Commr. BBSR-I Commte., Rajaswa Vihar, BBSR
19. Srinibash Lenka, UDC aged 36 years, S/o. late Biswanath Lenka, office of the Commr., C.Ex. & Customs, BBSR-II Commissionerate
20. Mirza Musarna Ali Baig, aged 40 years, S/o. late Mirza Mbarak Ali Baig, UDC, office of the Commr., C.Ex. & Customs, BBSR-II Commte.
21. Anita Mohini, UDC aged 33 years, w/o. N.Panda, office Commr., BBSR-II Commte.
22. Dipendra Guru, Tax Asst., aged 35 years, S/o. Gopabandhu Guru, office of the Commr., C.Ex. & Customs BBSR-II Commissionerate
23. Sandeep Kumar Jena, UDC, aged 32 years, s/o. Rasananda Jena, working as UDC in the office of Commr., C.Ex. & Customs, BBSR-I Commte., BBSR
24. Khetrabasi Nayak, aged 45 years, s/o. B.C. Nayak working as UDC in the office of the Commr., C.Ex. & Customs, BBSR-II Commte.
25. Prakash C. Dhal, aged 32 years, S/o. Amarendra Dhal working as UDC, in the office of the Commr., Central Excise and Customs, BBSR-I Commissionerate, BBSR
26. Satya Prasanna Rath, aged 34 years, S/o. Sudarsan Rath, working as UDC in the office of the Commissioner, C.Ex & Customs, BBSR-I Commte.

... Applicants

By the Advocates

M/s. Ashok Mohanty  
T. Rath, H.K.  
Tripathy, M.K.  
Rout, J.P.  
Patra

- VERSUS -

1. Union of India represented through its Secretary to Govt. of India, Finance Deptt. of Revenue, New Delhi-1
2. Chairman, Central Board of Excise and Customs, New Delhi
3. Chief Commissioner, Central Excise & Customs, Eastern Zone, 15/11, Stand Road, Calcutta-700 001
4. Commissioner of Central Excise and Customs, Commissionerate of Central Excise & Customs, Rajaswa Vihar, Bhubaneswar-I
5. Commissioner of Central Excise & Customs, Commissionerate Rajaswa Vihar, Bhubaneswar-II
6. Keshabananda Gouda, aged 53 years, S/o. Jaya Gouda at present working as UDC in the office of the Commr., C. Ex. & Customs, BBSR-I Commte.
7. P.K. Panda, aged 45 years, S/o. Jutibahar Panda, at present working as UDC in the office of the Commissioner C. Ex & Customs, BBSR-I Commte.,
8. Raju Das, aged 48 years, S/o. late Dharama Das at present working as UDC in the office of the Commissioner, C. Ex & Customs, BBSR-I Commte.
9. Subash Ch. Acharya, aged 47 years, S/o. late Banamali Acharya, at present working as UDC, office of the Commr. C. Ex. & Customs, BBSR-I Commte.
10. Sanfiranjan Jena, aged 45 years, S/o. Gajendrananath Jena, at present working as UDC in the office of the Commr., C. Ex. & Customs, BBSR-I Commte.
11. Sudhakar Behera, aged about 49 years, S/o. late Satyabadi Behera at present working as UDC, in the office of the Commr. C. Ex. & Customs, BBSR-I Commte.

... Respondents

By the Advocates

Mr. U.B. Mohapatra, SSC  
(Res. 1 to 5)

M/s. A.K. Mishra  
J. Sengupta  
D.K. Panda  
PRJ Dash  
G. Sinha  
(Res. 6 to 11)

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicants, Shri B.N. Majhi and 24 others, working as Upper Division Clerk (in short UDC) in the office of Central Excise & Customs, Bhubaneswar-I Commissionerate have invoked the jurisdiction of this Tribunal under Section 19 of the A.T. Act, 1985 being

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aggrieved by the action of the Respondents-Department granting notional seniority to private Respondents (Res. Nos. 6 to 11) vide order No.62/Estt.,Bhubaneswar-1-2K dated 7.7.2000 (Annexure-2) and thereby placing those private Respondents 6 to 11 above the applicants. Their allegation is that the said order was issued in contravention of the rules and regulations governing the field, because, all the applicants in the rank of U.D.C. were promoted earlier than Res. Nos. 6 to 11.

2. In a nut shell, the controversy with regard to seniority of the applicants vis-a-vis Res. 6 to 11 arises on account of the following reasons.

Res. 6 to 11 were recruited as Group D in the Respondents-Department. Under the Recruitment Rules of 1979, which were further amended with effect from 19.10.91, provisions were made for promotion of 10% of educationally qualified Group-D officials to the grade of L.D.C. on the basis of a departmental qualifying examination with typing test. In the said amendment, the following provision was also made.

"Explanatory Memorandum

Following representations from the staff side, the Government had issued instructions on the 9th December, 1982 that out of 10% quota, reserved for Group D staff, in the Lower Division Clerk's grade, 5% vacancies will be filled up by seniority and 5% vacancies on the basis of a qualifying examination. Since these instructions are being followed and amendments of the rules is to regularise the said position formally no one will be adversely affected as result of retrospective effect being given in this regard".

By virtue of the said provision, the Respondents

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had taken steps to regularise the services of Res. 6 to 11 in the grade of LDCs from the date they were given ad hoc promotion in that grade and their notional seniority seniority was also fixed accordingly. This decision of the departmental-respondents was communicated vide their order dated 3.3.1994 (Annexure-R/4) which led to the present controversy and the applicants having got their point accrossed with the Department have approached this Tribunal with the following reliefs:

- 1) To quash/set aside the order under Annexure-2 and the seniority list under Annexure-4.

3. The applicants have assailed the decision of the Respondents-Department on several legal grounds. Firstly, that the grant of notional seniority to the Res. 6 and 7 as UDCs with effect from 6.2.1991 and to other private respondents from 31.12.1991 was bad in law, because, those respondents had not passed the examination for being eligible for promotion to the grade of UDCs nor had they had qualifying service for appearing in that examination. In the circumstances, the seniority list published under Annexure-4 is illegal, arbitrary and contrary to the provisions of the recruitment rules. They have also alleged that the private respondents were granted notional seniority in the rank of UDCs from a period when they were working as LDCs only. Such a decision is patently illegal.

Secondly, in terms of Central Board of Excise and Customs letter No.10/37/69-Ad.I-A dated 28.9.1967, a new system of Promotion Examination was introduced with the stipulation that only UDCs who had completed a minimum

period of two years of service in the grade would be allowed to take the promotional examination.

Thirdly, that some of the private Respondents, viz., S/Shri S.K.Behera, Raju Das and S.R.Jena, who had sought permission to appear in the departmental examination for promotion to the grade of UDCs were refused permission by the Respondents on the ground that they had not completed the two years actual service in the grade of LDCs. In the circumstances, the applicants have urged that the Respondents-Department could not have given seniority to the private respondents from 1991, as pointed out earlier.

Fourthly, that none of the private respondents had completed seven years of actual service in the grade of LDCs to be eligible to be promoted to the grade of UDCs in 1991, because, they were working in the grade of Group-D on the date (s) they have been granted notional seniority in the grade of U.D.Cs.

Fifthly, that the private respondents 6 and 8 to 11 cleared the departmental examination in the year 1996 and Res. No.7 cleared the same on 6.1.1993 and as such granting notional seniority to them prior to the date of passing the departmental examination is highly illegal and without jurisdiction.

Sixthly, the applicants have alleged that the departmental-respondents, acting on the extraneous considerations have bestowed favour on the private Respondents in the matter of granting notional seniority and therefore, Annexures-2 and 4 having been issued arbitrarily and discriminatively are liable to be quashed.



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Lastly, that the promotion from the grade of LDC to UDC being dependent on an official's qualifying a departmental examination, the departmental respondents could not have conferred blanket seniority on the private respondents in violation of the recruitment rules.

4. The departmenta-respondents in their counter have not disputed the facts of the case. They have, however, explained that private Res. 8 to 11, who were educationally qualified Group D officials were appointed in the grade of LDCs on ad hoc basis on the condition that there would be a technical break in service for one day after every three months of the adhoc appointment. These ad hoc appointees were reverted to the grade of Group-D in terms of Ministry of Fiance letter No. F.10234/18/92-Ad.III.B dated 24.2.1992. However, as they were appointed as LDCs on ad hoc basis, i.e., Res. Nos.8, 9, 10 and 11 with effect from 3.5.1985, 14.11.1986, 6.8.1987 and 28.9.1987 respectively, their services were regularised in terms of the provisions of the amended recruitment rules dated 19.10.1991 (Annexure-R/3), wherein a provision was made that those of the Group D staff who were being allowed to officiate against the vacant post of LDCs upto 10% on ad hoc basis, their appointments may be regularised on promulgation of the said recruitment rules. Accordingly, a review D.P.C. was held in 1994 to consider the cases of those four Group-D officials for promotion to the grade of LDC on regular basis along with other seven officials, who had earlier been appointed to the grade of LDC against 10% quota reserved for this purpose

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and on the recommendation of the review D.P.C., these four officials were notionally appointed to the grade of LDCs from such date (s) on which their juniors were appointed to that grade and accordingly, the inter se seniority of the seven officials including the above four private-respondents were refixed notionally from such date(s) as mentioned against each (Annexure-R/4). They have also admitted that the private Res.8,10 and 11 had applied to the Commissioner for allowing them to appear in the departmental examination for promotion to the grade of UDCs, but as they had not completed the actual period of two years service as LDCs, their applications were rejected on the basis of the decision given by the Ministry of Finance vide their letter dated 3.2.1995 (Annexure-R/5). Later, on completion of two years service in the grade of LDCs, all of them appeared for examination for promotion to U.D.C. and passed the departmental examination and promoted to the grade of U.D.C. After the promotion to U.D.C., the aforesaid four officials represented to the Commissioner to give them notional promotion and seniority in the grade of UDC with effect from 1.2.1991, i.e., the date from which their immediate juniors were promoted to that grade on the basis of the recommendations of the review D.P.C. held in 1994. After consulting the Ministry of Finance (Department of Revenue), the Respondents-Department decided to allow the representations of these officials and accordingly, they were granted notional seniority in the grade of U.D.C. with effect from 31.12.1991.

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

6. No rejoinder to the counter was filed by the applicants. However, the learned counsel for the applicants has filed a Memo dated 16. 11.2004 giving details of case laws, in support of the stand taken by him in his application.

7. The controversy centres round the legality of granting notional seniority to the private Res. 8 to 11 in the grade of LDC and granting ante dated seniority to private Res. 6 to 11 in the grade of UDC by the departmental respondents vide their order dated 7.7.1994. The applicants have challenged the retrospective promotion/grant of notional seniority, both in the grade of LDC and U.D.C. in respect of private Res. 6 to 11 on the ground that they were promoted to the grade of UDCs earlier than those private respondents. Giving promotion/notional seniority was, therefore, violative of the then existing provisions of the recruitment rules inasmuch as 5% quota for promotion of educationally qualified Group D was to be filled up by seniority-cum-fitness and another 5% quota was to be filled up by holding a departmental qualifying examination in terms of the instructions in force. They have also pointed out that as per the recruitment rules for promotion from the grade of L. D. C. to U. D. C., an official has to qualify in a departmental examination after having two years of service in the grade of L.D.C. But in the instant case, none of the private respondents had qualified in U.D.C.

examination. In fact they were holding the post of LDC on the date(s) they were granted notional promotion to UDC cadre and thus, their appointments being in contravention of the recruitment rules are liable to be set aside. They have also alleged that as none of the private Respondents, i.e., Res. 8 to 11 had completed seven years of qualifying service in the grade of LDC and had qualified in the departmental examination only with effect from 9.8.1996, they could not be granted promotion and/or seniority with effect from 31.12.1991.

8. The departmental respondents, on the other hand, drawing our notice to the Recruitment Rules of the Central Excise and Customs Department (Group-C Posts) 1991, published in the Gazzettee on 19.10.1991 stated that notional seniority in the grade of LDC was granted to the private respondents retrospectively on the strength of the explanatory Memorandum (as quoted above) as contained in the said notification dated 19.10.1991, which allowed the Department to operate the 10% quota for promotion to Group-C reserved for Group-D staff in the ratio of 5% to be filled up by seniority and 5% vacancies on the basis of a qualifying examination to be operative retrospectively. They have, therefore, submitted that the service of the private respondents have been regularised from the date(s) they were continuously officiating on ad hoc basis in the grade of L.D.C. Once the private respondents were allowed notional seniority in the grade of LDC, their interest in the next higher grade, i.e., U.D.C. had to be protected vis-a-vis the

seniority position of their juniors. Accordingly, they had taken up the matter with the Respondent No.1 by their letter dated 18.3.1998 (Annexure-R/9) which, for the sake of clarity, we would like to quote hereunder:

" There are four Sepoy promotees in this Commissionerate, who were given Notional Promotion as LDCs with effect from 1984, etc. (they had actually been promoted to the grade of LDCs in 1994).

Some Direct Recruit LDCs and some Sepoy promotee LDCs had been promoted to the grade of UDC in 1991. All those persons are junior to the above four, as per the revised List of Seniority of LDCs drawn up on granting the above four Notional Promotion w.e.f. 1984, etc. Had the above four been promoted in 1984 itself as they should have been, they would have also had written the Departmental Examination for promotion to the grade of UDCs. They would also have had completed the required number of years in service as LDCs to become UDCs. Having been deprived of these opportunities, the above four plead that consequent upon their Notional Promotion and Notional Seniority, notional fulfilment of stipulated conditions of passing the Departmental Examination & minimum number of years of service as LDCs for further promotion to the grade of UDC be granted. As the matter is not free from doubt, it is requested that necessary clarification for our guidance may kindly be issued."

9. Thereafter, lot of consultations took place between Res. No.3 and 1, after which Res.1, by his letter dated 5.8.1999 (Annexure-R/14) held the view that "the concerned four UDCs are entitled for the notional seniority in the grade of UDC above their juniors, who were promoted on 31.12.1991". It was on the basis of this decision of the Government that the private respondents have been granted promotion retrospectively and were allowed notional seniority, with effect from 6.2.1991 and 31.12.1991 in so far as

private Res. 6 and 7 and 8 to 11 respectively, are concerned.

10. The learned counsel for the applicants, over and above the legal objections raised by him, pointed out that Respondent No.3 had misled Respondent No.1 to come to the conclusion that the private Res. 6 to 11 "were entitled for their notional seniority". He further submitted that at no point of time Res. 3 had ever whispered that the private respondents, in whose cause he had taken up the matter of revision of seniority before Res. No.1 were ever promoted either regularly or on ad hoc basis as U.D.C. in the year 1991. Further, referring to the decision of the Hon'ble Supreme Court in the case of A.P.M.Mayakutty etc. vs. Secretary, Public Service Deptt. etc. (reported in Supreme Court Service Rulings, Vol. 20, Page-372), the learned counsel for the applicants submitted that the service rendered as stop gap arrangement is not to be counted in determining the length of service. By referring to another decision of the Hon'ble Supreme Court in the case of State of Bihar and ors. vs. Sri Akhouri Sachindra Nath and ors. (reported in Supreme Court Service Rulings, Vol. 20, Page-196), he pointed out that no person could be promoted with retrospective effect from the date he was not borne in the cadre so as to adversely affect the interest of others. In other words, his plea is that the private respondents having neither qualified in the departmental examination nor formally

promoted to the grade of U.D.C. could not have been promoted and granted seniority retrospectively from an earlier date. Referring to the decision of the Hon'ble Supreme Court in the case of W.C.Monga vs. State of Punjab & Ors. (reported in Supreme Court Service Rulings, Vol. 24, Page 746), the learned counsel for the applicants submitted that the Apex Court in that case had decided that the petitioner, though was discharging the functions of the higher post from 11/1977, but remained in the pay scale of lower post, his service could not be counted for the purpose of eligibility for promotion. He, therefore, emphasized that following the ration of this decision, retrospective promotion of the private Respondents to the grade of U.D.C. was clearly illegal.

11. We have given our anxious thoughts to the legal issues involved in this case and have also gone through the settled position of law available in this regard. Undoubtedly, the genesis of the controversy can be traced from the application of the provision contained in 'Explanatory memorandum' to the recruitment rules for Group C posts of the Department issued in 1991. The departmental respondents have taken the position that by virtue of the explanatory memorandum they had derived the legal authority to apply the conditions of recruitment rules retrospectively. Prima facie, no objection can be made to this submission. However, it is to be noted that retrospective effect to recruitment rules is given

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very sparingly and is given on the sole consideration that such a retrospective application would not adversely affect the interest of existing incumbents of the grade/cadre. On a reading of the explanatory memorandum, in the instant case, we find that it has been clearly mentioned therein that

"since these instructions are being followed and amendment of the rules is to regularise the said position formally, no one will be adversely affected, as a result of which retrospective effect is being given in this regard".

12. This explanation was included by the rule making authority on the categorical certification of Res.NO.1 that giving retrospective effect to the provisions of the recruitment rules will not adversely affect any one's interest in the grade of LDC. Had that been true, the present controversy would not have been arisen nor the applicants in the instant O.A. could have knocked at the doors of the Tribunal. It is the allegation of the applicants that the private respondents were appointed on ad hoc basis in instalments of three months' period, that such adhoc appointments were made against Direct Recruitment quota vacancies, that on availability of regular nominees from Staff Selection Commission against the post of LDCs, all such employees were reverted to the grade of Group-D. This would mean that none of the private Res.8 to 11 were promoted on ad hoc basis against 10% quota reserved for Group-D and therefore, the question of regularising their services from the past period did not arise in terms of the aforementioned recruitment rules. In the " Explanatory Memorandum " two conditions



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were laid down for giving effect to the liberalised recruitment rules. Firstly, that the appointees must have been working on ad hoc basis against either 5% seniority quota or 5% examination quota and secondly, that because of grant of retrospective regularisation no one should be adversely affected. As the Respondents in their counter dated 22.5.2002 and 17.1.2003 have admitted that on availability of regular nominees from Staff Selection Commission, the ad hoc appointments of the private respondents were terminated, it would clearly bring to fore the fact that those private respondents were never officiating against 10% departmental quota reserved for Group-D, but against Direct Recruitment quota, and therefore, we have no hesitation to hold that Res. No. 8 to 11 were not entitled to the benefit of notional seniority in terms of Explanatory Memorandum to the recruitment rules of 1991. As we are of the view that the fixation of their seniority in the grade of L.D.C. was ab initio bad in law, it is not necessary for us to go further into the merit of the other allegation. However, as it would be necessary for us to quash the order dated 7.7.2000 (Annexure-2) issued by Res. No. 3, we would like to observe that it was not open to the Respondents-Department to consider the case of the private respondents for promotion to the grade of U.D.C. in contravention of the provisions of the recruitment rules framed in that regard. It is not denied that for getting promotion to the grade of U.D.C., an official after completing two years of regular service is to

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qualify in a departmental examination. It is the admitted fact that one of the private respondents had qualified in the departmental examination for promotion to the grade of U.D.C. and therefore, under no circumstances, the Res. No.3 could have taken up the case with Res. No.1 seeking his leave to accord the promotion of private Res. to the grade of UDC from a date earlier than that they had qualified in the departmental examination.

13. For the reasons discussed above, we hold that the instructions issued by Res.No.1 vide letter dated 5.8.1999 (Annexure-R/14) declaring that "four UDC are entitled for notional seniority" was based on mistaken facts and due to non application of mind on the rules and regulations framed in this regard. Resultantly, we quash Annexure-R/14 and R/15 dated 5.8.1999 and 7.7.2000, respectively and declare Annexure - 4 dated 31.5.2001 null and void. We further direct that the seniority of the applicants be revised/refixed on the basis of their respective length of service in the grade of U.D.C.

14. Last but not the least, we would like to observe that if the private respondents herein have enjoyed any financial benefits by virtue of the order dated 7.7.1994 issued by Res. No.3, no recovery should be made from their salaries on the ground that such benefits, if any, had accrued to them for the reason of wrong interpretation and/or wrong application of the rules on the subject, for which they were in no way responsible.

16. In the result, this Original Application  
is allowed, leaving the parties to bear their own  
respective costs.

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

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

BJY