

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

O.A.NO. 363 OF 2001

Cuttack, this the 16th day of April, 2004

R.N. Choudhury
.....

Applicant

Vrs

W.M. f.o.m.
.....

Respondents

FOR INSTRUCTIONS

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

Naik
(S.K.NAIK)
MEMBER(A)

Panigrahi
(B.PANIGRAHI)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A. No. 363 of 2001

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman
Hon'ble Mr. S. K. Naik, Member (A)

R. N. CHOUDHURY
VS
UNION OF INDIA & ORS

For the applicant : Mr. P. Padhi, Counsel

For the respondents : Mr. B. Das, Counsel

Date of order : 16.04.2004

O R D E R

Per Justice B.Panigrahi, VC:

The applicant herein has filed this OA long after his retirement from service seeking a direction on the respondent authorities to extend him the benefit of the judgment of the Principal Bench which was based on the decision of Hon'ble Supreme Court so that his seniority is counted on the basis of length of service and consequently his promotion be antedated and he be given enhanced pensionary benefits.

2. The facts giving rise to this application may be stated briefly as follows :



The applicant entered service under the respondents as Time Scale Clerk (Postal Assistant) on 3.4.1950. During the course of service, he was promoted to the cadre of Lower Selection Grade (LSG) on 1.6.74. However, due to his ailments, he took voluntary retirement from service w.e.f. 1.2.90.

At the time when the applicant entered service, for confirmation on the post, such appointees had to clear an examination and unless one passed the confirmation examination, he would not be confirmed in service. As a result, some senior employees, who could not clear the confirmation examination in due time became junior to the persons who were appointed subsequent to them by virtue of their passing the confirmation examination earlier than their seniors. This was creating a simmering discontent amongst senior employees and the matter was ultimately carried to the Hon'ble Supreme Court in Civil Appeal Nos. 1845-46 of 1968 and CA 50 of 1969. As per decision of the Hon'ble Apex Court, the seniority was directed to be fixed on the basis of length of service and not on the basis of date of confirmation. Thereafter, based on this decision, the Principal Bench in the case of Dev Dutta Sharma & Ors -vs- UOI & Ors reported in 1987 ATR (1) 221 held that seniority should be determined on the basis of length of service without reference to the date of confirmation. Following this decision, the DG PT issued a circular bearing No. 93-35/82-SPB II dt. 20.3.87 directing fixation of seniority on the basis of length of service for persons appointed during the period from 22.6.49 to 21.12.59, who failed to

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pass the confirmation examination within the stipulated period. In other words, passing of confirmation examination was exempted. It was also directed therein that cases of officials covered under the said circular may be reviewed and their seniority be re-fixed.

3. The grievance of the applicant is that although he was covered by this circular his case was not reviewed by the respondent authorities. Similarly, in respect of some others also no such review was undertaken. Being aggrieved, one Shri Niranjan Patnaik filed OA No. 187 of 86 before this Bench of the Tribunal which was decided on 7.9.87 directing the respondents to review his case and in case he was found eligible as per the aforesaid circular of 1987, he should be given benefits accordingly. Following this direction, Shri Niranjan Patnaik's seniority was re-fixed by the authorities. Incidentally, Shri Patnaik was senior to the present applicant. After this decision the applicant and others made representations for reviewing their cases also accordingly as they claimed to be covered by the said circular. The grievance of the applicant is that though the respondents reviewed the case of one Shri B.K.Purohit, who was just above him in the gradation list and accorded him benefit of seniority on the basis of length of service and accordingly his promotion to LSG grade was also antedated to 3.8.73 instead of 1.6.74, the case of the applicant was not considered. Hence this OA.

4. The respondents have contested the case by filing reply in which it is contended that the application is barred by limitation inasmuch as the applicant has filed the instant OA in 2001 whereas he retired from service in 1990 and during his service period he never agitated this question. On merit also it is contended that the applicant is not covered by the circular of 1987 as he passed in the confirmation examination in November 1953 and got his promotion to LSG cadre in due time on 1.6.74. It is also contended by

rcvising the seniority of Shri Niranjan Patnaik or Shri B.K.Purohit, the applicant's interest has not been prejudiced as he was junior to them.

5. During the course of hearing Id. Counsel for the applicant has contended that the ground of limitation cannot be taken in this case as due to non-extension of the benefit, the applicant is suffering in the matter of his pension and therefore it is a case of continuing wrong. So the question of limitation would not arise. He relies upon the decision of the Hon'ble Supreme Court in the case of M.R.Gupta -vs- UOI & Ors reported in 1995(2) U.J (SC) 689 wherein it was held that wrong fixation of pay is a continuing wrong and therefore cause of action arises every month and hence question of limitation would not arise. However, here it is not a case of wrong fixation of pay. Here the main question is for re-fixation of seniority and therefore the decision in M.R.Gupta's case has no application. However, we find that after the decision rendered by this Bench of the Tribunal in 1987, the applicant made a representation and thereafter he took voluntary retirement in 1990 on medical ground. However, his case was being pursued by the concerned Association continuously but no reply has been given by the respondents. Taking that in view and considering the predicament of the applicant, we consider it necessary to decide this case on merit in the interest of justice.

6. The contention of the respondents is that the applicant passed the confirmation examination in 1953 and therefore the circular of 1987 was not applicable to him. However, from a copy of representation dt. 17.6.93 we find that he failed in 1951 confirmation examination. Even otherwise, if for failed candidates length of service is taken into consideration for fixation of seniority, there is no reason why the same principle shall not be applied in case of those who qualified in the examination. Only

because one has passed the examination, his seniority cannot be fixed from the date of confirmation and not on the basis of length of service as held by the Apex Court and this Tribunal. It is, however, not clear from the averments made in this application whether the seniority of the applicant was fixed on the basis of length of service or from the date of his confirmation on his passing the examination in 1953. There is also no indication from which date the applicant wants promotion to LSG cadre. The cases cited by the applicant relate to his seniors. The applicant has not cited the case of any of his junior who has got promotion prior to him. Also we find that promotion to LSG cadre was restricted to 20% quota based on seniority.

7. Considering the matter from all its aspects, we dispose of this OA with a direction to the respondent authorities to review the case of the applicant in terms of the relevant circular of 1987 and if he is found to be eligible to get any benefit as per the said circular, then the same be granted to him notionally and on that basis his pensionary benefits be also re-fixed. Otherwise, a speaking order be issued to him. This exercise be completed within four months from the date of receipt of a copy of this order. No costs.

J. S. Clark

MEMBER(A)

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VICE CHAIRMAN