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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.88 of 2003  
cuttack, this the 22nd day of December, 2004

Mir Aub Ali.

....

Applicant.

-Versus-

Union of India & 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*

*J.K. Kaushik*  
(J.K. KAUSHIK)  
Judicial Member

*B.N. Som*  
(B.N. SOM)  
Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.88 of 2003  
Cuttack, this the 22nd day of December, 2004

C O R A M:

THE HONOURABLE MR.B.N.SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE MR.J.K.KAUSHIK, JUDICIAL MEMBER.

....

Mir.Aub Ali, aged about 53 years,  
S/o.Late Mir Wakub Ali, resident  
of Tulasipur near Board of Revenue  
Colony, Po:Tulasipur, Ps:Bidanasi,  
Town/Dist.Cuttack, now working as  
Driver Gr.II in the Office of the  
Commissioner, Income Tax, Appellate  
Tribunal, Link Road, Cuttack.

..... Applicant.

By legal practitioner: M/s.C.R.Nandi, B.N.Behera, D.K.Dash,  
T.K.Khuntia, Advocates.

:Versus:

1. Union of India represented through its  
Chief Commissioner of Income Tax, Orissa,  
Bhubaneswar-751 004.
2. Commissioner, Income Tax, Appellate Tribunal,  
At- Arundaya Market, Twon/Dist.Cuttack.
3. Madan Mohan Das, Driver, now working in the  
Office of the Commissioner, Income Tax  
(Appeal) Stoney Road, Cuttack.

..... Respondents.

By legal practitioner: Mr.U.B.Mohapatra,  
Senior Standing Counsel.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN:

The Applicant, in this case, Shri Mir Aub Ali has ventilated his grievances that he should be placed senior to Shri Madan Mohan Das, Respondent No.3 and accordingly has approached this Tribunal to declare the gradation list dated 01.01.2001 under Annexure-A/4 <sup>is</sup> illegal and has also prayed for a direction to be given to the Respondents to promote him to the <sup>rank</sup> grade of Driver Gr.I .

2, From the facts of this case it reveals that Applicant and Respondent No.3 were recruited as Driver Gr.III w.e.f. 04-11-1987. It has been disclosed by the Respondents in their counter that on the basis of the performances of the candidates before the Selection Committee, four persons were selected for appointment as Staff Car Driver and a merit list of these four candidates were prepared as follows:

1. M.M.Das
2. M.A.Ali
3. R.K.Murty
4. K.C.Patra.

They have further submitted that as per the guidelines issued by the DOP&T OM No.22011/7/86-Estt.(D) dated

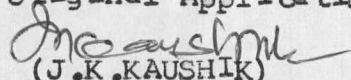
03-07-1986 and the provisions of the Recruitment Rules, the seniority of the successful candidates were determined strictly in terms of their position in the merit list. It has also been brought to our notice that Res. No.3 and the Applicant were thereafter promoted provisionally to officiate as Staff Car Driver Gr.II in the scale of pay of Rs.1200-1800/- by the order of the Respondent No.2 dated 12-12-1996 in which the position of the Respondent No.3 was also shown higher than the Applicant. The said seniority position was also earlier circulated by the Respondents to all concerned vide their letter dated 17.1.1990 as the final gradation list of Driver in the basic grade of Rs.950-1400/- as on 1-1-1990. Learned Counsel for the Applicant submitted, on our repeated query, that he had submitted representation as soon as the seniority list as on 1-1-1990 was published and circulated vide letter dated 17-01-1990. We have also perused his representation under Annexure-5 dated 17-09-2002 as well as the averments made by him at paragraph 4 of the rejoinder filed by him. We, however, find that in the said representation he had only made a submission before the competent authority to consider his case sympathetically for his promotion to Gr.I Driver with effect from 18.11.1996 or in the alternative with effect from 15.01.2000. In other words, since 1990 till 2001 at no point of time, the Applicant had ever challenged his seniority

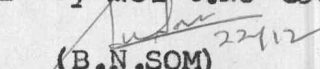


position as put in the seniority list and, therefore, today in this O.A. his challenge to the seniority list appears to be an after thought and is definitely barred by limitation.

3. We have also heard learned counsel for both sides and perused the materials placed on record.

4. From the facts of this case, it is crystal clear that the Applicant was never senior to the Respondent No.3 in the service ; because at the initial stage of recruitment to the cadre of Driver Gr.III in 1987, the Respondent No.3 had secured the first position and the Applicant was in the second position and that position has been maintained in all through and, therefore, we find no deficiency in the seniority list circulated by the Respondents. Learned Senior Standing Counsel, during the course of hearing submitted that in the meantime, the Applicant was called for the test on 09.05.03 for promotion to the post of Driver Gr.I. However, he was not aware of the final outcome of that. Be that as it may, as the challenge in this O.A. is that the Applicant should have been placed senior to Respondent No.3 is of no merit, we dispose of this Original Application being devoid of any merit. No costs.

  
(J.K.KAUSHIK)  
JUDICIAL MEMBER

  
(B.N.SOM) 22/12  
VICE-CHAIRMAN