

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 403 OF 2003
Cuttack this the 18- day of April 2005

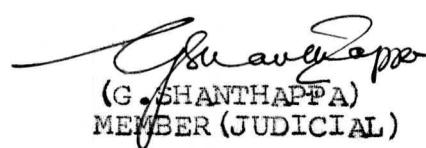
Harmohan Choudhury ... **Applicant(s)**

- VERSUS -

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

FOR INSTRUCTIONS

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


(G. SHANTHAPPA)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.403 OF 2003
Cuttack this the 1st day of April 2005

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.SHANTHAPPA, MEMBER (JUDICIAL)
...

Shri Harmohan Choudhury, aged about 51 years,
S/o. late Ganeswar Choudhury, Head Clerk, No.77
(Photo) Party (SEC) Survey of India, South
Eastern Circle, Bhubaneswar-30

... Applicant

By the Advocates

M/s.G.Rath
T.K.Prahraj
S.Rath
S.Mishra
B.K.Nayak-3

- VERSUS -

1. Union of India represented through the Surveyor General of India, Survey of India, Dehra Dun, Uttaranchal
2. The Director, South Eastern Circle, Survey of India, Survey Bhawan, Bhubaneswar-13

... Respondents

By the Advocates

Mr.B.Dash, A.S.C.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Sh.Harmohan Choudhury) a Head Clerk in the Office of the Director, South Eastern Circle, Survey of India (Res.2) has filed this O.A. under Section 19 of the A.T.Act, 1985 seeking the benefit of reservation under orthopaedically handicapped quota in the matter of promotion pursuant to O.M. NO.36035/1/89-Estt, (Set) dated 20.11.1989.

2. Shorn of details, the case of the applicant is that having been declared physically handicapped (40% orthopaedically handicapped/impairment by the Chief

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Medical Officer, Capital Hospital, Bhubaneswar); he was entitled to the benefit of the reservation policy declared by the Government vide their O.M. dated 20.11.1989. However, he was promoted on ad hoc basis to the grade of Head Clerk with effect from 3.2.1992 to 30.4.1994 with some breaks, reverted to his parent grade of U.D.C. thereafter and again promoted as Head Clerk on regular basis with effect from 12.8.1996. The grievance of the applicant is that when he was given regular promotion to the grade of Head Clerk in the year 1996, he was entitled to be promoted under physically handicapped quota prior to that period as per the reservation rules brought into force by the Government, being the roster points at 34, 64 and 100 points under the physically handicapped quota from the year 1989, and, had the Respondents followed the reservation policy as prescribed by the Central Government, he would have been promoted to the post of Superintendent in the year 2001. But because of the inaction on the part of the Respondents, he has been denied the benefit of reservation policy. He has, therefore, approached the Tribunal to direct the Respondents to promote him as Head Clerk from 1989 and then to the post of Office Superintendent from the year 2001 to meet the obligation of the administration towards physically handicapped employees.

3. The Respondents have resisted the application calling it not maintainable at all. It is their argument that till the reservation policy for physically

handicapped person was to be implemented only in respect of those ^{posts} cases, which were identified as being capable of being held by the appropriate category of physically handicapped persons. Further, they have submitted that the identification of number of posts coming within this category took time to be completed and the reservation policy was implemented finally from 12.8.1996, when the applicant was promoted to the grade of Assistant/Head Clerk on regular basis. The Respondents have also submitted that it was only in the year 1990 that the applicant that the applicant was declared orthopaedically handicapped with 40% physical impairment on account of his suffering from post-polio. They have, therefore, submitted that as the scheme of offering promotion under reservation of physically handicapped category was made effective only from 8.3.1996, the applicant's prayer for ante-dating his promotion is without any merit.

4. We have heard the learned counsel of both the sides and have perused the records placed before us.

5. The sole question to be answered in this O.A. is whether the applicant is entitled to claim for promotion under physically handicapped quota from 1989. The Respondents have argued that although the reservation policy for P.H. in Group C and D posts to be filled up for promotion was introduced by the Government vide letter dated 20.11.1989, it was clearly laid down that the applicability of the reservation would be limited to the promotions being made to those posts

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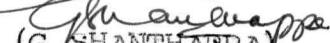
and ^{which} those are identified of being capable/filled up/ held by the appropriate category of physically handicapped. It is their claim that it took them some time and it was only with effect from 8.3.1996 ^{as done by others} that they could implement the scheme, like, the Indian Audit & Accounts Department and other Departments of the Central Government. The applicant, on the other hand, has refuted this plea of the Respondents by referring to O.M. No. 36035/5/84-291 (dated 28 Feb 1986) by dint of which the post of Assistant/Head Clerk was identified for being held/filled up by physically handicapped persons. However, on our query that if the post of Assistant/Head Clerk had already been identified, whether the applicant earlier represented to the authorities claiming the benefit of promotion under PH quota when he was promoted on regular basis with effect from 12.8.1996, the applicant limited his prayer for promotion under PH reservation policy from the year 1996 only. His revised submission is that the DPC which was held during the year 1996 for filling up of the post of Head Clerk and he was given promotion in his turn as O.C. candidate, the Respondents could have been him the benefit of PH quota and after he was given that benefit, he would have got promotion under one of the slots reserved for PH category.

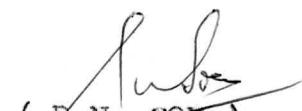
6. On consideration of the submission made by the rival counsels and on perusal of the seniority list of

U.D.C. for promotion to the grade of Asst/Head Clerk (Annexure-3), we find that the name of the applicant appears at Sl. No.92 and above him there is another individual at Sl.No.87 under PH category and therefore, his claim that had the scheme been made effective from the year 1996, he would have got the benefit of reservation under PH quota and his name would have gone up in the list of regular Asst./Head Clerk ~~holds~~ water. During the oral argument, the learned Addl. Standing Counsel was at pains to clarify as to why the Respondents, as admitted by them, implemented the scheme under PH quota with effect from 8.3.1996, instead of promoting the applicant under PH quota did promote him in his own turn as an O.C. candidate. He would not explain to us whether an official, whose name appears at Sl. No.87 was promoted under PH quota or in his own turn. In other words, the Respondents have failed to clarify that even when they had implemented the reservation policy for promotion under PH quota with effect from 8.3.1996, ^{new} but the promotion of the applicant could not be granted under PH quota. We had given enough opportunities to the Respondents to explain the matter in clear cut terms, but that has not yielded any fruitful result. The learned Addl. Standing Counsel wanted some more time. We have considered this submission, but we see that no purpose would be served by giving any more time, because, the question raised by us is so basic to the issue raised in this O.A., we thought that the Respondents should have ^{been} ready with the answer in their counter itself. They having ^{neither} replied 2

in the counter of their own nor having clarified the position despite several opportunities, we feel it just and proper to dispose of the matter on the basis of materials available on record. In the circumstances, the Respondents are directed to consider the representation of the applicant for promotion to the grade of Head Clerk/Assistant under PH quota as we find from the seniority list that there is only one more person above him under P.H. category and therefore, the Respondents are under obligation to explain whether the official at Sl.No.87 has been granted promotion to the grade of Head Clerk under PH quota and whether that official belongs to the same category of P.H. as the applicant herein, because, only in that case the applicant could not have received the benefit of reservation. We also direct that in case the official at Sl.No.87 belongs to PH category other than the one to which the applicant belongs, in that case the applicant should be considered for promotion under PH quota by holding a review D.P.C. and the decision in this regard, i.e., whether or not there is a case for convening a review DPC for promotion of the applicant under PH quota should be taken within a period of 60 (sixty) days from the date of receipt of this order.

Accordingly, the O.A. succeeds to the extent indicated above. No costs.


(G. SHANTHAPPA)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

BJY