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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 665 of 2003.

Cuttack, this the 21st day of March, 2006.

MADHUSUDAN SOY

.....

APPLICANT.

VERSUS


UNION OF INDIA & ORS

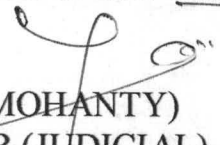
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RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of CAT or not? Yes.


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

21/03/06

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.**

O.A.No. 665 of 2003.
Cuttack, this the 21st day of March, 2006.

C O R A M:-

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

MADHUSUDAN SOY, Aged about 43 years,
S/o. Kailash Chandra Soy,
Permanent resident of Vill: Pokharipadi,
PO: Mituani, PS: Muhuldiha,
Dist: Mayurbhanj and at present working as
Grade-II, Staff Car Driver in Doordarshan Kendra,
Bhubaneswar-5, Dist. Khurda(Orissa)

..... APPLICANT.

By legal practitioner:- M/s. R.B.Mohapatra,S.K.Singh,
B.S.Dasparida,N.R.Routray,
Advocate.

-VERSUS-

1. Union of India, represented through its Secretary to Government of India, Ministry of Information and Broadcasting, New Delhi-110 001.
2. The Director General(Broadcasting Corpn. of India)
Prasar Bharati, Mandi House, Copernicus Marg,
New Delhi-110 001.
3. Chief Executive Officer, Prasar Bharati (Broadcasting Corporation of India), Mandi House, Copernicus Marg,
New Delhi-110 001.

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4. Director, Prasar Bharati (Broadcasting Corporation of India)
Doordarshan Kendra, Bhubaneswar-5, Dist. Khurda (Orissa),

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RESPONDENTS.

By legal practitioner:- Mr. S.B.Jena, Additional Standing Counsel.

ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

In this Original Application under Section 19 of the A.T. Act, 1985, the Applicant (engaged as a Gr.II Staff Car Driver in Doordarshan Kendra at Bhubaneswar) being aggrieved by the Office Order issued under Annexure-A/14 dated 14.7.2002, among other things, has sought for the following relief:-

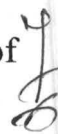
“...pass necessary order/direction against the Respondents to revise the office order dated 14.7.2003 under Annexure-A/14 to the Original Application and to consider his case to promote him to the post of Staff Card Driver in the Grade I w.e.f. 01.08.1999 at par Sri D.Krishan in the scale of Rs.4005/- to Rs.7000/- as per the percentage of reservation meant for the Scheduled Tribe under Annexure A/13 and roster point thereof or at best against the vacant post of Grade-I Staff Car Driver caused due to retirement of Sri Danam Murmu on 13.2.2002, and the consequential service and financial benefits with retrospective effect and the arrears thereof be paid within the stipulated period”.

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2. It is the case of the Applicant that he joined the post of Staff Car Driver, as a Scheduled Caste candidate under the Respondent-Department on 19.08.1985 being duly selected in the process of selection. The staff car drivers in Doordarshan Kendra did neither have any promotional avenue, although they belong to Gr.C category at par with the Clerks nor they were being treated as technical staff. Being aggrieved by this inaction of the Respondents, the Staff Car Drivers Association filed an O.A. (bearing No.2957 of 1991) before the Principal Bench of this Tribunal; which was disposed of with direction to the Government of India to devise a promotional scheme for Staff Car Drivers with the graded structure (Rs.950-1500, Rs.1200-1800/- and Rs.1320-2040/-) similar to one provided by the Ministry of Railways. Based on this judgment, Office Memorandum under Annexure-A/1 dated 30.11.1993 was issued (by the Ministry of Personnel, Public Grievances and Pension) stipulating that the posts of staff car drivers in the existing scale of Rs.950-1500/- will be placed in the respective three categories as referred to above in the ratio of 55:25:20: To make it more conspicuous, it was stipulated that if there are five posts of staff car drivers 55% of 5, i.e., 3 will be in the scale of Rs.950-1500/-, 25% of 5, i.e., 1(one) will be in the scale of Rs.1200-1800/- and 20% of five, i.e 1 (one) will be in the scale of Rs.1320-2040/- with the nomenclature Staff car Driver-Ordinary Grade, Staff Car Driver, Gr.II and Staff Car Driver Grade-I respectively. On 01.01.1998 under Annexure-A/6, a

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seniority list of Drivers in Doordarshan Kendra was published showing the seniority position of the applicant at Sl. No.12. Thereafter, under Annexure-A/7 dated 3.4.1998, an office order was issued appointing eight Drivers, as Gr.I and II indicating therein the date of appointment to those grades against each. Later under Annexure-A/10 dated 10.04.2000, the Applicant, along with 10 others, were allowed A.C.P. raising his scale of pay to Rs.4000-6000/-. While the matter stood thus, under Annexure-A/11 dated 21.8.2001, Respondent-Department issued an office memorandum seeking some information from all Zonal Head of Office with a view to introduce Staff Car Driver "Special Grade" in the scale of Rs.5000-8000/-. Under Annexure A-12 dated 15.2.2001, the Respondents-Department, (in compliance of the judgment dated 5.5.2000 in O.A.No.2529/96 of Bikram Singh vs. Union of India & Ors.) introduced a Special Grade for the Staff Car Drivers in the scale of Rs.5000-8000/- having retrospective application (with effect from 09.11.1996 i.e. the date of filing of that O.A.). The earlier grade structure; which was determined 55:25:20, by the introduction of a Special Grade among Staff Car Drivers came down to 30:30:35:5 in respect of Ordinary Grade, Grade-II, Grade-I and Special Grade, respectively. Under Annexure-A/13 dated 21.01.2002, seniority in promotion and consequential benefits to SC/ST employee promoted under reserved quota restored with effect from 17.6.1995 by the constitutional amendment which laid down that "SC/ST Government servants shall, on such promotion by virtue of



reservation roster, be entitled to consequential seniority ...". Based on this, the Applicant has submitted that in violation of the O.M. dated 30.11.1993, dated 9.8.1999, dated 15.2.2001 and dated 1.6.1998 as well as the direction of the Central Administrative Tribunal in O.A.No.2529 of 1996 (Annexure-A/12), instead of giving him the pay scale of Rs.4500-7000/- on the recommendation of the 5th Central Pay Commission report under the Assured Career Progression (ACP) Scheme, the DPC recommended to promote 11 drivers into different grades, wherein he has been promoted to Grade II drivers in the scale of Rs.4000-6000/- with effect from 8.11.1996. Ventilating his grievance he made a representation dated 28.7.2003 to the Director, Doordarshan Kendra, Bhubaneswar and as he could receive no reply from the Respondent-Department, he moved this Tribunal with the prayers referred to earlier.

3. Respondents have filed their counter opposing the prayer of the Applicant. In their counter the Respondents have submitted that that as per the instructions of DOPT and accepted by the M.I. & B, 5 posts of Driver in Grade-I and 6 posts in Grade-II were created under DDK, Bhubaneswar. According to the post based roster, out of the above posts in Grade-I, reservation for ST is 1 and SC is 1 and Grade-II reservation for SC is 1 and ST is 1. It has been further submitted that in pursuance of the Directorate O.M. dated 3.2.2003, the Applicant has been promoted to the post of Grade-II driver with effect from 8.11.1996 when there was vacancy and the promotion scheme

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became effective. It has also been submitted that though the Applicant has completed 15 years service as on 1.8.1999, he could not be promoted to Grade-I driver since there was no vacancy according to the prescribed ratio. The respondents have submitted that the representation of the Applicant dated 28.7.2003 was duly considered but it was not possible to give him promotion superceding his seniors. It has been submitted that eligibility criteria does not confer any right for promotion on the date an employee becomes eligible. With these submissions the Respondents have prayed for dismissal of the O.A. being devoid of merit.

4. We have heard the learned counsel for the parties and perused the materials placed on record. We have also gone through the rejoinder filed by the Applicant.

5. Having regard to the submissions made by the parties, it is worthwhile to mention here that neither the Applicant nor the Respondent-Department have revealed the ~~true~~ facts to enable this Tribunal to take a just decision in the matter. However, as the fact reveals, the Applicant has not ever disputed with regard to fixation of his seniority as on 1.1.1998 under Annexure-A/6. The Applicant has also not made out a case of super session. The only hope which he cherished is that by virtue of restoration of seniority of SC/ST candidates in view of 85th constitutional amendment under Annexure-A/13

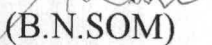
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dated 21.01.2002, safeguarding of the seniority position of those categories in the promotional grade with effect from 17.06.1995, he might be promoted. This amendment of the seniority position, in so far as Applicant is concerned, does not improve his case, inasmuch as by 17.6.1995 the Applicant had not been promoted to any higher grade by superseding his senior in O.C. category nor had he lost any seniority position. As regards his position in the seniority list, the same, as on date, is unquestionable. It is the specific case of the respondents that out of 5 posts of Grade-I driver, two were post based roster, i.e., 1 for ST and 1 for SC and, according to ratio, there being no vacancy in SC category, the Applicant could not be promoted. Respondents have also specifically stated in their counter that the representation filed by the Applicant was duly considered, in line with the Directorate and DOPT guidelines, but it was not possible to promote him by superseding his seniors. Viewed from this, we also fail to understand when the seniority position of the Applicant is not in dispute, how he could have been considered for promotion by superseding his seniors. This being the state of affairs, we are unable to see any justifiable reason to modify Annexure-A/14 dated 14.7.2003 by directing the Respondents to consider the case of the Applicant for promotion at par with Shri D.Krishan, Gr.I driver as prayed for by him/the Applicant. We are at one with the submissions made by the Respondents that mere fulfilling the eligibility conditions will not confer any right on an employee for being promoted to the next higher grade.

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Having regard to what has been discussed above, we are of the opinion that the applicant has not been able to make out a case for any of the relief prayed for.

Resultantly, the O.A. fails. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)