

9

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.**

O.A.NOS. 525 and 529 of 2004  
Cuttack, this the 30<sup>th</sup> day of June, 2005.

Purna Chandra Sukla & Another ..... APPLICANTS.

VERSUS

UNION OF INDIA AND OTHERS. .... REPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters; or not? 73
2. Whether it be circulated to all the Benches of the CAT or not? 72

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

30/06/05

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH :CUTTACK**

ORIGINAL APPLICATION NOS.525 & 529 OF 2004  
Cuttack this the 30<sup>th</sup> day of June' 2005

**CORAM:**

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

**IN O.A.NO.525/2004**

Purna Chandra Sukla, aged about 42 yrs.,  
Son of Golak Chandra Sukla, presently working as Assistant Post Master  
Accounts, Cuttack GPO, Cuttack, PO/DIST-Cuttack.

Applicant.

By the Advocates ..... M/s.M.Mohanty  
S.Patra  
S.C.Das

VERSUS

- 1.Union of India represented through Chief Post Master General,  
Orissa Circle, Bhubaneswar, Dist-Khurda
- 2.Director of Postal Services (Hqrs.Office)  
Office of the C.P.M.G., Orissa Circle, Bhubaneswar, Dist/Khurda
- 3.Senior Superintendent of Post Office, City Division, Cuttack, 15,  
Cantonment Road, Cuttack-I
- 4.Smt.Sanjukta Behera, S.P.M., Orissa School of Engineering, S.O.  
under Cuttack City Division, Cuttack, PO-Jobra, Dist/Cuttack
- 5.R.N.Pati, Accountant, Jagatsinghpur Head Office,  
PO/Dist-Jagatsinghpur

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.... Respondents

By the Advocates

Mr.B.Mohapatra, A.S.C.  
Mr.S.B.Jena, A.S.C.  
M/s.B.S.Tripathy  
M.K.Rath  
J.Pati(Res.4)

**IN O.A.NO.529/2004**

Gopabandhu Naik, aged about 43 years, Son of Kulamani Naik  
At: Sukhupada, PO-Gokan, PS/ Mahanga, Dist-Cuttack  
At present working as APM(Accounts)  
Chandinichouk Head Post Office,  
At/PO-Chandinichouk, PS-Lalbag, Town/Dist/Cuttack

... Applicant

By the Advocates

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M/s.P.K.Chand  
D.Satpathy  
J.Mohanty

**VERSUS**

- 1.Union of India represented by Director General of Posts  
New Delhi
2. The Chief Post MasterGeneral, Orissa Circle, Bhubaneswar,  
Dist/Khurda
- 3.Senior Superintendent of Post Offices, Cuttack City Division, Cuttack-1
- 4.Smt.Sanjukta Behera, Sub Post Master, Orissa School of Engineering  
Sub Post Office, Cuttack-7

... Respondents

By the Advocates

Mr.R.N.Mishra, A.S.C.  
M/s.B.S.Tripathy  
M.K.Rath  
J.Pati

**ORDER**

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

1. Since in both the above mentioned Original Applications common questions of fact and law are involved, we dispose of those applications through this common order. For the sake of convenience, the facts as averred in O.A.No.529/04 are being referred to.
2. Shri Gopabandhu Naik (applicant) has filed this Original Application challenging the order dated 16.7.2004 under Annexure-A/8 transferring/reverting him from the post of Assistant Post Master (in short A.P.M.) (Accounts) in Lower Selection Grade (in short L.S.G.) cadre to a lower post of Accountant on posting of Res.4(Smt.Sanjukta Behera) on her promotion in his place on the ground that this order is illegal, arbitrary and against the promotion policy.
3. The applicant had earlier approached this Tribunal in O.A.No.518/04 on identical grounds and the said O.A. was disposed by this Tribunal in order dated 19.7.2004 as under:

“Heard Mr.P.K.Chand, Ld .counsel appearing for the applicant .He has served a copy of this O.A. on Shri S.B.Jena, Id. Addl. Standing Counsel. Being aggrieved by the order dated 16.07.2004 posting Smt.Sanjukta Behera, present SPM, Cuttack City Division, as APM (Accounts), Chandinichowk H.O., the applicant has filed this O.A. seeking certain relief. It has also been disclosed by the applicant that he has

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filed a representation to the CPMG, Orissa Circle, through proper channel on 12.7.2004 for considering his case and to confirm him as APM(Accounts) in LSG Supervisory Cadre from 01.06.2000 without disturbing him from his present post. As this representation has been submitted we find only on 13.07.04, it is, therefore, premature on the part of the applicant to have approached this Tribunal without exhausting the departmental remedy. In the aforesaid premises, we direct Respondent No.2 to dispose of his representation by 29.07.04 and if relief sought by the applicant is permissible, the same may be considered. In any case, the representation should be disposed of before 29.07.04 as the posting order has to be implemented by 31.07.04".

4. The said representation dated 13.07.2004 of the applicant was disposed of by Respondent No.2 vide its order dated 5.8.2004, rejecting the same being devoid of merit. However, the applicant rushed to this Tribunal in this O.A. on 29.7.2004. It is surprising that although his representation was disposed of <sup>on</sup> 5.8.2004, which was received by him on 11.8.2004, the applicant has not assailed this order anywhere in his rejoinder nor has he filed any specific reply to the order issued by the Chief Post Master General (Res.No.2).

5. The issue raised in this O.A. by the applicant is that he is entitled to hold the norm based post of A.P.M.(Accounts), Chandinichowk H.O., Cuttack, that Res.No.4 (Smt.Sanjukta Behera) is junior to him in Accounts cadre and that norm based L.S.G. cadre including the Accounts cadre is a divisional cadre and, therefore, the

Res.4 being not belonging to Cuttack City Division could not have been appointed as APM(Accounts), Chandinichowk H.O.

6. The admitted facts of the case are that the applicant joined the Respondents-Department as Postal Assistant in Cuttack City Division. He qualified in the examination of P.O. & R.M.S. Accounts Examination in February, 1990<sup>and</sup> filed option on 20.2.1998 to work in Accounts line. On the other hand, private Respondent No.4 had also joined under the Respondents-Department as Postal Assistant, passed PO& RMS Accounts Examination in the year 1983. The plea of the applicant is that after his initial appointment in Cuttack City Division, he continued to work in that Division when he received financial up gradation under One Time Bound One Promotion(in short TBOP) Scheme in 1983 when he was posted as APM(Accounts) in Chandinichowk H.O. On the other hand, Private Res.4 although initially was belonging to Cuttack City Division and had worked in accounts in the said division from 6.2.1991, she opted for general line and went on transfer to Cuttack City Division under Rule 38 and on 21.11.2001, Respondent No.3 declared that Res.4 was no longer continuing in the accounts line. In spite of that, by order dated 17.6.2004, Respondent No.2 promoted Res.4 to the cadre of LSG(Accounts) against norm based of post APM(Accounts) and by his order dated 7.7.2004, allotted Res.4 to Cuttack City Division for posting. The plea of the applicant is that LSG cadre having been divisionalized by

4

order of the D.G.Posts dated 2.1.1986, the Res.4 could not have been posted to Cuttack Division jeopardizing his service interest, because, by virtue of her transfer to Sambalpur Division and again transferring her to Cuttack City Division in 1995, she had lost her seniority in terms of the provision under Rule 38, a fact which was ignored by Res.2 without any reason.

7. The Respondents have contested the O.A. on all counts. Their stand is that the O.A. is misconceived. They have on the facts of the case argued that Res.4 was recruited in the year 1973 whereas the applicant joined service in February, 1982 and that the Res.4 qualified PO & RMS Accounts Examination in 1983, when the applicant had put in only one year's of service. They have also pointed out that the applicant cleared PO& RMS Accounts Examination in the year 1990, and, therefore, the applicant could not claim himself to be senior to Res.4 either in Accounts cadre or in the General Line cadre. On the merit of the matter, the Respondents have pointed out that while it is true LSG cadre was divisionalised with effect from 2.1.1986 and that order was effected only in case of General Line LSG posts. However, <sup>later</sup> by the order of the Ministry of Communication dated 8.6.1994 (Annexure-A/4)Accounts Cadre was divisionalized only for the purpose of transfer liability. This clarification was issued by the Director General of Posts by his order dt. 13.2.1995(Annexure-R/9), wherein it was stated that "so far as term of

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divisionalization as mentioned in our order dated 8.6.1994 is concerned, it relates only to transfer liability. No other aspect of Accounts cadre was changed. In other words, there is no change so far as promotion to LSG Accounts at circle level is concerned nor there is any change with regard to disciplinary/appointing/administrative authority"/ They have, therefore, stated that as the norm based supervisory posts of APM Accounts continued to remain a circle cadre, the vacant posts of APM Accounts were filled up on circle basis by their impugned order dated 7.7.2004 (Annexure-A/4). They have further disclosed in their counter that norm based 1/3<sup>rd</sup> LSG APM posts which were to be filled up from amongst the officials declared qualified through PO & RMS Accounts Examination had remained in abeyance and only after issue of the Postal Directorate order No.4-16/02-SPB-II dated 12.11.2002 it was decided to fill up these posts by giving notional promotion from the year it was discontinued in terms of the relevant provisions of the recruitment rules. Accordingly, the norm based posts of APM Accounts were notionally filled up from the year 1989, i.e., from the year it was discontinued on the basis of circle seniority according to the year of passing the PO & RMS Accounts Examination by the officials as provided under rules subject to community wise reservation till the year 2001. In this process, the qualified PO & RMS Accounts officials up to the year 1983 were adjusted against the vacant posts. As the Respondents No.4 had qualified

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17

in the year 1989 and the applicant had qualified later than her, naturally, the name of Res.4 had found place in the list of 29 approved APM Accounts vide order dated 17.6.2004 (Annexure/A-6) whereas the name of the applicant did not find place as he was far junior in the list of qualified PO & RMS Accountants. They have also submitted that the applicant by his seniority in the time scale of Postal Assistant is a TBOP official in the scale of Rs.4500-7000/- and his name appears at Sl. No.27 in the gradation list. On the other hand, Res.4's name appears in the list of BCR officials and she being a qualified official in the PO & RMS Accounts Examination was considered for promotion to the norm based post of APM Accounts and by virtue of her seniority in the PO & RMS group maintained on circle basis, she was found suitable by the DPC for promotion on circle basis. As there was a vacancy of APM Accounts post at Chandinichowk H.O. she was posted against that post terminating the local arrangement against the post of APM Accounts which the applicant was enjoying since 2000.

8. By filing rejoinder, the applicant has sought to argue that Res.4 having on her own volition gone on transfer to Sambalpur Division under Rule 38 and again sought transfer back to Cuttack City Division in 1995, she had lost her seniority in Cuttack City Division and therefore, her promotion to the post of APM Accounts earlier than him is not just

4

and proper and, therefore, the same is liable to be quashed. He has further stated that Res.4 having not worked as Accountant due to her opting out of the Accounts line could not have been considered for promotion against APM Accounts post.

9. The Respondent-Department has repudiated the contention of the applicant by stating that the norm based LSG supervisory posts of APM Accounts are required to be filled up from amongst the Postal Accountants on the basis of circle seniority determined according to the year of passing the PO & RMS Accounts Examination. They have further submitted that in terms of the Recruitment Rules for promotion to

.Supervisory posts/Accounts line, Smt .Behera (Res.4) belonging to Scheduled Caste community has fulfilled all the conditions, i.e., she having completed 10 years of service in the time scale and having qualified in the PO & RMS Accounts Examination in the year 1986 could be included in the list of 28 officials for filling up as many vacant posts and that on the basis of her selection on merit she was allotted to Cuttack City Division against one of the two vacant posts available in the cadre. On the other hand, the applicant having qualified in the year 1990 stood junior to all the 28 aforesaid officials promoted.

10 We have heard the learned counsel of both the sides on two occasions. However, on the last day of hearing none was present on behalf

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19

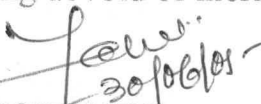
of the applicant, though the learned counsel for the Respondents was present. We have also perused the records placed before us.

11. The challenge of the orders dated 17.6.2004, 7.7.2004 and 16.7.2004 centers round the issues whether LSG(Accounts) is a divisionalized cadre or not like the LSG cadre on General Line. The objection raised in this application is that Smt.Sanjukta Behera (Res.4) could not have been posted as APM(Accounts) to Chandinichowk H.O. under Cuttack City Division as LSG cadre is a divisional cadre. The Respondent Department has answered the issue by stating that it is a divisional cadre except for the purpose of promotion and transfer on promotion. The fallacy behind this argument has been proved beyond doubt by the Respondents by referring to DG Posts circular dated 13.2.1995, (Annexure-R/9). Secondly, the applicant has also been not able to repudiate the contention of the Respondents-Department that for filling up of supervisory cadre of APM Accounts, there exists separate recruitment rules where the feeder grade consists of Postal Assistants having 10 years service and having qualified in PO & RMS Accounts Examination. The applicant has also not been able to find fault with the submission of the Respondents that Accountant Posts do not constitute the feeder grade for promotion to the grade of APM Accounts. The other admitted fact is that Smt.Sanjukta Behera (Res.4) having been qualified in 1983, whereas the applicant in the year 1990, she is senior in the list of

2

PO & RMS (Accounts) and therefore, she had rightly been considered first for appointment to the post of APM (Accounts) in preference to the applicant. Last but not the least, the disposal of representation of the applicant by the Res. No.1 by his order dated 5.8.2004 having not been countered by the applicant, the O.A. in effect fails being devoid of merit.

In view of the above Original Application No.525/04 also fails being devoid of merit. No costs.

  
(M.R. MOHANTY)  
MEMBER(JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN