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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO .951 OF 2004

Cuttack this the 11th day of September, 2008

Shri Trinath Behera Applicant
Vrs.

Government of India Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...
Shri Trinath Behera, aged about 44 years, S/o.Gangadhar Behera, Kalingavihar, Bhubaneswar, PS-Khandagiri, Dist-Khurda, at present Asst. Labour Commissioner (Central), Office of the Regional Labour Commissioner (Central), Bhubaneswar, Kali Mandir Lane, Satyanagar, Bhubaneswar, Dist-Khurda

... Applicant

By the Advocates:M/s.Satyabadi Das
S.B.Mohanty
S.K.Das

-VERSUS-

1. Government of India represented through the Secretary, Ministry of Labour, Sramasakti Bhawan, Rafi Marg, New Delhi
2. The Secretary, Department of Personnel & Training, Home Affairs, North Block, New Delhi
3. The Chief Labour Commissioner Centra, Government of India, Srama Sakti Bhawan, Rafi Marg, New Delhi
4. The Secretary, Union Public Service Commission, Shahajan Road, New Delhi
5. Sri A.K.Goel, S/o.Amar Kant Goel, A.L.W. ©, Asst.Labour Welfare Commissioner ©, Ordnance Cabla Factory, Chandigarh, Union Territory, India
6. R.K.Mina, A.L.W. ©, Army Depot, Bharatpur, Rajasthan
7. Prithi Singh Rana, Asst.Labour Commissioner ©, Chandigarh, Union Territory, India

... Respondents

By the Advocates:Mr.B.Dash (Res.4)
Mr.U.B.Mohapatra, SSC

ORDER**SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:**

Challenging the gradation list of Grade-V Central Labour Service Officers as per Annexures-4 and 7 dated 16.2.1999 and 31.3.2003, the applicant, inter alia, has prayed for the following relief:

- “(i) The gradation/seniority list published by the Respondent No. 1 and 3 on 16.2.1999 against officers of the Grade-V of Central Labour Service vide Annexures-4 and 7 may kindly be corrected and modified so far as the applicant is concerned and his place should be above of Respondent No. 5,6 and 7 and other juniors those who have been appointed in the said Grade-V post after the posting of the applicant.
- (ii) The Respondent No.1 may be directed to circulate the proper seniority and gradation list of Grade-V post of Central Labour Service indicating the proper placement of the applicant in the said list accommodating his grievances with intimation to the applicant forthwith
- (iii) The Respondent No.1 may kindly be directed to promote the applicant to the higher post of Grade-V in the Central Labour Service by properly fixing the seniority of the applicant whenever promotional post will be available for fill up.”

2. The brief facts which are necessary for the decision of the case are as follows:

The applicant joined as Assistant Labour Officer in Government of Orissa, Labour Service, during 1982. Thereafter, the applicant, being selected and recommended by the Union Public Service Commission, joined as Labour Enforcement Officer (LEO) in the Central Labour Service on 2.9.1985. As per the seniority list notified and circulated by the Ministry of Labour, Government of India (Annexure-2 dated 9.1.1990), the name of the applicant was shown at Sl. No.100 whereas the contesting Respondents 5 to 7 were shown at Sl. Nos.



104, 109 and 127 respectively. While so, during the year 1992 the applicant was recommended to compete the selection for the post of Grade-V of Central Labour Service which consists of Assistant Labour Commissioner (ALC) and Assistant Welfare Commissioner(AWC) and Labour Officer (LO). However, the applicant having been selected by the UPSC, joined Grade-V post on 15.1.1993 as a direct recruit. Subsequent to that, Respondent Nos. 5 to 7, who were in the feeder grade of Labour Enforcement Officer were also promoted to the post of Grade-V with effect from 16.3.1998. Thereafter, the Ministry of Labour, Government of India, published a gradation list of grade-V officers on 16.2.1999 in which the applicant was shown junior to Respondent Nos. 5 to 7. The applicant made several representations against the said gradation list dated 16.2.1999, but to no effect. While the matter stood thus, the Respondent No.1 notified and published the gradation list of Grade-V officers, placing the applicant junior to Respondent Nos. 5 to 7, as per Annexure-7 dated 31.3.2003. Aggrieved by the gradation list so published, the applicant filed the present Original Application with the prayers referred to above.

3. This Tribunal heard the learned counsel appearing on either of the parties and perused all relevant documents filed along with the O.A.

4. The learned counsel appearing for the applicant submitted that while the applicant was working as Assistant Labour Officer under the Government of Orissa, on being selected by the Union Public Service Commission, he was appointed to the post Labour Enforcement Officer (LEO), 1985 and thereafter as per Annexure-A/3 appointment order dated 09.10.1992, the applicant joined



as Grade-V with effect from 15.1.1993. The counsel for the applicant has submitted that as per Annexure-A/3 appointment order, the applicant was directly recruited and/or selected as Grade-V officer in the Central Labour Service prior to promotion of Res. 5 to 7 as Grade-V, who were also working as Labour Enforcement Officer in the State. If so, when the gradation list, according to counsel for the applicant, was published in the cadre of Grade-V on 31.3.2003, the placement of applicant junior to Res. 5 to 7 is irregular and illegal. In this context, the counsel for the applicant also relied on Annexure-A/2 gradation list dated 9.1.1990 in respect of Labour Enforcement Officer(LEO) published by the Ministry of Labour, which would show that the applicant was senior to Res. 5 to 7, his name being placed at Sl. No.100. Further, the counsel for the applicant submitted that although the applicant was appointed as a direct recruit, he was otherwise eligible for promotion to the post of Grade-V having fulfilled all the criteria for promotion and therefore, having been promoted to Grade-V later than the applicant, Res. Nos. 5 to 7 could not be held senior as the fixation of seniority in the grade of LEO as per Annexure-4 and in the Grade-V posts as per Annexure-7 is not consistent with the seniority/gradation list already published and notified as per Annexure-2 dated 9.1.1990. The learned counsel has, therefore, urged that the seniority/gradation lists vide Annexures-4 and A/7 being irregular and not in accordance with rules should be modified by placing the applicant above Res. 5 to 7.

5. To the above contentions, relying on the counter filed for and on behalf of the official Respondents, the learned Standing Counsel submitted that as

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per the Central Labour Service Rules, 66.2/3% of the post of Gr.V has to be filled up by direct recruitment and the remaining 33.1/3% by promotion. As the appointment of the applicant to the Grade-V post was through direct recruitment and while considering the applicant for promotion to Grade-V along with Res. 5 to 7, as by that time the applicant was not confirmed as Labour Enforcement Officer, he could not be considered for promotion to Grade-V although he had been holding that post and therefore, the confirmation of the applicant in the feeder grade having been done later than Res. 5 to 7, the applicant cannot be held senior to Res. 5 to 7.

6. In the light of the contentions raised by either sides and in consideration of the factual situation, the question to be decided in this application is whether the relief sought by the applicant is allowable or not.

7. The appointment of the applicant in the Labour Service of the State Government of Orissa and his appointment to the post of LEO, being nominated through UPSC, are not in dispute. However, the dispute centers round the appointment/promotion given to the applicant as per Annexure-A/3. Admittedly, as per Annexure-A/3 appointment order, the applicant is a direct recruit to the post of Grade-V though on temporary basis. The applicant joined the post of Grade-V with effect from 15.1.1993. If so, the applicant has been appointed/promoted to the post of Grade-V prior to that of Res. 5 to 7. In this context, it has to be borne in mind that as per Annexure-A/3, the applicant was appointed on selection made by the UPSC and he was posted on ad hoc basis/temporary basis without having regard to his seniority and/or



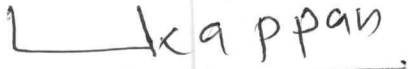
confirmation in the post of LEO. So far as the service of the applicant in the post of Labour Enforcement Officer is concerned, the same has not been considered for his appointment as Grade-V officer, as evidenced from Annexure-A/3 appointment order. If so, the confirmation of the applicant in the post of LEO, the feeder category of Grade-V is not the criteria for his appointment to the post of Grade-V as a direct recruit. Thus, the confirmation in the post of LEO is not the criteria to decide the seniority of the applicant in the Grade-V. In this context, even if the service of the applicant in the feeder category of LEO is taken into account, the confirmation in that post may or may not be prior to the confirmation of Res. 5 to 7. The question to be decided is whether the applicant's appointment as direct recruit and/or promotee to the post of Grade-V is prior to that of Res. 5 to 7. In this context, it is admitted by the Respondents that Res. 5 to 7 were appointed rather promoted to the post of Grade-V only during 1998. If so, the seniority of the applicant shall be above that of Res. 5 to 7 in the gradation list of Grade-V officers. In the above circumstances, the stand taken by the Respondents in the counter that confirmation of the applicant in the grade of LEO was later than that of Res. 5 to 7 is not tenable. Taking the above view, we are of the opinion that the applicant is entitled to seniority over Res. 5 to 7 in the Grade-V and we declare so. Consequently, Respondent No. 2 is directed to re-issue the gradation lists dated 16.2.1999 and 31.3.2003 showing the applicant above private Res. 5 to 7 in the posts of LEO and Grade-V respectively. It is further directed that if any promotion from Grade-V is considered and effected, the seniority of the



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applicant over Res. 5 to 7 shall be reckoned as directed in this order. It is also directed that the corrected gradation lists, as directed above, shall be notified/published by the Respondent-Department within a period of 60 (sixty) days of the date of receipt of this order. It is, however, directed that during the course of carrying out correction and/or publication of the revised seniority list, no promotion of officers from Grade-V shall be made, if it affects the interest of the applicant.

8. With the above, the O.A. is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER