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O.A.No. 126 of 2005.

Order dated 21-06-2006.

Heard Mr. Patnaik, learned counsel for the Applicant and Mr. S.K.Ojha, learned Standing Counsel for the Respondents/Railways.

In this case, the Applicant has prayed for a direction against the Respondents to provide him promotion by way of restructuring benefits as has been given to two others previously. The Applicant was appointed as Khalasi¹ in the year 1972 in carriage Khalasi at Puri which is a class IV post. He was transferred to Khurda as a Class IV employee. He was promoted as Junior Office Clerk in the year 1982. Further he was posted in the Office of the Senior Divisional Commercial Manager, Khurda Road. In the year 1989 he was promoted as Senior Clerk and posted in the Office of the Senior Divisional Commercial Manager, Khurda Road. In course of service he was further promoted to the post of Head Clerk in the same Office. In the provisional gradation list of Head Clerk, the Applicant's name



figured at Sl. No. 3 in the scale of pay of Rs. 5000-8000/- (RSRP) as on 01-01-2004. While he was working as Head Clerk, two other Head Clerks Senior to him namely T.V.Rao and Debraj Sahoo were given promotion in restructuring cadre/cadre up-gradation of the ministerial staff. As per the principle 29% up-gradation shall be made from the post of Head Clerk to the post of Office Superintendent (OS-II). It is pertinent to mention that the present scale of pay of Head Clerk is Rs. 5000-8000/- and in the up-gradation to the post of OS-II only financial benefit of Rs. 500/- shall be given by raising the scale of pay to Rs. 5,500 - 9,000/-. Although the third post of OS-II is available, the Respondents authorities had not taken into consideration for his promotion by way of restructuring of the cadre and kept the matter pending. Therefore, he has filed this case seeking a direction against the Respondents to give such restructuring benefit from the date when he became eligible.

Respondents have filed their reply in which the seniority position of the Applicant has not been



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disputed. It is submitted that the Applicant is next to Debraj Sahoo , as per the seniority list published by the Office as on 01-11-2003. His case will be considered when next vacancy will arise in the cadre of OS-II.

Be it noted that a vacancy is still in existence in the cadre of OS Gr.II. In the counter filed by the Respondents, an additional plea has been taken that the Respondents are not able to take a decision whether such post will go to SC candidate or not. Since it is restructuring of the cadre, on the basis of seniority promotion is to be given as per the mandate issued by the Hon'ble Supreme Court in the case of ALL INDIA NON-SC/ST EMPLOYEES ASSOCIATION (RAILWAYS) -vrs- V.K.AGARWAL & OTHERS. The Hon'ble Supreme Court held "**the effect of this is that where the total number of posts remained unaltered, though in different scales of pay, as a result of regrouping and the effect of which may be that some of the employees who were in the scale of pay of Rs. 550-700/- will go into the higher scale, it would be a**

case of up gradation of posts and not a case of additional vacancy or post being created to which the reservation principle would apply. It is only if in addition to the total number of existing posts some additional posts are created that in respect of those additional posts the reservation will apply, but with regard to those additional posts the dispute does not arise in the present case".

In view of the above, the stand taken by the Respondents that such post may go to a reserved category is untenable. Accordingly, we hereby direct the Respondents/Authorities to take a decision with regard to the Applicant's case for granting him promotion by way of up-gradation to the post of OS-II within four months from the date of communication of this order. In the result, this Original Application stands allowed. There shall be no order as to costs.

BBM
(B.B.Mishra)
Member(Admn.)

B Panigrahi
(Justice B.Panigrahi)
Chairman