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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO.33 OF 2006
ORDER DATED 17TH OCTOBER, 2006**

CORAM:

**HON'BLE JUSTICE M.A.KHAN, VICE-CHAIRMAN
AND**

HON'BLE SHRI V.K.AGNIHOTRI, MEMBER(ADMN.)

IN THE MATTER OF:

Khetrabasi Biswal, aged about 42 years, S/o.Late Suman Biswal, A permanent resident of Village:Chamarakera, Post:Basudevapur, Dist:Puri, at present working as Deputy Legislative counsel-now on deputation to Debts Recovery Tribunal as Registrar, Plot No.B-1412, C.D.A., Markatnagar, Sector-6, Cuttack-753 014.

Advocates for the Applicant

**..... Applicant
.....M/s. D.P.Dhalsamant,
P.K.Behera.**

VERSUS

- 1. Union of India represented through its Secretary, to Government of India, Legislative Department, Ministry of Law & Justice, shastri Bhawan, New Delhi-110001.**
- 2. Union Public Service Commission represented through its Secretary, Dholpur House, New Delhi-1.**

Advocates for the Respondents

**.....Respondents
.....Mr.U.B.Mohapatra.**

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ORDER

JUSTICE SHRI M.A.KHAN, VICE-CHAIRMAN

The applicant a Deputy Legislative Counsel in Legislative Legal Service presently working on deputation as Registrar in Debts Recovery Tribunal at Bhubaneswar has filed the present O.A. seeking following relief:

“ i) to quash the advertisement issued by the UPSC for filling up of two posts of ADDLC Gr.II by direct recruitment as issued in File No.1/21/2004. r.VI, Advertisement No.12, Item No.09 in the year 2004; under Annexure-A/7;

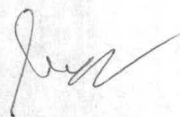
ii) to direct the res.No.1 to fill up the post of ADD,DLC Gr.II by way of promotion from the feeder cadre of DLC Gr.III and to consider the case of the Applicant for promotion:

iii) to pass any other order/orders as deemed fit and proper.”

2. The applicant is aggrieved that he has not been considered for promotion to the post of Addl.Legislative counsel, Grade-II after completion of 3 years of service in the feeder grade i.e. the Deputy Legislative Counsel Gr.III and that vacancies are sought to be filled up by the Respondents by direct recruitment. The Rule-6 of Indian Legal Service Rules,1957 which related to the filling up of the duty posts has provided as under:

“6.FILLING UP DUTY POSTS

1. A duty post in Grade I or Grade II shall be filled by promotion of a member of the service in the next lower grade unless the Central Government decides to fill any such post by direct recruitment.



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- 2. A duty post I Grade III shall be filled alternatively by direct recruitment and by promotion of a member of the service in Grade IV.
- 3. A duty post in Grade IV shall be filled by promotion of persons holding any post specified I the Third Schedule and by direct recruitment in the ratio of 1:1(namely 50% by promotion and 50% by direct recruitment.)
- 4. Notwithstanding anything contained in sub-rules(2)and(3), a vacancy required to be filled by promotion or direct recruitment may if a suitable person is not available to fill such vacancy, be filled by direct recruitment, or, the case may be, by promotion."

3. The Rule spelt out that the post in Grade-I and Grade-II, in the present context, the post of Addl.Legislative counsel Gr.II, would be filled up by promotion from the service in the next lower grade, unless the central government decided to fill it up by direct recruitment. The Rule-8 of the above said rules which related to promotion reads as under:

"8.PROMOTIONS

1) A person shall not be eligible for promotion:

- i) to a duty post in Grade-I, unless he has held a duty post in Grade II for the ;period of not less than two years, or unless he has held duty posts in Grade II and Grade II for a total period of not less than six years;
- ii) to a duty post in grade II, unless he has held a duty post in grade III for a total period of not less than three years;
- iii) to a duty post in grade III, unless he has held a duty post in grade IV for a total period of not less than three years;
- iv) to a duty post in Grade IV, unless he has held one or more post specified in the third schedule for a total period of not less than seven years.

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NOTE: In the case of officers who are holding any of the posts mentioned in the Third Schedule on regular basis on the date of commencement of the Indian Legal service (Amendment) Rules, 1987, the eligibility service for promotion to posts in Grade IV shall be three years' regular service in the feeder grade.

Provided that nothing in this sub-rule shall apply to a promotion to a duty post in any grade for a period of not exceeding three months.

2) Unless the central Government otherwise decides, promotion to a duty post in any grade in a Department shall be made from amongst persons holding duty posts, or, as the case may be, posts specified to the Third Schedule, in the Department.

3) Every person promoted to a duty post in any grade under this rule shall be initially appointed to that post in an officiating capacity.

4) every promotion for a period exceeding three months shall be by selection made on the recommendation of the Departmental Promotion committee constituted for the purpose in accordance with the general rules in force in that behalf.

5) In computing for the purposes of this rule, the period for which a person has held a duty post in any grade or, as the case may be, a post specified in the Third Schedule:

i) any period for which he has held such duty post in any grade, or, as the case may be, a post specified in the Third Schedule, on ad-hoc basis shall be excluded;

ii) there shall be included;

a) any period for which he has held a duty post in a higher grade;

b) any period of his deputation for which he would have held that duty post but for his deputation;

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c) any period for which he has held a post which, in the opinion of the central Government, corresponds to or is higher than such duty post, or as the case may be, a post specified in the Third schedule.”

4. In this case clause-(ii) of Rule-8 of above rule would apply to the applicant who is holding the Gr.III post and he would become eligible for the promotion to the post of Addl.Legislative Counsel Gr.II after completion of not less than three years of service in the feeder grade.
5. Two vacancies became available in the post of Addl.Legislative Counsel Gr.II. During the recruitment year 2003-04 first vacancy occurred w.e.f. 10.10.03 and second vacancy became available on 5.7.04 during the recruitment year 2004-05. Out of the two vacancies, which arose on 10.10.03, only one vacancy could be filled up during the year 2003-04 as no other officer with the requisite qualifying service was available in the feeder grade, i.e. in the grade of Deputy Legislative Counsel for promotion.
6. The applicant or any other member of the legal service in the feeder grade-III having not completed minimum three years of service in the grade was not eligible for promotion against these two vacancies. The DOP&T declined to relax the qualifying service in respect of individual member of the service. The applicant who completed three years of eligible service for promotion on 19.08.05 so he will become eligible for consideration for promotion against the vacancies occurring in the grade during the recruitment year 2006-07 only in terms of DOP&T, OM dated 17.09.1998. The crucial date

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for determining the eligibility was 01.01.03 and 01.01.04. Since no member of the service was eligible for being considered for promotion, the government decided to fill up the vacancy by direct recruitment and notified these vacancies to the Union Public Service commission(Res.No.2)herein vide letter dated 20.01.04. The process for selection of the suitable candidates was started by the Union Public Service Commission. It appears from the counter reply filed by the respondent(UPSC) that the interviews were scheduled to be held on 06/-7.02.06.

7. The Applicant feels that since he has completed three years of qualifying service and has become eligible for consideration for promotion to the next grade, therefore, the Respondents should have abandoned the proposal for filling up of the vacancies by direct recruitment and considered him for promotion to the post of Addl. Legislative Counsel Gr-II in accordance with the rules.
8. The Union of India(Res.No.1)in their counter has submitted firstly that the applicant was not eligible for promotion against the vacancy occurred on 10.10.03 and 5.7.04 since the crucial date for determining the eligibility is 01.01.03 ^{and} 01.01.04 and he has not completed the three years of service in the feeder grade-III in the post of Deputy Legislative counsel on that date. Secondly the applicant is placed fourth in the seniority list of Deputy Legislative Counsel. He has raised dispute about the seniority of ^{one} member still leaving two other officers senior to him whose seniority is undisputed, since they are in the list above to the applicant. So even if the applicant is considered, his turn will not come for promotion, he being fourth in the seniority list.

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9. Admittedly, Indian Legal Service Rules 1957 provided that a Deputy Legislative counsel Gr-III would be eligible for the promotion to the post of Addl. Legislative Counsel Gr-II on completion of three years of service in the feeder grade. The applicant has completed three years of service on 19.8.05. He became eligible for being considered for promotion to the next higher post of Addl. Legislative counsel after that date. It is also not disputed that one vacancy in the post of Addl. Legislative Counsel Gr-II became available on 10.10.03 and the second vacancy on 05.07.04. The relevant recruitment years are 2003-04 and 2004-05 respectively. The crucial date for the eligibility of qualifying service is to be determined in accordance with the OM No.22100/3/98-Est.(D) dated 17th September,1998 issued by the Ministry of Personnel & Training, P.G.& Pension which is Annexure-R/2 to the counter reply. The paragraph-2 of the said OM, which is relevant, is reads as follows:

“The matter has been reconsidered by the Government and in supersession of the existing instruction is has now been decided that the crucial date for determining eligibility of officers for promotion in case of financial year-based vacancy year would fall on January 1 immediately preceding such vacancy years and in the case of calendar year-based vacancy year, the first day of the vacancy year, i.e January 1 itself would be taken as the crucial date irrespective of whether the ACRs are written financial year-wise or calendar year-wise. For the sake of illustration, for the panel year 2000-2001(financial year), which covers the period from April 1,2000 to March 31,2001 and the panel year 2000(calendar year), which covers the period from January 1, 2000 to/ December 31,2000, the crucial date for the purpose of eligibility of the officer would be January,2000 irrespective of whether ACRs are written financial year-wise or calendar year-wise.”

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10. As per this OM, eligibility for the filling up of the vacancies for the recruitment year of 2003-04 will be 01.01.03 and for filling up of the vacancies for the recruitment year 2004-05 will be 01.01.04, in terms of the OM dated 17.9.98. As the applicant, as per his own case, fulfilled the qualifying service of three years for promotion to the next higher grade only on 19.08.05. The applicant as such was not eligible to be considered for promotion to the grade of Addl. Legislative counsel Gr-II either on 01.01.03 or on 01.01.04. he will not be considered even for the vacancies occurred in the recruitment year 2005-06 as he has not completed three years even on 01.01.05. The applicant will fulfill the eligibility condition for promotion to the post of Addl. Legislative Counsel only on 01.01.06 and will be eligible for consideration for promotion to the post, in accordance with the recruitment rule and law, for the vacancies which arises in the year 2006-07. The contention of the applicant that the recruitment process under way in the UPSC should be suspended and he should be considered for the promotion against the two vacancies which have been advertised for filling up by direct recruitment, therefore is not tenable. Even if the recruitment process is held over, the applicant's claim for promotion against the vacancy which have been advertised by the UPSC to be filled up by direct recruitment vide its notification Annexure-A/7 of the O.A. is not sustainable.


11. Before parting with this case it will be pertinent to mention that this Applicant had also applied for direct recruitment to the post of Addl. Legislative Counsel Grade-II advertised by the UPSC but he could not be short listed. Failing in that selection he now challenges the

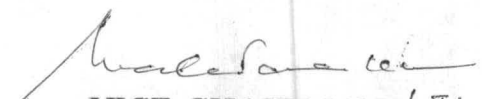


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very selection process in which he himself had participated. He cannot be allowed to do so.

11. Accordingly, we do not find any merit in this O.A. It is dismissed. No costs. Parties to be informed.


MEMBER (ADMN.)


VICE-CHAIRMAN (J)