

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 73 of 2006
Cuttack, this the 28th day of September, 2007.

Khetrabasi Biswal Applicant
Versus
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

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

Tarsem Lal
(TARSEM LAL)
MEMBER(ADMN.)

Dr. K.B.S. Rajan
(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

for emergency P1

[Signature]
(15)

Amiable (15/3/07)
[Signature]

9

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Original Application No. 73 of 2006
Cuttack, this the 28th day of September, 2007.

C O R A M:

THE HON'BLE **DR.K.B.S.RAJAN**, MEMBER (J)

A n d

THE HON'BLE **SHRI TARSEM LAL**,MEMBER(A)

1. Sri Khetrabasi Biswal, aged about 42 years, son of late Suman Biswal, a permanent resident of village-Chamarakera, Post-Basudevpur, Dist. Puri, Deputy Legislative Counsel, Ministry of Law & Justice, Legislative Department, New Delhi working as Registrar, on deputation to Debts Recovery Tribunal, Plot No. B-1412 , CDA, Markatnagar, Sector-6, Cuttack-753 014.

..... Applicants.

By legal practitioner: Mr.D.P.Dhalsamant &
P.K.Behera, Advocates

-Versus-

1. Union of India represented by through its Secretary to Government of India, Ministry of Law and Justice, Legislative Department, Shastri Bhawan, New Delhi-110 001.
2. Ms.Reeta Vasishta, Deputy Legislative Counsel, Ministry of Law and Justice Legislative Department, Shastri Bhawan, New Delhi-110 001.

...Respondents.

By legal practitioner: Mr. B.Dash, SSC



10

ORDER

DR.K.B.S.RAJAN, MEMBER(J):

The issue is short but sharp. The applicant, appointed as Legal Assistant in the respondent No. 1 organization figured in the Annexure A-1 seniority at serial No. 5, with the date of appointment in that cadre on 20-08-2002. In the said list published on 11th March, 2003, the name of the private respondent (R-2) does not figure. However, in the seniority list published on 21-09-2004 vide Annexure A-2, his name was preceded by the name of the private respondent, with her date of appointment in that grade as 28-03-2003 i.e. posterior to the date of appointment of the applicant. It is to pertinent to specify here that the applicant came under the promotion quota, while the respondent No. 2 under Direct Recruitment Quota and in the year 2001-2002, under the quota rota

system, five posts as P, D, P, D and P were to be filled up. The applicant represented, vide Annexure A-3 representation dated 01-10-2004 and without any reference to his representation, the department has, vide Annexure A-4 order dated 19th October, 2004 withdrawn the seniority list circulated under order dated 21-09-2004. However, by order dated 27th July, 2005 vide Annexure A-5, the Respondent No. 1 informed the applicant, in response to his representation dated 01-10-2004 that in the seniority list circulated in 2003 (Annexure A-1) the slot for D.R. was not reflected and the relative seniority is as per the recruitment roster i.e. according to rotation of vacancies between DRs and promotees based on the quota reserved for direct Recruitment and promotion respectively in the grade of DLC in the ILS rules. Thus, in the seniority list of Legal Assistants, published on 8th August, 2005, the

name of the applicant was again preceded by that of the private respondent. This forced the applicant to pen another representation dated 29-08-2005 vide Annexure A-7. Revised seniority list circulated through order dated 26-12-2005 vide Annexure A-8 (impugned along with Annexure A-6 order) had been published. Applicant has challenged the same.


2. Counter has been filed by the respondent No. 1 explaining the quota rota applicable to the post and also indicating the details vide table appended to para II of the counter at page 2 thereof. The respondents have explained in the counter that when five vacancies arose, intimation to UPSC for filling up of the same was sent, and while by DPC process, three individuals, including the applicant had been promoted and posted, UPSC were in the process of filling of the other two Direct Recruitment vacancies. In

the seniority list of 2003, the two slots for DR were, by inadvertence, omitted to be reflected but the applicant cannot take advantage of that omission. A copy of the ILS Rules, 1957 was also provided by the respondent, vide Annexure R-1, in which as regards seniority, the following provisions have been given:-

“Seniority of members of the service in each Department shall be determined in accordance with the general instructions issued by the Central Government in that behalf, from time to time.”

3. Respondents have also annexed the general instruction on the subject of seniority vide Annexure-R/5.

6. Learned Counsel for the Applicant submitted that the Hon'ble Apex Court has held in ~~the~~ ^{Certain by} following decisions that seniority of direct



14

recruits cannot be anterior to the date of entry of the direct recruits in service. Accordingly, Learned Counsel contends that in the instant case the seniority of private respondent cannot be prior to that of the Applicant as the Applicant's date of joining is much earlier than the Private Respondent.

7. Learned Counsel for the Respondent, however submits that all steps were taken to fill up the promotional as well as direct recruit vacancies simultaneously and certain inevitable administrative delay has taken place in filling up of the vacancies meant for direct recruits. The late joining of the private Respondent should not stand against her in view of the administrative delay.

6

15

8. Arguments of the parties were heard and documents perused.


9. Steps have rightly been taken to by the Department to fill-up the promotional as well as DR vacancies simultaneously. Thus, the Private Respondent belongs to 2001-2002 batch of direct recruit for which action has been taken on time. There is no much delay in processing the case and by March, 2003 the Private Respondent has joined. As such, the case does not come under that category wherein no direct recruit candidates were selected consequent which the vacancies were carried forwarded to the next year. Thus, the illustration given in order dated 3rd July, 1986 is not applicable in this case.



16

10. In view of the above, the Applicant has not made out any case. Consequently, this OA is liable to be dismissed. Ordered accordingly. Parties to bear their own costs.


(TARSEM LAL)
MEMBER(ADMN.)


(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

KNM/PS.