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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 113 OF 2006
CUTTACK, THIS THE ~~10th~~ DAY OF September, 2009


Sri Nakul Charan Behera.....Applicant


Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)

1. Union of India, represented by the Secretary to Govt. of India, Department of Science and Technology, Technology Bhawan, New Mehrauli Road, New Delhi-16.
2. The Surveyor General of India, At-Hathibarkala Estate, Post Box No. 37, Dehradun-1, Uttaranchal.
3. The Director, Orissa Geo-Spatial Data Centre, Survey of India, Survey Bhawan, Nayapalli, P.O.R.R.L. Bhubaneswar-13, Dist-Khurda.
4. Sri Rabindra Singh Rawat, Officer Surveyor National G.d.c., Survey of India, block No. 6, Post Box No. 200, Hathibarkala Estate, Dehra Dun-1(Uttaranchal) Pin-248001.

5. Shri Virendra Dutt, Officer Surveyor, survey Training Institute, Survey of India At/PO Uppal, Hyderabad-39 (A.P.)
6. Shri K.V.Ramamurthy, Officer Surveyor Survey Training Institute, Survey of India, At/PO Uppal, Hyderabad-39 (A.P.)
7. Shri Vijay Chandra, Officer Surveyor Uttaranchal G.D.C. Survey of India 17 E.C.Road, Dehra Dun-1 (Uttaranchal) PIN 248001.
8. Shri Premananda Das, Officer Surveyor Survey Training Institute, Survey of India, At/PO Uppal, Hyderabad-39 (A.P.)
9. Shri Rabindra Kumar Dash, Officer Surveyor Orissa G.D.C., Survey of India, survey Bhawan, Nayapally, P.O.R.R.Lab. Bhubaneswar-13 (ORISSA)
10. Shri Debaraj Singh, Officer Surveyor Orissa G.D.C., Survey of India, Digital Survey Complex, At/PO Khandagiri, Bhubaneswar-30 (Orissa).
11. Shri Mahipal Singh, Officer Surveyor National G.D.C., Survey of India, Block No.6, Post Box No. 200, Hathibarkala Estate, Dehra Dun-1 (Uttaranchal) Pin-248001.
12. Shri Rabindra Kumar Pattnaik, Officer Surveyor Orissa G.D.C., Survey of India, Survey Bhawan, Nayapalli, P.O.R.R.Lab, bhubaneswar-13, (Orissa) Pin-751013.

... Respondents

By the Advocates - Mr. U.B.Mohapatra.

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-3-

ORDER

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J):

In this Original Application the applicant has prayed
for the following relief:

- “(a) To quash the seniority list of Officer Surveyors as on 1.1.05 published vide letter No. E-1-16163/707 dt. 5.7.05 and letter No. E-1-25009/707 dt. 11.10.05;
- (b) To direct the departmental respondents to recast the seniority list of Officer Surveyors after giving retrospective effect to the promotion of the applicant as Officer Surveyor vide Order dt. 17.07.05 and place the applicant above the private respondents.
- (c) To direct the respondents to consider the case of the applicant for promotion to the cadre of Officer Surveyors w.e.f. the date of vacancies as were available pursuant to cadre review carried out in the year 1995;
- (d) To restrain the respondents from convening any D.P.C. for considering the cases of eligible persons in the cadre of Officers Surveyors for further promotion to the post of Superintending Surveyor, without recasting the seniority list of Officers Surveyors.
- (e) To direct the respondents to delete the names included in the Seniority list dated 11.10.05 from Sl.No. 475 to 482.”

2. Briefly stated, the case of the applicant is that he was appointed to the cadre of Surveyor after successful completion of training on 1.10.1976, promoted to the grade of Office Surveyor (Gr.B) on ad hoc basis as per Annexure-A/1 dated 23.7.98, followed by confirmation w.e.f. 16.7.01 along with some incumbent who had not been promoted on ad hoc basis. In the year

20

1997 there was Limited Departmental Competitive Examination (LDCE), the result thereof was declared in the year 2001, and the successful candidates joined as Office Surveyor, whereafter they were sent for training. In the seniority list prepared on 8.9.2003, the LDCE promotees, who joined in the year 2001 having been shown senior to the applicant, he preferred representation dated 25.11.2003 praying therein to place his name suitably in the seniority list of Office Surveyor (Gr.B) (Annexure-A/3). Again, as per Annexure-3/A dated 28.3.2005, the applicant preferred another representation for revising the seniority list of Group-'B' officer as per the provisions contained in the Recruitment Rules and to restore his seniority position. According to him, although pursuant to the above representation another seniority list as per A/4 dated 6.7.05 was published showing the name of the applicant at Sl. No. 148 pushing back some of the LDCE promotees promoted in the year 2002, but the private Respondents herein continued to be shown senior to the applicant. This being the situation, the applicant submitted further representation dated 26.7.2005 (Annexure-5/B) in response to which the applicant was intimated as per letter dated 24.8.2005 that he was at Sl. No. 148, being junior to one Sh. R.K.Patnaik, Officer Surveyor. While the matter stood thus, as per Annexure-A/6 dated 11.10.2005, the rectified seniority list was published showing the applicant at Sl. No. 167

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and below the private Respondents. Hence, this O.A. with the prayers referred to above.

3. By filing counter, the official respondents have opposed the prayer of the applicant. They have stated that the DPC for the vacant post of Officer Surveyor upto the year 1996 was held in the year 1997. At the same time though the Limited Departmental Competitive Exam was held in the year 1997, yet the result could not be announced due to pendency of O.A. No. 388/97 filed by one B.K.Padhi and others before this Tribunal. However, the result of the LDCE was announced in the year 2001 after disposal of the said O.A. The ad hoc promotion given to the applicant was purely provisional and did not confer any right to seniority. They have submitted that after the settlement of the Recruitment Rules, vacancies for and after the year 2001 including the posts created by cadre review, seniority have been fixed on the basis of the result declared by the respective year's DPC and LDCE. With these submissions the official respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

4. Private Respondents have neither appeared nor filed any counter. However, Respondent No.10 has filed a written note of argument justifying the action of the official respondents. He has stated that it was due to cases pending before the Tribunal the



result of the LDCE held in the year 1997 could not be published and that the said result having been announced in the year 2001, the official respondents have rightly been assigned seniority with reference to the year when vacancy arose and for which the LDCE was conducted.

5. Applicant has filed rejoinder to the counter filed by official Respondents.

6. None appeared for the applicant when called. This being a matter of 2006, it was not considered proper to adjourn the matter any further. However, we have heard Shri U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents and perused the materials on record. Having regard to the nature of relief sought, we would, at the outset, observe that the prayer of the applicant for quashing the seniority list dated 11.10.05 (Annexure-A/6) is wholly misconceived as the applicant has not made all those incumbents in the said seniority list as party respondents and on this score alone, the O.A. is liable to be dismissed. As regards the second limb of the prayer to direct the departmental respondents to recast the seniority list of Officer Surveyor vide order dated 17.7.05 and place the applicant above the private respondents, we do not find any such order dated 17.7.05 to have been referred to by the applicant in the Index of the O.A. to enable us to have an idea as to what exactly the applicant has meant by this. Moreover,



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- 7 -

nowhere in any of the representations preferred, the applicant has prayed for giving him promotion with retrospective effect. Therefore, this prayer of the applicant in the present O.A. is without exhausting the departmental remedy.

7. As regards the rest of the prayers, we have gone through the records and as we understood, the applicant wants his seniority to be taken into account w.e.f. 23.3.98 when he was promoted to the grade of Officer Surveyor on ad hoc basis. The applicant in this connection has placed reliance on the decision of the C.A.T., Guwahati Bench. But the fact remains, neither the applicant nor the official respondents have thrown any light as to what is the follow up action pursuant to the directions contained therein has been taken. Except a bald assertion the applicant has not been able to establish as to how the position in the seniority list which he wants to be assigned in accordance with the Recruitment Rules, has been infringed by the Respondents. Unless and until the period of ad hoc service rendered by the applicant as Office Surveyor is regularized, he cannot be assigned seniority with effect from the date when he was so promoted. The applicant, as revealed from the seniority list, has been assigned seniority with effect from 16.7.2001, i.e., when his ad hoc service was confirmed. In other words, applicant's ad hoc promotion as Officer Surveyor was regularized only w.e.f. 16.7.2001. Therefore, the official

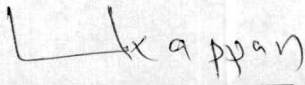
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respondents have not committed any irregularity in reckoning seniority of the applicant from 16.7.2001. The applicant has not made out a case anywhere for counting his seniority after regularizing his ad hoc service with effect from the date he was so promoted. In the circumstances, we cannot but hold that the O.A. as laid is devoid of merit. However, keeping in view the order dated 18.8.2005 passed by C.A.T., Guwahati Bench in O.A. No. 151/04, we would observe that if in the meantime, the Respondent Department, in compliance with the directions contained therein, have issued some orders in the matter of reckoning ad hoc service for the purpose of seniority, the same shall be made applicable in so far as the present applicant is concerned.

8. With the above observation, this O.A. is dismissed.

No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)


(K. THANKAPPAN)
MEMBER (JUDL.)