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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.751 OF 2011
Cuttack, this the 6th Day of March, 2013

N.C. Parida..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O. A. NO.751 OF 2011
Cuttack the 6th day of March, 2013

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Narayana Chandra Parida,
aged about 56 years,
S/o. Late Jadumani Parida,
Resident of Village-Tarando,
Po-Baro, Dist-Kendrapara, Pin-754250,
At present working as Assistant Labour
Welfare Commissioner (Central)
Ordnance Factory, Badmal,
At-Po-Badmal, Dist-Balangir.

...Applicant

(Advocates: M/s-S.K. Ojha, S.K. Nayak)

VERSUS

Union of India Represented through

1. The Secretary Ministry of Labour
and Employment, Govt. of India,
Sharma Shakti Bhawan, Rafi Marg,
New Delhi-1.
2. Secretary Govt. of India,
Department of Personnel and Training,
North Block,
New Delhi-1
3. Chief Labour Commissioner (Central,
5th Floor,
Sharma Shakti Bhawan, Rafi Marg,
New Delhi-1.
4. Union Public Service Commission represented through
It's Secretary, Sahajahan Road, Dholpur House,
New Delhi.
5. Vinay Kumar Sinha,
at present working as Assistant Labour
Welfare Commissioner (Central),
Govt. of India Press,
Ring Road, Mayapuri,
New Delhi.

... Respondents

(Advocate: Mr. M.K. Das)

ORDER
HON'BLE MR. R.C. MISRA, MEMBER (A)

The applicant in this case is presently working as Assistant Labour Welfare Commissioner (Central) Ordnance Factory, Badmal. By filing this O.A. he has prayed before the Tribunal for quashing the final seniority list of JTS (Grade-V) Officers of the Central Labour Service

prepared by the Ministry of Labour and Employment, Govt. of India which has been filed as Annexure-A/9 of the Original Application. He has also made a prayer for re-fixation of his seniority by reckoning his promotion to Grade-V post from the year 1993.

2. The short facts of the case are that the applicant joined in the Ministry of Labour and Employment in the position of Education Officer on 01.03.1982 and was subsequently selected and appointed as Labour Enforcement Officer (Central) on 07.09.1987 and thereafter promoted to Grade-V post. The matter of challenge here is the year of allotment of his promotion to Grade-V Post. As per the provisions of the Central Service Rule 1987, the posts in the Grade-V i.e., Assistant Labour Commissioner (Central) will be filled by promotion upto $2/3^{\text{rd}}$ of the vacancies where as $1/3^{\text{rd}}$ vacancy will be available for the direct recruits. While working as Labour Enforcement Officer which is a Group-B post, the applicant was selected to the Grade-V post by way of direct recruitment through the UPSC and in 1997 he was appointed as Assistant Labour Commissioner (Central) out of the direct recruitment quota. By that time he had already completed 03 years of service in Group-B and was eligible for promotion to Grade-V; but the DPC for considering such promotion was not held by that time. For considering promotion for Grade-V post out of the promotional quota the DPC which met in the year 1998 considered the matter of promotion for the year 1993. It is the case of the applicant that over telephone he communicated to the Section Officer, Central Labour Services-1 Section of the Ministry that he would like to give option for the mode of Selection which is the most beneficial to him, although he did not exercise any written option. Since the DPC in the year 1998 was considering promotions for the vacancies for the year 1993 exercising options for promotion quota was more beneficial to him since his direct recruitment was for the year 1997. On 07.05.2003, a seniority list was published in which he was shown against Sl. No.118 counting his promotion to Grade-V post from the year 1993. However, in the final seniority list published on 15.09.2011, he was shown against Sl. No.65 and his seniority was fixed against the direct recruitment quota of the year 1997 and not against the promotional quota of the year 1993. The case of the applicant is that by this process he has lost his seniority and although

he was selected in the direct recruitment quota in the year 1997, his seniority should have been fixed against the promotion quota for the year 1993 for which the DPC had met in the year 1998 and basing on the fact that over telephone he had given an option to be considered for that quota which will be more beneficial for his seniority. This is basically the crux of the matter which is before us for consideration.


3. We have heard Ld. Counsel for both the parties and also perused the necessary papers in this regard. Both the Counsels have also submitted the written notes of argument.

The Ld. Counsel for the applicant has made a mention of an O.A. No.951/04 disposed of by this Bench of the Tribunal in which one Trinath Behera was the applicant who had claimed seniority over 03 more persons who were parties in that proceeding. In that case the Tribunal had directed the Respondents to give the applicant seniority over some other Labour Enforcement Officers who were parties in that case. However, the applicant in the present O.A. was not a party to that proceeding. Our attention has been drawn to another O.A. No.664/09 filed by one Yashpal Tyagi which was decided by the Jabalpur Bench of the Tribunal on 28.10.09. In that case the Tribunal had directed the Respondents namely the Ministry of Labour and Employment only to consider the representation of the applicant and dispose of his prayer for revision of the seniority list. It was further pointed out by Ld. Counsel for the applicant that although Respondent No.5 in the present O.A. has been all along junior to the applicant, he has been considered against the Direct Recruitment Quota for the year 1995 and promoted to the JTS (Grade-V) earlier to the applicant. In the final seniority list published on 15.09.2011 the applicant has been shown at Sl. No.65 and the Respondent No.5 shown at Sl. No.40. The Ld. Counsel had taken pains to point out that this has amounted to loss of seniority of the applicant, a grievance which needs to be redressed. The main contention of the Ld. Counsel is that the applicant must be considered against the promotion quota of the year 1993 and not against direct recruitment quota of 1997. As his seniority had been fixed in the year 2003 as per the DOP&T circular dated 03.07.1986, it cannot be altered in the year 2011. The Ld. Counsel has cited the judgement of the Hon'ble Supreme Court in the case of S.S. Mohapatra -Vrs- State of Orissa reported in AIR

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2010 Supreme Court 706. In that judgement it has been laid down that the seniority list cannot be unsettled after lapse of a considerable period of time. It has been further contended by the Ld. Counsel that the applicant was placed in the pre-revised seniority list as a promoted officer in accordance with the prescribed ratio between DR Quota and Promotional Quota in that year and not as a direct recruit. In the revised seniority list dated 15.09.1911 which has been prepared in terms of DOP&T O.M. dated 03.07.1986 and O.M. dated 03.03.2008 the applicant has been placed as a Direct Recruitment candidate appointed in 1997 and not as a promoted officer. It has been alleged further that the Respondents have changed the entire seniority list in the year 2011 taking into account the orders passed in Trinath Behera's case on the basis of DOP&T circular dated 03.03.2008 whereas the earlier seniority as assigned was on the basis of the DOP&T circular dated 03.07.1986 which had taken into account the yearwise vacancies of the promotion and direct recruitment quota. It is argued that the DOP&T circular dated 03.03.08 is only prospective in nature and the seniority fixed as per the guidelines of DOP&T circular of the year 1986 must not be re-opened. This Tribunal's order in the case of Trinath Behera was for rectification of seniority of that applicant with reference to private Respondent and that should not have any effect on the seniority of other officers. One of the important arguments that the Ld. Counsel advanced was that the DOP&T circular dated 03.03.08 has been declared non-est to the extent the same is in derogation to the earlier OMs of the DOP&T circulated in 1986 by the Hon'ble Apex Court. Therefore, the action taken on the basis of 2008 circular of DOP&T is void. In this regard, Ld. Counsel for the applicant has submitted the copy of the orders of the Hon'ble Supreme Court of India passed on 27th November, 2012.

4. In the counter affidavit by the Respondents, firstly, it has been submitted that the O.A is barred by limitation and secondly it suffers from non joinder of necessary parties and therefore, the O.A. is liable to be dismissed. The Respondents have in the counter affidavit mentioned that in pursuance of the orders of this Tribunal as mentioned earlier by the Ld. Counsel for the applicant, the Respondents had a detailed consultation with the Nodal Department i.e, DOP&T and the Ministry of Law and Justice and thereafter published the draft seniority list in the light of DOP&T O.Ms



dated 03.07.1986 and 03.03.2008. The draft seniority list of JTS Officers was circulated among JTS officers vide Ministry's O.M. dated 18.11.2010 inviting objections, if any, within a period of 60 days. The objections/submissions received from the officers including the Applicant were examined by the Ministry on the basis of the facts and rule position in consultation with DOP&T as well as the Ministry of Law and Justice. Thereafter, the Final Seniority List of JTS of CLS was issued vide Ministry's O.M. dated 15.09.2011. According to the Respondents not only the concerned officers including the applicant were given the chance to file their objections but also due consultation was taken up with the concerned Nodal Ministries before publication of the final seniority list. The submission of the applicant regarding his option about which would be the most beneficial mode of seniority that he had exercised over telephone has been countered by the Respondents in the counter affidavit mentioning that a specific option should have been exercised either against DR quota or Promotion quota., if recommended through both methods of selection. It is not desirable to leave option at the discretion of the administration. According to the submissions made in the counter the draft seniority list of Grade-V was first circulated on 07.05.2003 in response to which a number of representations were received. The issue of inter-se-seniority between DR and promoted Grade-V officers was examined in consultation with DOP&T which opined that this would be guided by the Department's OMs dated 03.07.1986 and 03.03.2008. Since a number of judgements of the Tribunal had been delivered on the Original Applications filed by different officers, the Department thought it appropriate to revise the seniority list in accordance with due procedures and the extant Rules for that purpose. They had prolonged consultation with DOP&T and the Ministry of Law in order to arrive at a final seniority list. The final seniority list drawn up is not only in consonance with the extant provisions of the Rules but also have been arrived at after due opportunity was afforded to the applicant and all other officers who were in the JTS (Grade-V) Cadre.

5. It has been contended that the O.M. dated 03.07.1986 stipulates that the inter-se-seniority of Direct Recruits and of Promotees is to be fixed on the basis of the rotation of quota of vacancies between Direct Recruits and Promotees as reserved in the Recruitment Rules. If adequate

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number of Direct Recruits do not become available in any particular year, rotation of quotas for the purpose of determining seniority would take place only to the extent of the available direct recruits and the promotees. The DOP&T OM dt. 03.03.2008 also provides that while the inter-se- seniority of direct recruits and promotees is to be fixed on the basis of the rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees for the purpose of rotation and fixation of seniority shall be the actual year of appointment, after declaration of results/selection and the completion of pre-appointment formalities as prescribed. It is further clarified that when appointments against unfilled vacancies are made in subsequent years or years either by direct recruitment or promotion, the persons so appointed shall not get seniority of any earlier year but should get the seniority of the year in which they are appointed on substantive basis. It was clarified that the cases of fixation of seniority already decided with reference to any other interpretation of the terms 'available' as contended in O.M. dated 03.07.1986 need not be reopened. That was done with a view to avoiding unsettling of the settled seniority over the last many years. In substance therefore, it has been contended that the concept of antedated seniority with reference to the year of vacancy was done away with by the DOP&T's O.M. dated 03.07.1986. There is no scope, therefore, for giving antedated seniority to the officers with reference to the year of vacancy on their promotion on retrospective dates. In the case of the applicant, it is contended that in the revised seniority list dated 15.09.2011 which has been prepared taking into account the year of joining of an officer in JTS Grade in terms of DOP&T's O.M. dated 03.07.1986 read with OM dated 03.03.2008 the applicant has been placed as a direct recruit candidate having been appointed in the year 1997 and not as a promoted officer. In the written note of argument given by the Ld. Counsel for the Respondents, these factors have also been highlighted and what has been emphasized is the fact that an administrative decision was taken by the competent authority for a holistic revision of the seniority list taking into consideration that a number of JTS Officers were either approaching the Courts of Law or making representations for fixation of their seniority in terms of DOP&T O.M. dated 03.07.1986 read with O.M. dated 03.03.2008. The thrust of the argument of the Ld. Counsel for the Respondents is that the case of the

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applicant has been decided according to the extant rules and principles and therefore, the grievance as has been made out is devoid of any merit.

6. Having listened to the arguments of both the Ld. Counsels and having gone through their notes of arguments, it has become quite evident that there are two issues which have to be decided upon. The first issue is whether the relevant OM's dated 03.07.86 and 03.03.2008 of the Department of Personnel and Training which is the Nodal Department in matters of fixation of inter-se seniority have been duly followed in fixing seniority in this case. It is also important to examine what are the implications of these two circulars issued by the Nodal Department.

The second issue is whether the option which the applicant mentions to have exercised over telephone could be acted upon. The resolution of these two issues would help us in examining the claim of the applicant in its proper perspective.

7. The Ld. Counsel for the applicant had given us a copy of the judgement of the Hon'ble Supreme Court of India datd 27.11.2012. On a perusal of this judgement it is found that the relevant OM's of DOP&T have been thoroughly examined. The purpose of the DOP&T OM dated 03.07.1986 was to consolidate the existing Govt. orders on the subject of seniority. It has been laid down that the relative seniority of Direct Recruits and Promotees shall be determined according to the rotation of vacancy between the Direct Recruits and the Promotees. If adequate number of direct recruits are not available in a particular year, rotation of quota for the purpose of determining seniority could be only to the extent of available Direct Recruits and Promotees. To the extent direct recruits are not available the promotees will be bunched together at the bottom of the list below the last position in which it is possible to determine the seniority on the basis of Rota Quota. The unfilled DR Quota vacancies will be carried forward and added to the corresponding DR vacancies of the next year and subsequent years where necessary. The direct recruits selected against the carried forward vacancies of the years should be placed below the last promotees or direct recruits as the case may be, in the seniority list based on Rota Quota for that year. An illustration of the same has been given in the said circular. This principle formulated in the OM dated 03.07.1986 is

identical with the instructions earlier issued on 07.02.1986 which was the first circular of this subject.

8. On perusal of the OM dated 03.03.2008 it is seen that this is a clarification regarding the consolidated instructions on seniority contained in the DOP&T OM dated 03.07.1986. It has been clarified in that circular that the year of availability will be the vacancy year in which candidates of a particular batch of selected direct recruits or officers of a particular batch or promotees join the post/service.

9. The Hon'ble Apex Court have decided that the circular dated 03.03.2008 is merely a clarification of the earlier circulars dated 07.02.1986 and 03.07.1986 of the DOP&T and therefore cannot in any way amend the earlier provisions. The Hon'ble Apex Court while examining an office note of DOP&T held that it is not necessary that the DRs for a particular recruitment year should join within the recruitment year during which the vacancies had arisen. As such the date of joining would not be the relevant factor for determining seniority of DRs. It would suffice if action has been initiated for filling up DRs vacancies within the recruitment year in which the vacancies had been available. The basic purpose behind this is that in case of DRvacancies if the administrative action for filling up the posts takes more than a year the individual cannot be held responsible for such administrative delay and hence it would not be appropriate to deprive him of his due seniority for the delay on the part of the administration in completing his selection process. In the circular dated 03.03.08, it has been mentioned that the year of availability will be the vacancy year in which a candidate of the particular batch of selected Direct Recruits or an officer of the particular batch of Promotes joins the post/service. The Hon'ble Apex Court has decided that the said circular has breached the parameters and the ingredients of "clarification". Therefore, for all intents and purposes the Hon'ble Apex Court has decided that OM dated 03.03.08 must be deemed to be non-est to the extent the same is in derogation of the earlier OMs dated 07.02.86 and 03.07.86. In other words, the OMs of 1986 would have an overriding effect over OM dated 03.03.08 to extent the latter is in conflict with the former.

10. It is, therefore, quite evident that the Hon'ble Apex Court has declared the DOP&T OM dated 03.03.08 non-est only to extent that the

same is in derogation of earlier OM's dated 07.02.86 and 03.07.86, and as such the OM issued in the year 1986 would have an overriding effect as per the judgement of the Hon'ble Apex Court. Here, we have to see whether the present case of the applicant is buttressed by this judgement of the Hon'ble Apex Court. In our considered view, no such facts have been presented by the applicant with regard to his year of selection as Direct Recruit in the year 1997. There is no mention as to whether the applicant joined in a particular year as Direct Recruit against the vacancy of an earlier year because of the administrative delay caused by the concerned Department and therefore, his seniority should not be counted from the year of his joining; but has to be antedated. Therefore, we have to see as to whether the principle applied in the case of the applicant is in violation of the consolidated instructions of inter-se seniority issued by the DOP&T on 03.07.86. Admittedly, the applicant has joined as a Direct Recruit Grade-V Officer in 1997. By that time the relevant guidelines contained in the OM dated 03.07.86 were already in force and therefore were to be applicable in his case. The Ld. Counsel for the applicant has not been able to point out any specific violation of the said guidelines.

Regarding, the second issue of exercising of option for promotion as more beneficial, over telephone as claimed by the applicant, it is a matter of common sense that an option has to be specifically exercised in writing. A mere telephonic conversation with the Section Officer and indicating that the most beneficial option should be accepted amounts to no option between DRQ and Promotion Quota. The case made out by the Respondents is that because of various judgements of the Courts it was decided to have a holistic revision of the seniority list in consultation with the DOP&T and the Ministry of Law. After such consultation they revised the seniority list and circulated the same amongst the JTS Officers vide OM dated 18.11.2010. Therefore, due opportunity was accorded to all officials including the applicant to raise objections, if any to the revised seniority list. The final seniority list has been issued vide OM dated 15.09.2011. In the final seniority list however, the applicant has been shown against the Sl. No.65 and his date of appointment has been shown as 21.04.1997 and date of confirmation as 16.03.2000. This indicates that his seniority has been fixed for the year 1997 in which he was selected as a Direct Recruit. The

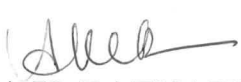
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applicant had raised an issue that the Respondent No.5 in the Original Application who was all along junior to him was considered against the DR Quota for 1995 and promoted to the JTS Grade-V cadre earlier to the applicant. With regard to this issue, it has been clarified by the Ld. Counsel for the Respondents that the Respondent No.5 joined in the year 1995 as a DR where as the applicant joined as a DR in the year 1997. Accordingly, the seniority has been fixed. Apparently, there does not seem any irregularity committed by the Respondents in fixing the inter-se seniority in accordance with the relevant circular of the DOP&T dated 03.07.86 as per the submission made in the counter. The revised seniority list was also duly published and objections were invited before publication of the final seniority list. As regards exercise of option by the applicant between Promotion Quota and DR Quota, we do not find the conversation with the Section Officer of much relevance. The relevant instructions needed to be followed for fixing inter-se seniority of the applicant as DR to JTS (Grade-V) cadre of the Central Labour Service. The Departmental Authorities while undertaking the revision of the seniority list in view of the various judgements of the Courts and the pending representations, followed the required procedures and obtained the views of the DOP&T as well as the Ministry of Law which are nodal Ministries in this matter. The judgement of the Hon'ble Apex Court which has been cited by the applicant stating that the provision of Circular dated 03.03.08 to the extent it is derogatory to the provisions of the circular dated 03.07.86 is non-est, in our considered view, is not attracted to the case of the applicant. We therefore, do not find any valid grounds for interfering with the revised seniority list published by the Respondents for JTS Grade-V Officers of the Central Labour Service (Annexure-A/9).

The O.A. in consequence is accordingly, dismissed. No costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER (J)