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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 185/2003

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SECTION OFFICER (Judl.)

FORM NO.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALATI BENCH

ORDERSHEET

Original Application : 185/03

Misc Petition No. : _____

Contempt Petition No : _____

Review Application No: _____

Applicants:- B. Mahapatra

Respondents:- U.O.I Toms

Advocate for the Applicants:- S. Samra, Miss U. Das.

Advocate for the Respondents:- CASE

| Notes of the Registry | Date | Order of the Tribunal |
|--|--|--|
| <p>1 96157132</p> <p>Dated 30.7.03</p> <p><i>[Signature]</i></p> <p>Dy. Registrar</p> <p><i>[Signature]</i></p> <p>14/8/03</p> <p>Steps taken along with envelops.</p> <p>Notice prepared & sent to Dls for filing the Respondent No. 1 & 2 by Regd. A/P.</p> <p><u>185/03 to 185/03</u></p> <p><u>28/8/03</u></p> <p><u>28/8/03</u></p> | <p>27.8.2003</p> <p>lm</p> <p>20.10.2003</p> <p>bb</p> <p>24.11.03</p> | <p>Present: Hon'ble Mr. Justice D.N. Choudhury, vice-Chairman and Hon'ble Mr. K.V. Prahaladan, Member(A).</p> <p>Heard learned counsel for the parties.</p> <p>Application is admitted. Call for Records. Returnable by four weeks.</p> <p>List on 29.9.03 for orders.</p> <p><i>[Signature]</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>On the prayer made by Mr. A. Deb Roy, learned Sr. C.G.S.C. the case is listed on 24.11.2003 for filing of written statement.</p> <p><i>[Signature]</i> Vice-Chairman</p> <p>no Bench today.</p> <p>Ad. to 12-12-03</p> <p>370</p> |

(2)

O.A. 185/2003

21.1.04 Present : The Hon'ble Sri Bharat Bhusa,
Judicial Member

The Hon'ble Sri K.V.Prahlada
Member(A).

No written statement
has been filed.

22
20.1.04

Sri S.Sarma, learned counsel for the
applicant and Sri A.Deb Roy, learned Sr.
C.G.S.C for the respondents present.

Sri Deb Roy seeks four weeks time
to file written statement. Time allowed.
Rejoinder if any be filed within two
weeks thereafter.

List on 27.2.04 for further order.

K.P. Prasad
Member(A)

P
Member(J)

pg

27.2.04

Learned counsel for the respondents
prayed and allowed four weeks time
for getting instruction and to file
written statement.

List on 29.3.04 for order.

K.P. Prasad
Member(A)

h
Member(J)

pg

29.3.04

On the prayer of Mr A.Deb Roy, learned
Sr.C.G.S.C two weeks time is allowed to
file written statement.

List on 30.4.04 for order.

K.P. Prasad
Member(A)

h
Member(J)

pg

30.4.2004

On the plea of Mr. A. Deb Roy, learned
Sr. C.G.S.C. for the respondents four
weeks time is allowed to the respondents
to file written statement. List on 3.6.20
for orders.

K.V. Prahlada
Member (A)

mb

No written statement
has been filed.

22
2.6.04

No. w/z has been
filed.

22
26.3.04

No. w/z has been
filed.

22
29.4.04

3.6.2004 List on 17.6.2004 for orders. Meanwhile, the respondents may file written statement.

16.6.04
W/S submitted
the Respondents.

mb

ICV Bhandari
Member (A)

Present: The Hon'ble Mrs.
Bharati Roy, Judicial Member
Mr. K.V. Prahlaydan, Administra-
tive Member.

The learned counsel
for the respondents prays
for adjournment to file coun-
ter reply. On earlier occasion
also opportunities were
granted. We therefore, fina-
lly granted three weeks time
to file counter reply.

Let this case be listed
before the next available
Division Bench. In the mean
time, the applicant may file
rejoinder if any, within the
next date.

LM
Member(A)

Member(J)

LM

17.6.03. Present: The Hon'ble Mrs. Bharati Roy,
The Hon'ble Mr. K.V. Prahladan, Administrative Member.

The learned counsel for the applicant submits that he has received the counter reply before Yesterday. He prays for three weeks time to file rejoinder. Let this case be listed before the next available Division Bench.

K.V. Prahladan
Member(A)

J.
Member(J)

lm

~~18.11.04.~~

~~On the request of learned counsel for the applicant~~
~~Mr. S. Sarma~~

10.11.04.

On the request of Mr. U. Das, learned counsel for the applicant case is stand over to 7th December.

U. Das
Member

R.
Vice-Chairman

3-12-04

✓ S/R - granted.
✓ W/S - has been filed.
✓ NO Rejoinder has been filed.

lm

6.12.2004
Shillong

~~Mr. S. Sarma, learned counsel for~~

6.12.2004
Shillong

Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents states that written statement has been filed. Learned counsel for the applicants Mr. S. Sarma seeks four weeks time to file rejoinder. His request is granted. Advance copy of the rejoinder to be given to learned Sr. C.G.S.C.

Matter be listed for hearing on 28.1.2005.

K.V. Prahladan
Member

R.
Vice-Chairman

bb

28.1.2005

List before the next Division Bench.

K.V. Prahladan
Member (A)

14-12-04

Rejoinder submitted by the applicant.

Am

Case is ready for hearing.

Am

Notes of the Registry | Date | Order of the Tribunal

15.3.05

Heard the learned counsel for the applicant. Also heard Mr A.K.Choudhury, learned Addl.C.G.S.C for the respondents.

On the prayer of the counsel for the parties the case is adjourned to 22.3.05.

Case is ready for hearing.

da
21/3

pg

22.3.05

Present: Hon'ble Mr. Justice G. Sivaraman,
Vice-Chairman.
Hon'ble Mr. K.V. Prahladan,
Administrative Member.

Post the matter on 11.4.05 for orders.

lm

11.04.2005

Post on 13.4.2005 for judgment.

2.5.05

Judgment delivered in open Court.
Kept in separate sheets. Application is dismissed. No costs.

lm

Received copy
of Choudhury
12/5/05
for respondents

16.5.05

Copy of the judgment
has been sent to the
office for issuing
the order to the applicant
by post.

Also, I have vide D.N.O.
762 D, 17.5.05

Mr. Prahladan
Member

Mr. Sivaraman
Vice-Chairman

Mr. Prahladan
Member

Mr. Sivaraman
Vice-Chairman

Mr. Prahladan
Member

Mr. Sivaraman
Vice-Chairman

Mr. Prahladan
Member

Mr. Sivaraman
Vice-Chairman

25/2/05

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~Rxxx~~ No. 185 of 2003

DATE OF DECISION 2.5.2005

Shri Bhagirathi MahapatraAPPLICANT(S)

Shri S. SarmaADVOCATE FOR THE
APPLICANT(S).

-VERSUS -

The Union of India and othersRESPONDENT(S)

Mr A.K. Chaudhuri, Addl. C.G.S.C.ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE-CHAIRMAN .

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ? NO
 2. To be referred to the Reporter or not ? Yes
 3. Whether their Lordships wish to see the fair copy of the Judgment ? -
 4. Whether the judgment is to be circulated to the other Benches ? Yes
- Judgment delivered by Hon'ble Vice-Chairman
- [Signature]*

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 185 of 2003

Date of Order : This the 2nd Day of May, 2005.

The Hon'ble Sri Justice G. Sivarajan, Vice-Chairman.

The Hon'ble Sri K.V. Prahladan, Administrative Member.

Sri Bhagirathi Mahapatra
Deputy director
Survey of India
N.E. Circle, Shillong
Meghalaya

... Applicant.

By Advocate Sri S. Sarma.

- Versus -

1. The Union of India,
Represented by the Secretary to the
Govt. of India,
Ministry of Science and Technology
Technology Bhawan,
New Mehrauli Road,
New Delhi.
2. The Surveyor General of India
At - Hathiberkala Estate,
Dehradun.

... Respondents.

By Advocate Mr. A.K. Chaudhuri, Addl. C.G.S.C.

ORDER

SIVARAJAN. J (V.C.)

The question that arises for consideration in this case is as to whether the applicant, an Officer Surveyor on his promotion as Superintending Surveyor is entitled to arrears of salary for the period during which, admittedly he had not



worked but he has been given notional promotion from the deemed date i.e., the date from which his junior was promoted to the said post.

2. The applicant was initially appointed as Surveyor (Gr. 'C') with effect from 1.7.1976; he was promoted as Officer Surveyor with effect from 16.7.1987 through Limited Departmental Competitive Examination (LDCE for short), 1986; he was further promoted as Superintending Surveyor (Gr. 'A') on ad hoc basis with effect from 17.12.1999 and on regular basis as per order dated 26.7.2001 (Annexure 1 to the O.A.). The applicant was subsequently promoted as Deputy Director (Gr. 'A') as on 11.6.2002.

3. In this application the applicant challenges the orders dated 28.11.2001 (Annexure-A) issued by the Director, North Eastern Circle, Shillong and 29.4.2003 (Annexure-8) issued by the Deputy Surveyor General, Dehra Dun (Uttaranchal) to the extent it did not grant arrears of salary in the promoted post of Superintending Surveyor with effect from 15.12.1995 though it is stated that the date of promotion will be the date the applicant's junior got promoted, i.e. 15.12.1995 and its confirmation. In the circumstances, the applicant seeks to set aside and quash the orders dated 28.11.2001 and 29.4.2003 with a further direction to the respondents to pay the applicant the arrears of salary with effect from 15.12.1995 to 17.12.1999 also in the post of Superintending Surveyor alongwith interest at the rate of 21% per annum on such delayed settlement.

4. The respondents have filed a written statement wherein they have taken the stand that since the applicant did not work in the promoted post he is not entitled to arrears of salary for the period from 15.12.1995 to 17.12.1999. The respondents have also stated that there was no direction in regard to the monetary benefits for the period from the date of retrospective promotion till the date of actual



promotion either in the order of the competent authority or in the order of the Tribunal in the applicant's case.

5. The applicant has filed a rejoinder. Alongwith the said rejoinder the applicant had also produced copies of the order dated 4.5.1998 passed by the Cuttack Bench of the Tribunal in O.A.No.221 of 1996 and the order dated 23.4.1999 in O.A.No.438 of 1998 passed by the said Bench. An order dated 27.3.2000 passed in the said O.A. was also produced. The applicant reiterated the stand that he is entitled to arrears of salary for the period between 15.12.1995 to 17.12.1999.

6. Mr S. Sarma, learned counsel for the applicant, submitted that the applicant had vigilantly prosecuted the claim for promotion to the post of Superintending Surveyor right from 1996 before the Cuttack Bench of the Tribunal, evinced by the order dated 4.5.1998 in O.A.No.221/1996, that the Cuttack Bench had issued clear directions to the respondents to prepare a revised seniority list and to give due promotion to the applicant in accordance with such seniority list. The counsel submitted that when the respondents, pursuant to such directions, had passed the impugned order on 26.7.2001 giving retrospective promotion to the applicant in the post of Superintending Surveyor with effect from 15.12.1995, i.e. the date on which the applicant's junior got promoted there was no justification on the part of the respondents in not granting the monetary benefits attached to the promoted post from that date. The counsel submitted that the delay in giving promotion to the applicant is not attributable to any lapses on the part of the applicant and that it is only on the misinterpretation of the relevant rules and the factual circumstances that the delay occurred. The counsel also submitted that it is well settled position in law that when promotion was denied to an employee for no fault of his and subsequently promotion is given with retrospective effect,

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all benefits attached to the promoted post must be granted to such employee. The counsel in support of his submission has relied on the decisions of the Supreme Court in H.S. Chandra Shekara Chari Vs Divisional Controller, KSRTC and others, (1999) 4 SCC 611; State of A.P. Vs K.V.L. Narasimha Rao and others, (1999) 4 SCC 181; Paramjeet Singh Vs State of U.P. and others, (1998) 8 SCC 388; Rabindra Kumar Battack and another Vs. State of Orissa and others, (1998) 8 SCC 769; J.N. Srivastava Vs Union of India and another, (1998) 9 SCC 559 and a decision of the Delhi High Court in Sunder Dass Vs The Management of M/s Asthetic Exports Pvt. Ltd and others, 1985 (1) AISLJ 577. Counsel accordingly submitted that the applicant is entitled to get all dues in salary in the promoted post from 15.12.1995 to 17.12.1999.

7. Mr A.K. Chaudhuri, learned Addl. C.G.S.C. appearing for the respondents, on the basis of the averments in the written statement filed on behalf of the respondents particularly with reference to the proceedings and order in O.A.No.221 of 1996 and O.A.No.438 of 1998 submitted that based on the revised seniority list of Officer Surveyors published in implementation of the directions issued in the judgment in O.A.No.221/1996 of the Cuttack Bench, notwithstanding the fact that the said seniority list was made provisional as per the interim order in O.A.No.438/1998 filed by one Shri Sampath Kumar and another, the applicant was promoted from the post of Officer Surveyor to the post of Superintending Surveyor (Gr.'A') on ad hoc basis with effect from 17.12.1999. The Standing Counsel also submitted that after the Full Bench decision in O.A.No.438/1998 revised seniority list for Officer Surveyors (Gr.'B') has been finalised and circulated vide letter dated 29.1.2001. Since the applicant came in the zone of consideration for promotion to the post of Superintending Surveyor (Gr.'A') being senior to the last officer recommended for promotion in 1995 panel and the



competent authority approved the promotion of the applicant to the grade of Superintending Surveyor (Gr.'A') with effect from 15.12.1995, counsel submitted that no orders for consequential benefits were issued either by the competent authority or in the Tribunal's order. The Standing counsel submitted that it is in the above circumstances the pay of the applicant was notionally fixed with effect from 15.12.1995 and annual increments due thereafter have been allowed, but arrears have been granted to him from 17.12.1999 i.e. the date of assumption of charge of the post of Superintending Surveyor on ad hoc basis vide order dated 17.5.2002. The Standing counsel submitted that since the applicant did not perform the duties of the post of Superintending Surveyor from 15.12.1995 till 17.12.1999 he was not entitled for arrear benefits from 15.12.1995. The Standing counsel relied on a decision of the Principal Bench of the Tribunal rendered on 14.3.2002 in O.A.No.2197 of 2000 and also the decision of the Supreme Court in State of Haryana and others Vs O.P. Gupta and others, (1996) 7 SCC 533 and submitted that the applicant is not entitled to any monetary benefits other than fixation of pay and increments in the post of Superintending Surveyor (Gr.'A') from 15.12.1995 to 17.12.1999.

8. The applicant while working as Officer Surveyor at SECO, Survey of India, P.O.-R.R. Lab, P.S.-Shahidnagar, District Khurda alongwith 5 others had filed O.A.No.221 of 1996 seeking for a direction to respondent No.2 in the said application to recast the seniority list by properly fixing the inter se seniority positions of the applicants who passed the LDC Examination, 1986 in respect of vacancies of 1984 vis-à-vis the DPC promotees, who were promoted through the DPC in the vacancies of the same year in accordance with the 3:1 roster. They had also sought for setting aside the order dated 15.12.1995 promoting 33 Officer Surveyors to the post of Superintending Surveyor and for a direction to the

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respondent No.2 therein to issue fresh order of promotion after recasting the seniority list. The Cuttack Bench of the Tribunal by order dated 4.4.1998 after due consideration of the rival contentions held that the applicants must be shown in between 1985 DPC appointees according to their roster points. The Tribunal, however, did not order inter se fixation of positions in respect of certain LDC Examination appointees who were not parties to the application and held that their position cannot be usurped by the applicants. Various directions have been issued including a direction to consider the case of the applicants for promotion to the post of Superintending Surveyor from the date their juniors, if any, in the revised seniority list got promoted. The Tribunal declined to interfere with the promotion granted to other persons in the order dated 15.12.1995. The respondents prepared a revised seniority list pursuant to the direction issued in the Tribunal's order assigning proper place to the applicants in the post of Officer Surveyor. However, this seniority list was challenged by two other Officer Surveyors before the Cuttack Bench of the Tribunal in O.A.No.438/1998 which culminated in the reference to a Full Bench of the Tribunal and the Full Bench finally decided the issues referred to it by its order dated 23.4.1999. During the pendency of O.A.No.438/1998 the applicant was promoted to the post of Superintending Surveyor on ad hoc basis and he was continuing in the said post since then. After the preparation of the seniority list based on the decision of the Full Bench the applicant has been regularly promoted to the post of Superintending Surveyor by order dated 26.7.2001 with retrospective effect from 15.12.1995.

9. It is in this background the claim of the applicant for arrears of salary in the promoted post from 15.12.1995 till 17.12.1999, i.e. the date of ad hoc promotion to the said post has to be considered. The Hon'ble Supreme Court had occasion to consider the question of grant of arrears of salary etc. in case of notional



promotions with retrospective effect in Paluru Ramkrishnaiah and others Vs Union of India and another, (1989) 2 SCC 541, Virender Kumar, General Manager, Northern Railways, New Delhi Vs Avinash Chandra Chadha and others, (1990) 3 SCC 472 and in State of Haryana Vs O.P. Gupta and others, (1996) 7 SCC 533.

10. A three Judges Bench of the Supreme Court in Paluru Ramkrishnaiah's case (Supra) had incidentally considered the claim of the appellants therein for grant of difference of back wages in the promoted post on the basis of their back date promotion as Chargeman II pursuant to the orders of the Supreme Court. It was contended before the Supreme Court that the promotion tantamounts to implementation of the order of the Supreme Court only on paper inasmuch as they have not been granted the difference of back wages and promotion to higher posts on the basis of their back date promotion as Chargeman II. The Supreme Court noted that as regards the back wages the Madhya Pradesh High Court held as follows:

"It is the settled service rule that there has to be no pay for no work i.e. a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of a higher post although after due consideration he was given a proper place in the gradation list having deemed to be promoted to the higher post with effect from the date his junior was promoted. So the petitioners are not entitled to claim any financial benefit retrospectively. At the most they would be entitled to refixation of their present salary on the basis of the notional seniority granted to them in different grades so that their present salary is not less than those who are immediately below them."

The Supreme Court endorsed the said view and denied the relief of arrears of back wages in the promoted post to the appellants there.

11. In Virendra Kumar's case (Supra) the Supreme Court considered the question of payment of emoluments of higher post with retrospective effect on

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account of deemed promotion with effect from an earlier date. In paragraphs 15 and 16 of the said decision it is observed thus:

"15. As regards the emoluments of higher posts with retrospective effect, we find that the High Court had categorically denied the same to the respondents even on the basis of their claim to higher grades in Class III posts. Further, even the entitlement of the respondents to the higher grades in Class III posts as per the directions of the High Court was on the basis of the quota and rota rule which in itself is both inequitable and irrational. Time and again, the rule has been criticized on account of the absurd result to which it leads, viz. the deemed appointments have to be given to the concerned employees even from the dates when they were not in service and probably when they were still in their schools and colleges. We are informed across the bar that this is the situation even with respect to some of the respondents herein. The quota and rota rule had to be worked out in the present case from the year 1954 as per the direction of the High Court and the Tribunal. There is, therefore, neither equity nor justice in favour of the respondents to award them emoluments of the higher posts with retrospective effect. It is for this reason that we are of the view that the decisions of this Court such as in P.S. Mahal v. Union of India directing the payment of higher emoluments with retrospective effect on account of the deemed promotions of earlier dates will not be applicable to the facts of the present case and have to be distinguished.

"16. It is true that the appellant-railways had failed to give correct effect to the decision dated July 30, 1975 of the High Court in L.P.A. No.220 of 1972, and had kept the matter hanging till this day for no fault of the respondents. The High Court by its said decision had directed the appellant-railways to prepare a seniority list within three months from the date of the decision, and also to proceed to make further promotions in the higher grades in accordance with law, rules and orders in force from time to time. But it is equally true that during all these years the higher posts were not vacant and were manned by others and the appellant-railways had paid the incumbents concerned the emoluments of the said posts. The respondents have not actually worked in the said

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posts and therefore, on the principle of "no work no pay" they will not be entitled to the higher salary. Hence, we give no directions in this behalf and leave it to the appellant to give such relief as they may deem fit."


12. The Supreme Court considered an almost identical situation in O.P. Gupta's case (Supra). In that case the respondents were working in Haryana Service Engineers, Class II, Public Works Department (Irrigation Department), governed by the Haryana Engineers Service Class II, PWD (Irrigation Department) rules 1970. There was inter se dispute regarding the promotion to the higher echelon of service, which ultimately resulted in the order passed by the Supreme Court on 7.8.1990. The Supreme Court had directed the Government to prepare the seniority, in accordance with Rule 9 of the Rules ignoring the instructions contained in para 11.4 of the Manual and any other inconsistent instructions running counter to the rules and to prepare a fresh list strictly in accordance with the rules untrammelled by inconsistent observation made by the High Court. Following the directions seniority list has been prepared and promotions accordingly were given to all the eligible persons. The respondents approached the High Court by filing writ petition claiming payment of arrears. The High court directed the payment of arrears from the due date given in the seniority list to the date of their posting in the promotional post. On these facts the Supreme Court observed that the controversy is as to whether the respondents are entitled to arrears of salary for the period during which, admittedly they had not worked but they have been given notional promotion from the deemed date. The Supreme Court answered the question in para 6 of the judgment thus:

"Having regard to the above contentions, the question arises whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition

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precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order has become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on 1-12-1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1-1-1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a fact, they did not work even on ad hoc basis."

13. The earlier decisions in Paluru Ramkrishnaiah's case (Supra) and Virendra Kumar's case (Supra) were also relied. The counsel for the respondents in that case relied on a decision of the Supreme Court in Union of India Vs. K.V. Jankiraman, (1991) 4 SCC 109 where the Supreme Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of his, he is entitled to the payment of arrears of salary. However, the Supreme Court distinguished the said decision by stating that it was a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case; when the criminal case ended in his favour and department proceedings were held to be invalid the Supreme Court held that he was entitled to arrears of salary. It was observed that the said ratio has no application to the cases where the claim for promotion are to be considered in accordance with rules and the promotions are to

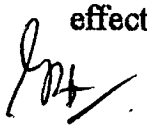


be made pursuant thereto. Finally it was held that payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period.

14. Now we will deal with the decisions relied on by the learned counsel for the applicant. H.A. Chandra Shekara Chari's case (Supra) was concerned with the dismissal of a Workman from service. The Labour Court set aside the said dismissal with back wages. The learned Single Judge modified the award by stating that, "It is not as if that the worker was totally innocent and he was illegally terminated. The facts in this case clearly show that with better proof the charges could have been established. If so, the worker cannot be rewarded with full back wages. Besides, he has a record of 40 previous similar conducts. Hence the order of dismissal of the Workman from service is set aside and the management is directed to reinstate the Workman in service to his original post with continuity of service. A portion of back wages must be disallowed to him by way of punishment". The Supreme Court in appeal held that there may be circumstances justifying non-payment of full back wages, but they cannot be denied for the reason that the charges could have been established with better proof. If better proof was available with the management and it was not furnished or produced before the court the presumption would arise that such proof, if furnished, would have gone against the management. The Court observed that it is surprising that the view propounded by the Single Judge which falls in the realm of speculation had been upheld by the Division Bench. The Supreme Court accordingly remitted the case back to the Single Bench to re-hear it on merits. The said decision has no application to the facts of this case for that was not a case of promotion with retrospective effect. That apart, no immutable principle regarding the payment of arrears has been laid down in the said decision.



15. K.V.L. Narasimha Rao's case (supra), of course was a case of retrospective promotion on notional basis, but were not given monetary benefits. In that case the respondents relied on the provisions of Rule 26(aa) of the Fundamental Rules and Rule 14(aa) of the Hyderabad Civil Service Regulations. The Hyderabad Civil Service Regulations provided that pay of a Government servant whose seniority by promotion has been revised and refixed from an earlier date, may be refixed on the basis of notional duty in the post from time to time. Note thereto provided that monetary benefit arising out of refixation as above shall be limited to the duty periods and arrears shall be payable only for the period during which the Government servant actually discharged the duties of the post. Arrears shall not be payable for the notional duty periods assigned as a result of revision of seniority position. In the case before the Supreme Court there was inter se seniority dispute among the judicial officers of different regions. Certain litigations arose as to the norms to be adopted for fixing the seniority and ultimately the High Court in a writ proceeding directed the judicial officers in Telangana must be given their due promotions with effect from the date their juniors being actually promoted. The respondents filed representations before the authorities regarding payment of arrears of salary and their monetary benefits flowing from their respective dates of notional promotion to the higher post from the grade of Munsif to subordinate Judge and from subordinate Judge to District Judge. In the writ petitions filed by the respondents the High Court directed payment of arrears of salary, which was affirmed in appeal. The High Court took the view that the State Government cannot deny the monetary benefit to officers whose ranks in the seniority list were adjusted and notional promotions were effected as a result of review of the common seniority list which attained finality



under the provisions of the Act. The Supreme Court considered the matter in the light of the rules mentioned above and observed thus:

"In normal circumstances when the retrospective promotions are effected all benefits flowing therefrom, including monetary benefits, must be extended to an officer who has been denied promotion earlier. However, on the reorganization of States a large number of officers stood allotted from different States to the newly-formed State and their services had to be integrated on various principles and several agencies were involved in the same. The steps to be taken thereto were one of formulation of principles, publication of a provisional inter-State seniority list, inviting objections thereto, consideration of those objections in consultation with the Central Government and acting upon its directions to bring the seniority list in conformity with such directions. This entire exercise involved a good deal of time and gave rise to an extraordinary situation. It is in those circumstances that the rules contained in Fundamental Rule 26 or Rule 40 of the Hyderabad Civil Services Regulations have been framed. As a matter of fact, rules of the erstwhile State regarding seniority are not applicable in the new State as the allottees are governed by the Act and seniority is finalized therein. Even so, we do not see that there is any impediment to frame new rules affecting conditions of service of such allottees but in conformity with the Act. Surely new rules cannot be brushed aside by saying that they are not applicable to cases coming under the Act. There is no contention either in the High Court or before us that they are framed in contravention of the Act. In this background, we fail to see as to why the rules are not applicable to the respondents as held by the High Court."

This decision, according to us, instead of supporting the applicant only supports the case of the respondents that if the circumstances so warrant the monetary benefits for the period of notional promotions can be denied.

16. In Paramjeet Singh's case (supra) the appellant before the Supreme Court was originally working as Assistant Engineer in Minor Irrigation Department of the State of U.P. By order dated 22.7.1997, he was promoted as Executive Engineer in the Hill Cadre on the recommendations of the DPC and he was posted

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in the Minor Irrigation Department at Nainital in 1997. He also took charge of the said post on 21.8.1997. Respondent No.4 in the said case who was posted as Executive Engineer, Minor Irrigation at Nainital was transferred from Nainital and was attached to the Superintending Engineer, Pauri. He challenged the said order in writ petition before the Allahabad High Court and obtained an interim order of stay on 2.9.1997. The operation of the order dated 19.8.1997 posting the appellant at Nainital was also stayed. Consequently, the appellant was deprived of the post of Executive Engineer at Nainital by an order dated 11.9.1997. He was not given a posting thereafter in the said post. The applicant also filed a writ petition seeking to quash the order dated 11.9.1997 and sought for giving a posting as Executive Engineer, Minor Irrigation, Nainital and for payment of salary and allowances since August 1997. The writ petition filed by respondent No.4 was subsequently dismissed and the writ petition filed by the applicant was dismissed as infructuous. The appellant took up the matter in appeal before the Supreme Court. The Supreme Court observed thus:

"We are unable to appreciate the order passed by the High Court on the writ petition filed by the appellant. The appellant was deprived of the post of Executive Engineer, Minor Irrigation, on the basis of the interim order dated 2.9.1997 passed by the High Court in the writ petition filed by Respondent 4. After dismissing the writ petition of Respondent 4 it was necessary for the High Court to have given appropriate directions in the writ petition of the appellant with regard to his posting as well as for payment of his salary. The writ petition could not be dismissed as infructuous.

The appeals are, therefore, allowed and it is directed that the appellant be given suitable posting as Executive Engineer, Minor Irrigation, in the Hill Cadre and till he is given such posting he should be paid the salary for the period he has not been paid the salary on account of his being deprived of the post of Executive Engineer, Minor Irrigation, Nainital on 11.9.1997. The said amount of salary should be paid within one month. No order as to costs."

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17. This case is distinguishable for the reason that the appellant was promoted and posted as Executive Engineer at Nainital and he took charge in the promoted post. It is thereafter, by virtue of the interim order passed by the Allahabad High Court in a writ petition filed by the respondent No.4, the posting order was cancelled. It is pertinent to note that after cancellation of the posting order on 11.9.1997 the appellant was not given a posting to any other place at all. It is in the above circumstances the Supreme Court directed payment of arrears of salary etc.

18. In Rabindra Kumar Battick's case (supra) the Supreme Court was concerned with a situation where the appellants were untrained teachers employed in Upper Primary School which was initially a private school but subsequently taken over by the Notified Area Council, CT Rourkela. The appellants were thereafter sent to undergo the CT training course and after completing the training course they were not allowed to join their respective posts. The appellants filed applications before the Orissa Administrative Tribunal and the Tribunal by judgment dated 4.7.1995 allowed the said applications and directed that the applicants joining reports be accepted with effect from the date they submitted the same to the Executive Officer of the Notified Area Council and they be deemed to be continuing in service for the purpose of seniority, pension etc. but they would not be entitled to back salary. Though the applicants sought review of the said order the same was dismissed. The appellants thereafter took up the matter in appeal before the Supreme Court. The Supreme Court observed that since the appellants concerned were not at fault the Tribunal was not right in denying salary to the appellants for the period from the date when they reported for duty after completing the training till they were taken back on duty in pursuance of the directions contained in the judgment of the Tribunal dated 4.7.1995. The Supreme

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Court accordingly directed that the appellants shall be paid salary for the said period. This decision also has no application to the facts of the present case.

19. The Supreme Court in J.N. Srivastava's case (supra) was concerned with a case of an employee who submitted notice for voluntary retirement from service and he sought to withdraw the said notice within the notice period itself, which was rejected. The appellant went to the Tribunal, but without success. The Supreme Court observed that, "It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement." The Supreme Court accordingly allowed the appeal and set aside the orders of the Tribunal as well as the orders of the authorities and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from the date of coming into force of the notice. The effect of the said order was that the appellant will have to be treated in service till the date of his superannuation on his completing 58 years of age. The Supreme Court also directed that the authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation and further held that this entitles him to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. The contention of the respondent authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay" this amount should not be given to the appellant. This contention was negatived by stating that the appellant was always ready and willing to work, but the respondents did not allow him to work.

This decision also turns on the peculiar facts of the said case and consequently the

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ratio of the said decision cannot be applied to the case on hand. The decision of the Delhi High Court in Sunder Dass (supra) relied on by the counsel for the applicant also says that when termination/dismissal of a workman is set aside by the Court normal rule is reinstatement of workman with back wages. The said decision also mentions about exceptional circumstances which make it impossible or wholly inequitable. This decision also does not help the applicant.

20. The principles laid down by the Supreme Court in the aforesaid decisions can be summed up thus:

1. There will be no pay for no work; i.e., a person will not be entitled to any pay and allowances during the period for which he did not perform the duties attached to a post or of a higher post. In exceptional circumstances, when there is absolutely no fault on the part of the Government servant and the Government servant was always willing to do the work attached to the post but he was denied employment/promotion then the Government is obliged to give the pay and allowances attached to the post from the date from which he was denied the pay and allowances. ((1989) 2 SCC 541, (1990) 3 SCC 472, (1996) 7 SCC 533. Exceptional cases are (1998) 8 SCC 388, (1998) 8 SCC 769, (1998) 9 SCC 559).
2. In normal circumstances when retrospective promotions are effected all benefits flowing therefrom, including monetary benefits must be extended to an officer who has been denied promotion earlier. If there are specific rules which provides that if the officers concerned did not actually work in the higher posts they have no right to claim monetary benefits or that arrears shall not be payable for the notional

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duty periods assigned as a result of revision of seniority position then courts are bound to honour the said rules (1999) 4 SCC 181.

3. To lay down as an inflexible rule that in every case where retrospective promotion is granted the concerned person is entitled to all salary from the date of notional promotion is not practicable. The concerned authorities must be vested with the power to decide whether the officer concerned is entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion and if so to what extent on a consideration of the totality of the circumstances of each case. (1991) 4 SCC 109; 1990 3 SCC 472.

21. The principles, thus deduced from the decisions of the Supreme Court discussed above there appears to have apparent inconsistency between principles specified above. If there is no pay for no work there is no question of payment of back wages when a person is reinstated after disciplinary proceedings and likewise when notional promotion is given retrospectively. However, Supreme Court itself has not taken it as an absolute rule. In certain circumstances it is held otherwise. The Supreme Court has also stated that when a person is fully absolved of all the charges in a disciplinary proceeding or in a criminal case on merits and on that basis he is reinstated in service or promoted with retrospective effect he must be entitled to all monetary benefits on such reinstatement or retrospective promotion. If there is a statutory rule which prohibits payment of arrears of salary in any such situation that will bind the authorities and the court. On a harmonious reading of all the above principles it is clear that the common approach is that the question of payment of arrears of salary/back wages on the situations mentioned above will depend on the facts and circumstances of each case and there cannot be an hard

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and fast rule in the matter except when there is a statutory prohibition as discussed in K.V.L. Narasimha Rao's case (Supra).

22. Coming to the facts of the case on hand, as already noted, the applicant alongwith others while working as Officer Surveyor had filed O.A.No.221/1996 before the Cuttack Bench of the Tribunal seeking for directions to the Surveyor General of India, Dehra Dun, to recast the seniority list by properly refixing the seniority position of the applicants who have passed the LDC Examination, 1986 in respect of vacancies of 1984 vis-à-vis the DPC promotees who were promoted by the DPC in accordance of 3:1 vacancy roster and for cancellation of the order dated 15.12.1995 promoting 33 Officer Surveyors to the post of Superintending Surveyors and to issue fresh order of promotion after recasting the seniority list. As already noted the Cuttack Bench of the Tribunal in the order dated 4.5.1998 did not quash the order dated 15.12.1995 nor did it interfere with the promotion given to 33 Officer Surveyors. The Tribunal had only issued certain directions including the preparation of revised seniority list in accordance with the observations made in the said order and to consider the case of the applicant and others for promotion to the post of Superintending Surveyor from the date their juniors, if any, in the revised seniority list got promotion. The respondent authorities on the basis of the direction issued by the Tribunal prepared a revised seniority list but at the instance of one Shri Sapan Kumar Chakrabarty and another who were Officer Surveyors, the Cuttack Bench of the Tribunal in O.A.No.438/1998 passed an interim order of stay of the revised seniority list. Hence the revised seniority list prepared pursuant to the directions of the Tribunal in O.A.No.221/1996 was treated as provisional and the applicant was promoted to the post of Superintending Surveyor on ad hoc basis from 17.12.1999. The applicant took charge in the post of Superintending Surveyor on 17.12.1999 and continued as such. O.A.No.438/1998 was referred to

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a Full Bench posing certain questions and the Full Bench of the Tribunal decided the said application finally by its order dated 27.3.2000 (Annexure-RJ3). Following the principles laid down by the Full Bench in the said decision a final seniority list of Officer Surveyor has been prepared and on the basis of the applicants position in the said list he was promoted on regular basis notionally with retrospective effect from 15.12.1995. The applicant was given arrears of salary and other monetary benefits from 17.12.1999, i.e. the date of ad hoc promotion from which date he had worked in the post of Superintending Surveyor. However, he was denied the monetary benefits for the earlier period from 15.12.1995. The Competent authority while giving promotion to the applicant in the post of Superintending Surveyor notionally from 15.12.1995 did not thought it proper, in the circumstances, to order arrears of salary also. It is relevant to note that a Full Bench decision of the Tribunal was necessitated for settling certain relevant principles in regard to fixation of seniority of Officer Surveyors under the respondents which would clearly demonstrate that it required lot of adjustments and equities based on certain ratios and roster points to determine the seniority position of the applicant and other similarly situated persons. This would be finally settled only by the Full Bench decision.

23. In the circumstances it cannot be said that the respondents are responsible for the delay in giving promotion to the applicant from an anterior date. As soon as the Tribunal had decided the applicant's case the respondents had prepared a revised seniority list and the same was published. However, the said list was stayed by the Tribunal in another case. In spite of this the respondents have promoted the applicant on ad hoc basis from 17.12.1999 and he is given arrears of salary also from that date. The decision of the Principal Bench of the Tribunal in

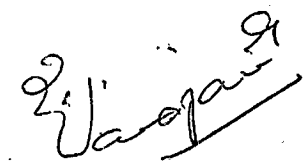
 O.A.No.2197/2000 (Manjula Rani (Smt) V. Government NET, of Delhi and others

dated 14.3.2002) also shows that in almost similar circumstances claim for monetary benefits for periods prior to the actual date of promotion on the basis of notional promotion on the basis of notional promotion was denied.

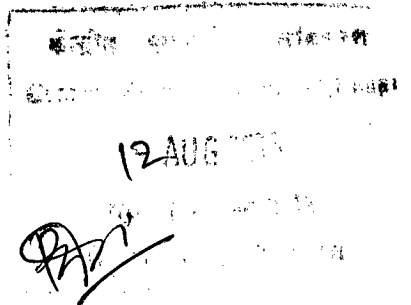
24. Considering the questions posed in the opening paragraph of this order in the factual background discussed in paragraphs 9 and 20 hereinabove and in the light of the legal principles laid down by the Supreme Court and specified in paragraph 18 above as reconciled in paragraph 19 we are of the view that the challenge against the impugned orders cannot be sustained.

The application is accordingly dismissed. In the circumstances there will be no order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(G.SIVARAJAN)
VICE-CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 185 of 2003

BETWEEN

Shri Bhagirathi Mahapatra Applicant.

AND

Union of India & ors..... Respondents.

I N D E X

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Filed by : Alsha Das.

Regn.No.:

File : c:\W57\BHAGIRATHI

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.185..... of 2003

Sri Bhagirathi Mahapatra

.....Applicant

-VS-

Union of India & Ors.

.....Respondents

LIST OF DATES

1. 4.5.99 Judgment passed by the Hon'ble Tribunal, Cuttack Bench OA No. 221/96. ✓
2. 26.7.2001 Order bearing No. C-3550/853-SS circulated showing the applicant as eligible to be promoted as Superintending Surveyor.
3. 10.7.2000 Notification appointing the applicant as superintending Surveyor on ad-hoc basis.
4. 30.1.2002 Notification appointing the applicant to officiate as Superintending Surveyor.
5. 28.11.2001 Order issued by the respondents by which the applicant was allowed the arrear of pay w.e.f. 17.12.99.
6. 18.12.2001 Representing preferred by the applicant regarding pay fixation and drawal of arrears of pay.
7. 19.7.2002 Representation preferred by the applicant regarding Review DPC, Pay fixation & drawal of arrears of pay in case of retrospective promotion from 15.12.95.
8. 20.6.2003 Impugned communication rejecting the prayer made in the representation regarding release of his arrear pay w.e.f. 15.12.95.
9. 29.4.2003 Impugned rejection order by which the prayer of the applicant made in the representation has been rejected.

Filed by
the applicant through
Alsha Das. 30
Advocate
618103

31
Filed by
the applicant through
Usha Das
Advocate
6/8/03

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An application under section 19 of the Central
Administrative Tribunal Act.1985)

O.A.No.1885..... of 2003

BETWEEN

Sri Bhagirathi Mahapatra
Deputy Director
Survey of India
N.E.Circle, Shillong,
Meghalaya.

..... Applicant.

- AND -

1. The Union of India.
Represented by Secretary to the
Govt. of India.
Ministry of Science and Technology,
Technology Bhawan,
New Mehrauli Road,
New Delhi.
2. The Surveyor General of India
At- Hathiberkala Estate,
Dehradun.

..... Respondents.

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION
IS MADE:

This application is made against the impugned communication dated 29.04.2003 by which prayer made by the applicant for drawl of arrear salary w.e.f. 15.12.95 to 17.12.99 in the event of his retrospective promotion to the post of Superintending Surveyor has been rejected and the said letter was communicated to him by a letter dated 20.8.2003 by the Additional Surveyor General, Eastern Zone, Kolkata.

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2. LIMITATION:

The applicant declares that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act, 1985.

3. JURISDICTION:

The applicant further declares that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That the applicant was promoted to the post of Superintending Surveyor on regular basis w.e.f. 15.12.95 after convening a review DPC pursuant to various judgments passed by Hon'ble Central Administrative Tribunal, Cuttack Bench. The applicant preferred representations for drawal of arrear salary w.e.f. 15.12.95 to 17.12.99 in a the cadre of Superintending Surveyor but same was rejected vide impugned communication dated 29.04.2003. The applicant who was eligible to be promoted to the grade of Superintendent Surveyor in the year 1995 itself, but same was denied to him illegally. The illegal deprivation for such promotion was the subject matter for scrutiny before the Hon'ble Central Administrative Tribunal, Cuttack Bench. The Hon'ble Cuttack

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Bench vide its judgment and order dated 4.5.98 directed the Respondents to consider the cases of the applicant along with other similarly situated persons for promotion to the post of Superintending Surveyor from the dated where their juniors in the revised seniority list got such promotion. The private respondents effected parties of the said OA (OA No. 221/96) before the Hon'ble Central Administrative Tribunal, Cuttack Bench preferred OA No. 438/98 and the said OA was referred to full Bench of the Hon'ble Tribunal. The Hon'ble Full Bench of the Tribunal after hearing the parties to the proceeding was pleased to confirm the judgment dated 4.5.98 passed in OA No. 221/96. The respondents thereafter implemented the judgment and convened Review DPC and found the applicant eligible for such promotion w.e.f. 15.12.95 (that the date of promotion of last junior officer). Accordingly promotion orders and notifications were issued promoting him to the post of Superintending Surveyor w.e.f. 15.12.95, with notional pay fixation but he was denied of arrear salary. Situated thus the applicant preferred representation before the concerned authority for drawal of arrear pay and allowances pursuant to such retrospective promotion, but same was rejected by the impugned communication dated 29.04.2003. Hence the applicant having no other alternative has come before this Hon'ble Tribunal seeking redressal of his grievances.

4.3. That the applicant is presently working as a Deputy Director, Survey of India, N.E.Circle, Shillong. The applicant was eligible for the promotion Group-B (Officer Surveyor). The Survey of India new Recruitment Rule came into effect on 27.04.1983. The said Rule prescribed the

method of promotion from the feeder cadre viz. 75% available vacancy of a particular year by DPC and by qualified persons who passed LDC examination with mathematics in graduation. For other 25% quota some instruction was issued vide letter dated 27.04.83 by limited departmental Competitive Examination from Surveyors Survey Assistants, Scientific Assistants, Geodetic Computers and Draft Man div-I who passed bachelor degree with mathematics as one of the subjects and have rendered 5 yrs of service in the respective grade. The Respondents while preparing the seniority in respect of the persons passed LDC examination in 1986 in respect of vacancies of 1984 vis-a-vis the DPC promotees who were promoted through DPC from the vacancies of same year in accordance with 3:1 vacancy roster. The applicant along with some other similarly situated persons claiming recasting of such seniority preferred OA No. 221/96 before the Hon'ble Tribunal, Cuttack Bench. In the OA the applicant made the promoted persons as party respondent seeking their order of promotion to be modified after recasting the seniority. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to direct the Respondents to recast the seniority list in question with a further direction to consider their cases for promotion to the post of Superintending Surveyor from the date when their Surveyor from the date when their immediate juniors were so promoted.

The applicant craves leave of this Hon'ble Tribunal to produce the copy of the said judgment dated 4/5/98 passed in OA No. 221/96 at the time of hearing of this case.

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4.4. That the affected parties of the aforementioned OA No. 221/96 after the Judgment dated 4/5/98 preferred OA No. 438/98 before the Hon'ble Central Administrative Tribunal, Cuttack Bench making present applicant as one of the parties to the said proceeding. The aforementioned OA however by an order dated 23/4/99 was referred to a larger Bench to sort out the controversy. Accordingly, the said OA was taken up by a Full Bench after hearing the parties to the proceeding was pleased to confirm the Judgment dated 4/5/98 passed in OA No. 221/96.

The applicant craves leave of this Hon'ble Tribunal to produce the Judgments dated 23/4/99 and 27/3/2000 passed in OA No. 438/98 at the time of this case.

4.5. That pursuant to the aforesaid judgments passed by the Hon'ble Cuttack Bench the respondents the seniority of the Officer Surveyors was revised vide office letter No. C-546/787 dated 29.1.2001 and on the basis of said revised seniority on 26.6.2001 review DPC, held as of 1995. In the said review DPC, the applicant was found eligible to be promoted as Superintending Surveyor. The respondents issued an order bearing No. C-3550/853-SS dated 26/7/2001 by which the order of promotion to the Grade of Superintending Surveyor was circulated and by the said order itself the applicant was given the posting at NEC, Shillong.

A copy of the order dated 26.07.2001 is annexed herewith and marked as Annexure-1.

4.6. That the aforesaid order of promotion dated 26.7.2001 was followed by a residential notification dated 30.1.2002 by which the applicant has given the effect of such promotion w.e.f. 15.12.95 on regular basis. It is pertinent to mention here that the applicant prior to his regular promotion to the post of Superintending Surveys Group-A got Ad-hoc promotion to the said Post w.e.f. 17/12/99 and to that effect notification dated 10/7/2000 may be referred to.

Copies of the notifications dated 30.1.2002 and 10.7.2000 are annexed herewith and marked as Annexure- 2 & 3 respectively.

4.7. That the applicant begs to state that since he was eligible for promotion to the post of Superintending Surveyor in the year 1995 itself, the respondents ought to have promoted him to the said post but ignoring his case the respondents have taken into consideration the cases of his juniors when the matter was settled by the Hon'ble Tribunal, the respondents realising their mistakes convened review DPC as of 1995 and found him suitable for the said post of Superintending Surveyor. However, the respondents willfully and deliberately denied him the benefit of arrear pay from 15/12/95, although the review DPC allowed him the promotion w.e.f. 15.12.95. Instead of fixing the pay of the applicant from 15.12.95 the Respondents issued an order dated 28.11.2001 by which he was allowed the arrear of pay w.e.f. 17.12.99.

A copy of the said order dated 28.11.2001 is annexed herewith and marked as Annexure-4.

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4.8. That the applicant being aggrieved by the aforesaid order dated 28.11.2001 regarding fixation of his pay, preferred a representation dated 18/12/2001 to the Director, North Eastern Circle, Survey of India, Shillong-1 for drawal of arrear pay.

A copy of the representation dated 18/12/2001 is annexed herewith and marked as Annexure-5.

4.9. That the applicant thereafter kept on pursuing the matter and he preferred yet another representation dated 29.7.2002 with a prayer to release his arrear pay, in the Grade of Superintending Surveyor w.e.f. 15.12.95 to 17.12.99. The applicant preferred the said representation dated 29.7.2002 to the Secretary, Department of Science and Technology through proper channel.

A copy of the said representation dated 29.7.2002 is annexed herewith and marked as Annexure-6.

4.10. That the applicant in the month of June 2003 received a communication dated 20.6.2003 enclosing the impugned communication bearing no.C-1640/853-SS dated 29.4.2003 by which his prayer made in his representation regarding release of his arrear pay w.e.f. 15.12.95 has been rejected.

Copies of the said order dated 20.6.2003 and 29.4.2003 are annexed herewith and marked as Annexure 7 & 8 respectively.

4.11. That the applicant begs to state that the terms of the guidelines issued in respect of convening Review DPC it is very clear that under 5 conditions it is necessary to convene Review DPC and the conditions are as follows:-

- (a) Where eligible persons were omitted to be considered; or
- (b) Where ineligible persons were considered by mistake; or
- (c) Where the seniority of a person is revised with retrospective effect, resulting in a variance of the seniority list placed before the DPC; or
- (d) Where some procedural irregularity was committed by a DPC; or
- (e) Where adverse remarks in the Crs were toned down or expunged after the DPC had considered the case of the officer.

It is noteworthy to mention here that there has been a specific mention that in the event of consideration of a case after expunging of adverse remarks only if Review DPC considers his case and effected the promotion with retrospective effect no arrear would be admissible. In the instant case there has been incorrect fixation of seniority as well as on the basis of such incorrect seniority promotion have been effected to ineligible persons (Junior) to the applicant and as such he is entitled to fixation of pay & arrear of pay with retrospective effect, that is from 15.12.95.

4.12. That the applicant states that taking into consideration the correct seniority position of the applicant he was well within zone of consideration and for no fault of his own he was not allowed to hold the post of Superintending Surveyor although he was very much willing for such promotion. In such an eventuality the respondents are duty bound to refix the pay and to pay the arrear of the applicant w.e.f. 15.12.95.

4.13. That the applicant states that reasoning contained in the impugned communication dated 29.4.2003 is totally arbitrary and same depicts total non-application of mind by the respondents. In the aforementioned impugned order the respondents denied the arrear to the applicant on the ground that neither the competent authority nor the judgments pursuant to which has given specific order for such consequential benefit. In this connection it is stated that the Hon'ble Tribunal in it's judgment and order dated 4.5.98 in OA No. 221/96 in fact, did not issue any Mandamus to the respondents for such promotion, but direction was issued to recast the seniority and to consider the case of the applicant for promotion to the post of Superintending Surveyor on the basis of such recasted seniority with retrospective effect. Contrary to the stand taken by the respondents in the impugned communicated 29.4.2003, it is further stated that the Hon'ble Tribunal on the other hand did not debar the respondents to provide all consequential benefits. The respondents them self evaluated a way to reject the claim of the applicant taking the aid of the judgment passed by the Hon'ble Tribunal which is contrary to the settled law guiding the field.

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4.14. That the Respondents while issuing the impugned orders dated 29.4.2003 and 28.11.2001 have violated various provisions containing FRSR as well as the guidelines issued in this regard and as such the aforementioned impugned orders are not sustainable and liable to be set aside and quashed.

5. GROUND FOR RELIEF WITH LEGAL PROVISION:

5.1. For that the respondents have acted contrary to the legal provision of law and Rules guiding the field and as such impugned orders are not sustainable and liable to be set aside and quashed.

5.2. For that the applicant who was well within the zone of consideration and also eligible for promotion to the post of Superintending Surveyor. Way back in year 1995 itself, the respondents have acted illegally in depriving him the benefit of such promotion and as such the impugned action on their part as well as the impugned orders dated 28.11.2001 as well as 29.4.2003 are not sustainable and liable to be set aside and quashed.

5.3. For that the respondents have illegally rejected the claim of the applicant for drawal of arrear pay w.e.f. 15.12.95 violating the various provisions contained in the rules/ guidelines and as such the impugned orders dated 28.11.2001 and 29.4.2003 are liable to be set aside and quashed.

5.4. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that he has exhausted all the remedies available to them and there is no alternative remedy available to him.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicant further declares that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicant:-

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8.1. To set aside and quash the impugned orders dated 28.11.2001 and 29.4.2003 with a further direction to the respondents to pay the applicant the arrear salary w.e.f. 15.12.95 to 17.12.99 in the post of Supdt. Surveyor along with an interest of @21% p.a. on such delayed settlement.

8.2. Cost of the application.

8.3. Any other relief/reliefs to which the applicant is entitled to under the facts and circumstances of the case and deemed fit and proper.

9. INTERIM ORDER PRAYED FOR:

Taking into consideration the facts and circumstances of the case the applicant does not pray for any interim order at this stage however he prays for early disposal of this application.

10.

11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 96 1571332
2. Date : 30/7/03
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

43

And I sign on this the Verification on this
the 6th day of August of 2003.

Bhagirathi Mahapatra

सर्वेक्षण विभाग
SURVEYOR GENERAL'S OFFICE

376, 4th Flg 37, POST BOX No.37,

488, 74246601 (GURUGRAM) - 110001

DEHRA DUN-248001 (UTTARANCHAL), INDIA

Dated : 26th July, 2001

The Asst. S.G. (EZ/STL)

The Director, NEC/DMC (Hyd.) / R&D.

PROMOTION OF OFFICER SURVEYORS (GROUP 'B') TO THE POST OF SUPERINTENDING SURVEYOR (GROUP 'A') - TRANSFER/POSTING OF

In compliance of the Hon'ble CAT, Cuttack, Full Bench Order dated 27-03-2000 in the OA No. 438/98, (upholding the order dated 04-03-1993 of Hon'ble CAT Cuttack in OA No. 221/96), the seniority of Officer Surveyors was revised vide this office letter No.C-546/707 dated 29-07-2001. On the basis of revised seniority, DPC held in 1995 was reviewed on 26-06-2001 for promotion from Officer Surveyor to Superintending Surveyor. As a result of review, the following Officer Surveyors are promoted as Superintending Surveyors and are mentioned as indicated below. They will assume charge of the Superintending Surveyor at the new place of posting :-

| No. | Name | Present Posting | New Posting | Remarks |
|-----|-----------------------|-----------------|----------------------------------|----------------------------|
| 1. | Shri J.K. Bath | DMC, Hyderabad | DMC, Dehra Dun | Against existing vacancy. |
| 2. | Shri Ram Nath Nahak | STL, Hyderabad | No.17 DO (NWC), Jammu | To take over charge of OC. |
| 3. | Shri D. C. Niyam Kunu | R&D, Hyderabad | Since retired w.e.f. 30-09-1997. | |
| 4. | Shri P.K. Ganguly | DMC, Hyderabad | No.93 P (SA), New Delhi | Against existing vacancy. |
| 5. | Shri B. Annapatna | NEC, Shillong | No.29 P (NEC), Shillong | To take over charge of OC. |

The date of their promotion will be the date their junior got promoted i.e. 15-12-1995 vide this office letter No.C-4497/853-SS dated 15-12-1995.

The Competent Authority have sanctioned creation of five supernumerary posts for the officers for the period when they would be adjusted against vacancies of 1994 immediately following the holding of DPC for 1994 and consequent promotions made there of and the date of effect of promotions.

The above officers may be relieved of their duties immediately so as they take over the charge of Superintending Surveyor at the new place of posting by 26-03-2001.

Contd. 2/-

Attested
Advocate.

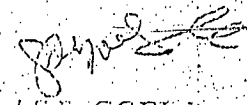
- 15 -
--2--

45

Necessary certificate of assumption of charge on form 0.115 (Acc) may please be submitted in triplicate, for further necessary action.

In case of any vigilance case/disciplinary proceedings or pendency of punishment of any of the above official(s) is noticed at your end, the order of promotion may not be implemented.

Authority: Ministry of Science & Technology (Department of Science & Technology), New Delhi letter No.SM/01/004/2001 dated 24-07-2001.



[S.E. GOEL]

DEPUTY SURVEYOR GENERAL
for SURVEYOR GENERAL OF INDIA

The Secretary to the Govt. of India, Ministry of Science and Technology, (Department of Science and Technology), Technology Bhavan, New Mehrauli Road, New Delhi-110 016 with reference to their letter No.SM/01/004/2001 dated 24-07-2001.

The Additional Surveyor General, Northern Zone, Survey of India, Chandigarh

The Director: NWC/S. (Air) / DMC (D.Dun).

The General Pay & Accounts Officer, Survey of India, Dehra Dun.

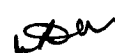
The Regional Pay & Accounts Officer, Survey of India, Hyderabad/Kolkata/Jaipur.

The EI Section (SOO).

File No. C-707/701-SS.

(A.C.O. (SOO)).

Attested


Advocate.

Government of India
Ministry of Science & Technology
(Department of Science & Technology)
Technology Bhavan, New Mehrauli Road,
New Delhi-110 016.

Annexure-2

Dated : 3rd January, 2002

NOTIFICATION

No. SM/01/004/2001. The President is pleased to appoint the following Officers holding the post of Officer Surveyor (Group 'B') in Survey of India to officiate as Superintending Surveyor (Group 'A') in the pay scale of Rs. 10,000-325-15,200 in that Department on regular basis with effect from the date(s) mentioned against them, until further orders:-

| <u>Sl. No.</u> | <u>Name of Officer</u> | <u>Date of Promotion</u> |
|----------------|---------------------------|--------------------------|
| 1. | Shri J.K. Rath | 15-12-1995 (FN) |
| 2. | Shri Ram Nath Nahak | 15-12-1995 (FN) |
| 3. | Shri D.K. Shyam Kiran | 15-12-1995 (FN) |
| 4. | Shri P.K. Ganguly | 15-12-1995 (FN) |
| 5. | Shri Bhagirathi Mahapatra | 15-12-1995 (FN) |

[Signature]
[AVINASH DIKSHIT]
DIRECTOR

To

The Manager,
Govt. of India Press
Faridabad (Haryana) with a copy of Hindi Version.

N.O.O.

Copy forwarded to :-

1. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110 011 with reference to their letter No.2/1(1)/2001-SW(A) dated 3-7-2001.
2. The Surveyor General of India, Dehra Dun with reference to his letter No.C- 75/853-SS dated 7-1-2001 for information and necessary action. Spare copies of the officers concerned are enclosed.
3. The Central Pay & Accounts Officer, Survey of India, Dehra Dun.
4. The Regional Pay & Accounts Officer, Survey of India, Jaipur/Hyderabad/Kolkata.

[Signature]
[AVINASH DIKSHIT]
DIRECTOR

Attested
[Signature]
Advocate.

[Handwritten notes]

TO BE PUBLISHED IN PART-I SECTION-II OF THE GAZETTE OF INDIA
 Government of India
 Ministry of Science & Technology
 (Department of Science & Technology)
 Technology Bhavan, New Mehrauli Road,
 New Delhi-110016.

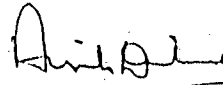
No.SM/01/002/98(II)

10.7.2000

NOTIFICATION

The President is pleased to promote the following Officer Surveyor Group 'B' in Survey of India and to appoint him to the post of Superintending Surveyor Group 'A' post in that organisation in the Pay Scale of Rs.10,000-325-15,200 from the date mentioned against him on ad-hoc basis for a period of three months, until further orders :-

| Sl.No. | Name of the officer | Date of Appointment |
|--------|---------------------|---------------------|
| 1. | Shri B. Mahapatra | 17-12-1999 (FN) |



(AVINASH DIKSHIT)
 DEPUTY SECRETARY TO THE GOVT. OF INDIA

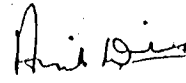
To

The Manager,
 Govt. of India Press
 Faridabad (Haryana) with a copy of Hindi Version.

N.O.O.

Copy forwarded to :-

1. The Surveyor General of India, Dehra Dun with reference to his letter No.C-1911/853-SS dated 17.05.2000 for information and necessary action, Spare copy of the officer concerned is also enclosed.
2. The Central Pay & Accounts Officer, Survey of India, Dehradun.
3. The Regional Pay & Accounts Officer, Survey of India, Calcutta



(AVINASH DIKSHIT)
 DEPUTY SECRETARY TO THE GOVT. OF INDIA

Attested

Wm
 Advocate.

2. returned on 10.7.2000
 to office.

- 18 -

भारत के राजपत्र के भाग-I खण्ड-II में प्रकाशनार्थ

भारत सरकार

विज्ञान और प्रौद्योगिकी मंत्रालय

(विज्ञान और प्रौद्योगिकी विभाग)

टैक्नोलोजी भवन, नया महरौली मार्ग,

नई दिल्ली-110 016

48

सं० एसएम/01/002/98 (II)

दिनांक 10. 7. 2000

अधिसूचना

राष्ट्रपति भारतीय सर्वेक्षण विभाग में कार्य कर रहे निम्नलिखित समूह "ख" के अधिकारी सर्वेक्षक को पदोन्नत करते हैं तथा उस ही संगठन में अधीक्षक सर्वेक्षक के पद पर 10,000-325-15,200 रुपये के वेतनमान में उनके समावेश दी गई तारीख से तीन माह की अवधि के लिए अगले आदेशों तक तदर्थ आधार पर नियुक्त करते हैं :-

| क्रम संख्या | अधिकारी का नाम | नियुक्ति की तारीख |
|-------------|------------------------|------------------------|
| 1. | श्री भागीरथी महापात्रा | 17-12-1999 (पूर्वाह्न) |

(अभिनाश दीक्षित)

(अभिनाश दीक्षित)

उप सचिव, भारत सरकार

सेवा में,

प्रबंधक,

भारत सरकार मुद्रणालय,

फरीदाबाद (हरियाणा) को हिन्दी अनुवाद की एक प्रतिलिपि के साथ ।

मूल प्रति पर नहीं।

प्रतिलिपि :-

1. भारत के महारसर्वेक्षक, देहरादून को उनके पत्र सं०सी-1911 /853-एस०एस० दिनांक 17 मई 2000 के संदर्भ में सूचनार्थ एवं आवश्यक कार्यवाही के लिये प्रेषित । अधिसूचना की अतिरिक्त प्रति सम्बन्धित अधिकारी के लिए संलग्न है ।
2. केन्द्रीय वेतन एवं लेखा अधिकारी, भारतीय सर्वेक्षण विभाग, देहरादून ।
3. क्षेत्रीय वेतन एवं लेखा अधिकारी, भारतीय सर्वेक्षण विभाग, कलकत्ता ।

(अभिनाश दीक्षित)

(अभिनाश दीक्षित)

उप सचिव, भारत सरकार

Attested

(Signature)

Advocate.

Annexure-4

NO. A2-1311 /4-F-1-2/29

SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
POST BOX NO.89
SHILLONG- 793 001 (MEGHALAYA)

DATED THE 28 NOVEMBER 2001

O.C. No.29 Party(NEC)
Survey of India
Shillong.

SUB : PAY FIXATION/ P.I.C. - REGARDING

Ref : Your No.1306/1-A (B.Mahapatra) dt.22-11-01

....

P.I.C. received under your above quoted letter is return herewith duly sanctioned. Arrears of pay in respect of Shri B.Mahapatra, S.S. may be drawn from the date he took-over the charge of No.29 Party(NEC), Shillong (i.e.) 17-12-1999.

Enclo : As above

(T.K. BANDYOPADHYAY)
DIRECTOR,
NORTH EASTERN CIRCLE

....

Distribution :-

1. The Regional Pay & Accounts Officer - Kolkata..

....

Attested

Advocate.

has been denied promotion including

Dated, the 18th Dec., 2001.

The Director,
North Eastern Circle,
Survey of India,
Shillong-1.

SJB:- PAY FIXATION & DRAWAL OF ARREARS OF PAY.

- Ref:-
- i) O.C.No.29 Party's letter No.1090/3-D-2 dt. 17.9.01
 - ii) N.E.C.O. Routine Order No.13 dt. 13.11.01
 - iii) Your letter No.A2-7391/4-F-1-2/29 dt.28.11.01
 - iv) S.G's letter No.C-3550/853-SS dt. 26.7.01

Sir,

I was promoted to the post of Superintending Surveyor on regular basis with effect from 15-12-1995 vide letter under reference (iv) above. Accordingly Routine Order was issued vide your order under reference (ii) above. The date of assuming duties on Form O.115 (Arc) was 15.12.95 and the same was sent to you vide O.C.No.29 Party's letter under reference (i) above.

2. As per rule 8 am entitled to draw basic Pay & allowances from 15.12.95 and also all the consequential benefit with arrears of Pay from that date. But vide your letter under reference (iii) you have specified to draw the arrear from 17.12.99 the date on which I took over the charge of No.29 Party.

3. As per guide line for Review DPC, In cases where adverse remark have been expunged or turned down if the individual is promoted on review DPC his pay should be fixed under FR 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. This is the instances of category (e) for Review DPC. It is implied that in other instances of review DPC pay would be fixed from the date of retrospective promotion as well as arrear would be admissible. (Kindly refer Part VI - Review DPC Para 18.4.3 of Swamy's - Seniority & Promotion Page - 103 - copy enclosed).

4. Under F.R. 17(1) it is clearly specified the officer shall begin to draw the pay & allowances attached to his tenure of Post with effect from the date when he assumes the duties of post and cease to draw them as soon as he ceases to discharge those duties. Provided that an officer who is absent from duty without ~~any~~ any authority shall not be entitled to any pay and allowances during the period of such absence. This proves 'No work No Pay' rule is applicable only to the cases where officer remains away from work for his own reason although work is offered to him.

5. But this is not the situation in my cases. As "No work No pay" rule is not applicable to cases where the employee though willing to work is kept out of work for no fault of his.

Honourable Principal Bench Central Administrative Tribunal in his verdict in the case of B.M.Jha vrs Union of India, 9/2000 dated 11.1.2000 directed to the respondents to release the applicant the arrears of Pay and allowances for the higher post for 27.8.1984 till 5.2.1992 which is similar to my case.

6. Recently in the case of 'STATE OF A.P.V.K.V.L. Narasimha Rao and other' JT 1999 (3) SC 205 which is similar to my case the Hon'ble Supreme Court has held

"In normal circumstances when retrospective Promotions are affected, all benefits flowing therefrom including monetary benefits must be extended to an officer who has been denied promotion earlier".

Contd.....p/2.

Attested
[Signature]

- 2 -

7. Similarly the Hon'ble Supreme Court has observed, which is similar to my case, in the case of Union of India V.K.V. Jankiraman (AIR 1991 SC 2010) thus

" We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of 'no work no pay' is not applicable to cases such as the present one where the employee although is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR 17 (1) will also be inapplicable to such cases." So as per the above dictum I was willing to work on the promoted post, but was not promoted for no fault of mine.

8. The above observations by the Hon'ble Supreme Court which are submitted herewith are exemplary but not exhaustive.

9. The dictum, observation & law declared by the Hon'ble Supreme Court is binding on the State and its officer & they are bound to follow it under Article 141 of the constitution of India.

Under the above circumstances it is prayed to consider my case for the drawal of arrears of Pay in the promotional from post the date of assuming i.e. 15.12.1995.

Yours faithfully,

B. Mahapatra
(B. MAHAPATRA)
SUPERINTENDING SURVEYOR,
O.C. NO.29 PARTY (N.E.C.),
SHILLONG.

Attested
Wms
Advocate.

To

The Secretary,
Department Of Science & Technology
(Ministry Of Science & Technology)
Technology Bhawan,
Institutional Area,
New Mehrauli Road,
New Delhi-110016

Dt 29th July 2002

(Through Proper Channel)

Sub:- REVIEW DPC, PAY FIXATION & DRAWAL OF ARREARS OF PAY IN
CASE OF RETROSPECTIVE PROMOTION FROM 15-12-1995

Ref:- i) S.G's Letter no.C-3550/853-SS dt 26.7.01
ii) Gazette Notification vide your letter no .SM/01/004/2001 dt 30th Jan 2002
iii) D.N.E.C's letter no.A2-739/4-f-1-2/29 dt 28.11.01
iv) My representation dt 18.12.2001 to D.N.E.C
v) S.G.'s letter no E-1-10503/P.F (B.MAHAPATRA) dt 27.5.2002 endorsed
vide D.N.E.C.'s letter no.A2-2984/4-f-1-2/29

Respected Sir,

With due respect I lay before you the following grievances for your
kind and sympathetic consideration and necessary instruction.

2. Sir, I was promoted to the post of Superintending Surveyor on regular basis
with effect from 15.12.95 after the Review DPC vide letter under reference i)
above. Accordingly Gazette Notification was issued by you vide ref ii) above.

3. As per rule I am entitled to draw basic pay and allowances of the promotional
post from 15.12.95 and also all the consequential benefit with arrears of from that
date. But vide D.N.E.C's letter under references iii) above, It is instructed to draw
the arrears from 17.12.99 the date on which I took over the charge of No.29 Party
Shillong as Superintending Surveyor.

4. I have represented the D.N.E.C vide my application dt 18.12.2001 stating the
rule and ruling on the subject by the Hon'ble Apex Court on the subject i.e drawal
of arrear from 15.12.95.

5. D.N.E.C in his letter No.A2-2984/4-f-1-2/29 dt 3.7.02 enclosed S.G's letter
No.E-1-10503/P.F (B.Mahapatra) dt 27.5.02 in which Surveyor General Of India
arbitrarily denied for the drawal of arrear from 15.12.95 without going through
the rule in the matter.

Attested
Wan
Advocate.

24-

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Hon'ble High Court in the case of Gracy Vs State of Kerala- 1985 FSLR 478 (Kerala) observed once petitioner was deprived promotion illegally mistake was directed to be rectified petitioner held entitled to full salary and allowances with date on which he was given retrospective promotion.

- d) Similar to my case recently in the case of 'STATE OF A.P Vs. K.V.L. Narasimha Rao and others (JT 1999 (3) SC 205)' The Hon 'ble Supreme Court has held

"In normal circumstance when retrospective promotions are affected, all benefits flowing there from including monetary benefits must be extended to an officer who has been denied promotion earlier".

- e) In a similar case the Hon'ble Supreme Court has observed, in case of Union of India Vs.K.V.Jankiraman (AIR 1991 SC 2010) thus

" We are not much impressed by the contentions advanced on behalf of the authority, the normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that FR17(1) will also be inapplicable to such cases".
As per the above dictum I was willing to work on the promotional post, but was not promoted for no fault of mine

8.All the above observation are submitted here with are examplary but not exhaustive.

9. Under above circumstances it is prayed before you to consider my case and to issue necessary order for drawal of arrear of pay in the promotional post from the date of assuming i.e.15.12.95.

Thanking you sir.

Your's faithfully

(B. Mahapatra)
23/12/02
(B. MAHAPATRA)
Superintending Surveyor
O.C No. 29 Party (N.E.C)
Shillong

Copy in advance sent for early disposal of grievance.

Attested
Wm
Advocate.

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

तार Telegram SUREAST / SUREASTZONE
दूरभाष Telephone
कार्यालय Office : 240-2156/247-6950/280-0196
फैक्स Fax : 033280-0196
ई-मेल e-mail : soiezkol@vsnl.net



पूर्वी क्षेत्र कार्यालय
EASTERN ZONE OFFICE
13, वुड स्ट्रीट, 13, WOOD STREET,
कलिकाता-16. CALCUTTA-16.
(प.ज.) (W.B.) भारत INDIA

सं. No. EZ-

1703 /18-A-17(1)

तारीख Dated

20/6/2003

To

The Director,
North Eastern Circle,
SHILLONG.

SUB : REVIEW DPC, PAY FIXATION & DRAWAL OF ARREARS
IN CASE OF RETROSPECTIVE PROMOTION FROM
15-12-1995.

Ref : Our No. EZ-2658/18-A-17(1) dt 30-8-2002.

A photo copy of S.G's letter No. C-1640/853-SS dt 29-4-2003 on the above mentioned subject in respect of Shri B. Mahapatra, Superintending Surveyor, O.C. No. 29 Party(NEC) is forwarded herewith.


Shri B. Mahapatra, Suptdg. Surveyor may be informed of the contents of the above.

Enclo : As above.

(AMIN SAH)
ESTT. & ACCOUNTS OFFICER
for ADDL. SURVEYOR GENERAL(EZ)

Attested
Advocate.

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

तार : "महासर्वे" 
Telegram : "SURVEYS"
फैक्स व दूरभाष : 0091-135-744064
Fax-cum-Telephone : 0091-135-744064
E-Mail/ई-मेल : sgo@nde.vsnl.net.in

26 -
Annexure - 8
EASTERN ZONE OFFICE

Diary No. 2056

File No. 18-A-1271

DO. 12/6

महासर्वेक्षक का कार्यालय

SURVEYOR GENERAL'S OFFICE

डाक बक्स सं० 37, POST BOX No.37,

देहरादून-248001 (उत्तरांचल)-भारत।

DEHRA DUN-248001 (UTTARANCHAL), INDIA

Dated : 29 April, 2003

No.C-1640 /853-SS

To

The Additional Surveyor General,
Eastern Zone,
Survey of India,
Kolkata

SUB.: REVIEW DPC, PAY FIXATION & DRAWAL OF ARREARS IN CASE OF
RETROSPECTIVE PROMOTION FROM 15-12-1995.

REF.: Your No.EZ-2658/18-A-17 (1) dated 30-08-2002.

Sl. No. (35) (Volume II)

Shri B. Mahapatra, Superintending Surveyor, has claimed arrear of pay from the date of his retrospective promotion on the grounds of Courts judgements of different individuals. In case of Shri B. Mahapatra, on account of revision of seniority for implementation of the Hon'ble CAT Bench (Full Bench), Cuttack order dated 27-03-2000, Shri B. Mahapatra stands in the zone of consideration for promotion to the grade of Superintending Surveyor, who was senior to the last officer recommended for promotion in 1995 panel was also considered and the competent authority have approved the appointment of Shri B. Mahapatra to the grade of Superintending Surveyor w.e.f. 15-12-1995 (i.e. the date of promotion of last junior officer) but neither orders for consequential benefits were issued by the competent authority nor in judgement of his Court case. Therefore, the pay of Shri B. Mahapatra was notionally fixed w.e.f. 15-12-1995 and monetary benefit granted to him from 17-12-1999 (i.e. the date of assumption of charge of Superintending Surveyor on ad-hoc basis) vide this office letter No.E1-10503/P.F. (B. Mahapatra) dated 17-05-2002 and he is not entitled for monetary benefit from retrospective effect.

Shri B. Mahapatra may be informed accordingly.

(GIRISH KUMAR) BRIGADIER
DEPUTY SURVEYOR GENERAL
for SURVEYOR GENERAL OF INDIA

Copy to: The Secretary to the Govt. of India, Ministry of Science and Technology,
(Department of Science and Technology), Technology Bhavan, New Mehrauli
Road, New Delhi-110016 with reference to their letter No.SM/01/045/2002 dated
10-09-2002 for information.

Attested
Wm
Admission

1 JUN 2003

File 957
14/6/03
(A. DEB 807)
Sr C. G. S. C
C. A. T. Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI.

O.A. NO. 185 OF 2003

Shri Bhagirathi Mahapatra .

- Vs - Applicant.

Union of India & Ors.

..... Respondents.

In the matter of :

Written Statement submitted by
the Respondents.

The respondents beg to submit a
brief history of the case which
may be treated as a part of the
written statement.

(BRIEF HISTORY OF THE CASE)

A. Shri Bhagirathi Mahapatra (applicant) was appointed
as Surveyour (Group 'C') w.e.f. 01.07.1976 and promoted as
Officer Surveyour w.e.f. 16.07.1987 through Limited Depart-
mental Competitive Examination 1986. He was further promoted
as Superintending Surveyour (Group 'A') on ad-hoc basis w.e.f.
17.12.1999 and on regular basis vide SG's letter No. C-3550/
853-SS dated 26.07.2001 (Annexure-1 of OA) and Deputy Director
(Group 'A') as on 11.06.2002.

Contd.....

2. The applicant and other Officer Surveyors of South Eastern Circle, Survey of India, Bhubaneswar filed an O.A. No. 221/1996 Vs Union of India in Hon'ble CAT, Cuttack Bench, Cuttack on 28th March, 1996 to seek the following reliefs :-

- i. The Surveyour General of India, respondent No.2 be directed to recast the seniority list by properly fixing the inter-se-seniority positions of the petitioners who passed Limited Departmental Competitive Examination (hereinafter mentioned as LDCE) for the post of Officer Surveyor (Group 'B') in 1986 in respect of vacancies as on 27.04.1983 vis-a-vis the DPC promotees who were promoted through DPC in 1985 to the vacancies of the same year in accordance with the 3: 1 vacancy roster.
- ii. The order dated 15.12.1995 issued from SGO vide their letter No. C-4497/853-SS (Copy enclosed) regarding promotion of Officer Surveyors (Group 'B') to the post of Superintending Surveyour (Group 'A') on regular basis, be quashed and respondent No.2 (i.e. Surveyour General of India) be directed to issue fresh order of promotion after recasting the seniority list as prayed in above para No.(i).

3. The Hon'ble CAT Cuttack Bench, Cuttack gave its Judgement on 04.05.1998 in O.A. No. 221 of 1996. The operative part of this Judgement is as follows :-

-3-

i. According to this Judgement, the correct procedure would be, to give these petitioners their rightful position one after every three & DPC promotees of 1985. The seniority of 1985 will be fixed in 3:1 ratio till such time all the LDCE candidates of 1987 the adjusted, thereafter bunch panel seniority of promotees will be operative.

ii. The respondents should consider the cases of these applicants for promotion to the post of Superintending Surveyeur from the date their junior, if any in the revised seniority list got promoted to the post of Superintending Surveyeur.

In implementation to the judgement of Hon'ble CAT Cuttack Bench, Cuttack in O.A. No. 221/1996 in the case of Shri B. Mahapatra and others -Vs- Union of India, a seniority list of officers in the grade of Officer Surveyors in replacement to the existing seniority list was circulated vide SG's letter No. C-3165/707 dated 12.09.1998. This list was made provisional in implementation of the interim order of Hon'ble CAT Cuttack Bench, Cuttack order dated 02.09.1998 in O.A. No. 438/98 filed by Shri S.K. Chakravorty and another.

Contd.....

4. Shri S.K. Chakravorty, Officer Surveyor and another of South Eastern Circle, Survey of India, Bhubaneswar who are the DPC promotees filed on O.A. No. 438/98 in the Hon'ble CAT, Cuttack Bench, Cuttack on 27.08.1998 to seek the following reliefs against the Hon'ble CAT, Cuttack Bench order dated 04.05.1998 in O.A. No. 221/1996 :-

- i. The Departmental respondents be directed NOT to fix inter-se-seniority of respondent No.3 (I.E. Shri B. Mahapatra) to respondent No. 8 and other LDCE Promotees of the year 1987 alongwith the DPC promotees of the year 1985 which includes the applicants.
- ii. The Departmental respondents should be directed NOT to recast the seniority list as existed on 27.08.1998 in the grade of Officer Surveyor (Group 'B') of office of respondent No. 2 (i.e. Surveyor General of India, Dehra Dun) and NOT allow consequential benefits.
- iii. Not to act upon the directions/decision given by the Hon'ble CAT, Cuttack Bench, Cuttack in its judgement/order dated 04.05.1998 in a month which shall prejudice the rights, claim and interest of the applicants (i.e. Shri S.K.- Chakravorty and others) since they were not parties to the case (i.e. O.A. No. 221/96) filed by the respondent No. 3 to 8 (i.e. B. Mahapatra & others).

In this O.A. No. 438/98 an interim order dated 02.09.1998 was passed by Hon'ble CAT where it was directed that seniority list should be made provisional subject to final outcome of the O.A. No. 438/98. On this basis the seniority list issued vide SG's No. C-3165/707 dated 12.09.1998 was made provisional. Thereafter, on the basis of revised provisional seniority list, the applicant was promoted from Officer Surveyor to Superintending Surveyor (Group 'A') on ad-hoc basis w.e.f. 17.12.1999.

5. In the above O.A. No. 438/98, the Hon'ble CAT, Cuttack Bench, Cuttack gave its judgement on 23.04.1999 in which the subject matter of O.A. No. 438/98 was referred to Full Bench of Hon'ble CAT, Cuttack for determination on the following points :-

- i. Whether the principle of seniority decided by the Full Bench in Ashok Mehta case and by Karnataka High Court in V.T. Rajendram Case confirmed by the Hon'ble Supreme Court in order dated 10.07.1990 is applicable in determining seniority of Officer Surveyors promoted under 1983 Rules.
- ii. Whether the private respondents (applicants in O.A. No. 221/96) having for the first time joined as Officer Surveyor on promotion in July, 1987 were justified under law in approaching this Tribunal 9 years thereafter i.e. on 11.03.1996 claiming seniority from the year 1984.

6. The Hon'ble CAT, Cuttack Bench (Full Bench), Cuttack gave its judgement on 27.03.2000, in O.A. No. 438/98, Accordingly, in case a candidate does not possess the eligibility criteria of five years regular service in the feeder (i.e. Surveyors (Group 'C') post and Bachelor Degree with Mathematics as a subject in 1985, he will not be considered eligible for being granted the benefit of seniority.

In implementation of Hon'ble CAT, Cuttack (Full Bench) order dated 27.03.2000 in O.A. No. 438/98, the seniority list for Officer Surveyors (Group 'B') has been issued and circulated vide SG's No. C-546/707 dated 29.01.2001.

7. In case of applicant, on account of revision of seniority for implementation of the Hon'ble CAT Bench (Full Bench), Cuttack order dated 27.03.2000, Shri B. Mahapatra stands in the zone of consideration for promotion to the grade of Superintending Surveyor (Group 'A') who was senior to the last officer recommended for promotion in 1995 panel was also considered and the competent authority have approved the promotion of Shri B. Mahapatra to the grade of Superintending Surveyor (Group 'A') w.e.f. 15.12.1995 (i.e. the date of promotion of last junior officer) but neither orders for consequential benefits were issued by the competent authority nor it is mentioned in Hon'ble CAT orders. Therefore, the pay of Shri B. Mahapatra was notionally fixed w.e.f. 15.12.1995 and annual increments due thereafter have been allowed but arrears have been granted to him from 17.12.1999 (i.e. the date of assumption of charge of Superintending Surveyor on

ad-hoc basis) vide SG's letter No. B1-10503/P.F. (B. Mahapatra) dated 17.05.2002 and he is not entitled for arrears benefit from retrospective effect i.e. from 15.12.1995 as he did not perform the duties of the post . It is further added that he had not completed 8 years of qualifying service as per Survey of India (Group 'A' posts) Service Rules 1989 in the feeder grade of Officer Surveyor (Group B) for his promotion to Superintending Surveyor (Group 'A') for vacancies of 1992 and 1993 and thus he was not eligible for promotion to Superintending Surveyor (Group 'A') in 1992 and 1993.

8. Therefore the contents of present O.A. No. 185/2003 filed by the applicant in Hon'ble CAT? Guwahati Bench, Guwahati are not sustainable as per law. It is stated that the deemed date of promotion of applicant has been allowed 15.12.1995 for seniority purpose but the actual date of promotion will be the date of assumption of the duties of higher post (though on adhoc basis) i.e. 17.12.1999. The arrears of pay are not admissible to him w.e.f. 15.12.1995 in view of submission made in parawise comments of OA and the case is liable to be dismissed in merit. He has been allowed arrears w.e.f. 17.12.1999.

Written Statement as per Parawise Comments.

1. That with regard to paras 1, 2, 3 and 4.1, of the application, the respondents beg to offer no comments.
2. That with regard to the statement made in para 4.2, of the application the respondents beg to state that the applicant

was not eligible to be considered in the DPC held in 1995 for promotion to the post of Superintending Surveyor against the vacancy for the year 1992 and 1993 as the applicant had not completed 8 years qualifying service in the grade of Officer Surveyor (date of appointment in the grade of Officer Surveyor is being on 16.07.1987) for promotion to the post of Superintending Surveyor (Group 'A') as per Survey of India (Group 'A' Posts) Service Rules 1989. However in the case of applicant, on account of revision of seniority in implementation of the Hon'ble CAT Bench (Full Bench), Cuttack order dated 27.03.2000 in O.A. No. 438/98 the applicant Shri B. Mahapatra stands in the zone of consideration for promotion to the grade of Superintending Surveyor, who was senior to the last officer recommended for promotion in 1995 panel was also considered by the Review DPC and the competent authority have approved the promotion of Shri B. Mahapatra to the grade of Superintending Surveyor w.e.f. 15.12.1995 (i.e. the date of promotion of last Junior Officer) but neither orders for consequential benefits were issued by the competent authority nor ordered by the Hon'ble CAT in his case. Therefore, the pay of Shri B. Mahapatra was notional fixed w.e.f. 15.12.1995 and annual increments due thereafter have been allowed but actual arrears have been allowed to him from 17.12.1999 (i.e. the date of assumption of charge of Superintending Surveyor on ad-hoc basis) vide SG's letter No. E1-10503/P.F. (B. Mahapatra) dated 17.05.02 and he is not entitled for arrears from retrospective effect since did not perform the duties of the post during that time.

3. That with regard to para 4.3, of the application the respondents beg to state that para 17 of orders dated 04.05.1998 of Hon'ble Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 221 of 1996 filed by Shri Bhagirathi Mahapatra and others is reproduced below :-

"This manner of fixing of seniority according to recruitment roster, alongwith DPC appointee of earlier year will have to be done only for Limited Departmental Competitive Examinations of 1986 who was appointed in 1987".

In implementation of the above judgement, the seniority list was revised vide SG's letter No. C-365/707 dated 12.09.1998. This seniority list was made provisional in implementation of Hon'ble CAT judgement/order dated 02.09.1998 in O.A. No. 438/98 filed by Shri S.K. Chakravorty and others. On the basis of this provisional seniority list ad-hoc promotion was granted to applicant to the post of Superintending Surveyor (Group 'A').

In implementation of Hon'ble CAT, Cuttack Bench (Full Bench) order dated 17.03.2000, the final seniority list was circulated vide SG's No. C-546/707 dated 29.01.2001. The seniority has been assigned to all the petitioners of O.A. No. 221/96 as per Hon'ble CAT orders dated 04.05.1998 and 27.03.2000.

Para 18 of orders dated 04.05.1998 of Hon'ble Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 221 of 1996 filed by Shri Bhagirathi Mahapatra and others is reproduced below :-

"As regards the second prayer for quashing the promotion of private Respondents 3 to 32, the prayer is without any merit. Admittedly they are DPC appointees of 1985 (as Officer Surveyors) and according to their eligibility and suitability, they have been promoted (as Superintending Surveyors). There is therefore, no case for quashing their promotions/appointments. It is, however, ordered that after the Respondent bring out the seniority list (in Officer Surveyors), in accordance with the directions given above, they should consider the cases of these applicants for promotion to the post of Superintending Surveyor, from the date, their juniors, if any, in the revised seniority list get promotion to the post of Superintending Surveyor. This prayer, is, therefore, disposed of with the above directions".

According to seniority list issued on 29.01.2001, Shri B. Mahapatra stands in the zone of consideration for promotion to the grade of Superintending Surveyor, who was senior to the last officer recommended for promotion in 1995 panel was also considered and the competent authority have approved the promotion of Shri B. Mahapatra to the grade of Superintending Surveyor w.e.f. 15.12.1995 (i.e. the date of promotion of last junior officer) but neither orders for consequential benefits were issued by the competent authority nor ordered by the Hon'ble CAT in his CAT case. Therefore, the pay of Shri B. Mahapatra was notionally fixed w.e.f. 15.12.1995 and annual increments due thereafter have been allowed but arrears have been granted to him from 17.12.1999 (i.e. the date of assumption of charge Superintending Surveyor on ad-hoc basis) vide SG's letter No. E1-10503/P.F. (B. Mahapatra) dated 17.05.2002 and he is

not entitled for arrears from retrospective effect i.e. from 15.12.1995 since he did not perform the duties of the post.

4. That with regard to the statement made in para 4.4, of the application the respondents beg to state that in implementation of the following judgements seniority list of officers in the grade of Officer Surveyors has been finalised and circulated vide SG's No. C-546/707 dated 29.01.2001 :-

a. Hon'ble CAT Cuttack Bench (Full Bench), Cuttack judgement dated 27.03.2000 in O.A. No. 438 of 1998 filed by Shri S.K. Chakraborty and another -Vs- Union of India and others.

b. Hon'ble CAT Cuttack Bench, Cuttack judgement dated 04.05.1998 in O.A. No. 221 of 1996 filed by Shri B. Mahapatra -Vs- Union of India and others.

c. Hon'ble CAT Allahabad Bench, Allahabad common Judgement dated 14.02.1992 in the three OAs.

a. O.A. No. 1050/1988 filed by Shri S.N. Jugran.

b. OA No. 1084/1988 filed by Shri D.N. Pandey.

c. OA No. 1134/1988 filed by Shri J.C. Khurana.

Accordingly Shri B. Mahapatra stands in the zone of consideration for promotion to the grade of Superintending Surveyor, who was senior to the last Officer recommended for promotion in 1995 panel was also considered and the competent authority have approved the appointment of Shri B. Mahapatra to the grade of Superintending Surveyor w.e.f. 15.12.1995 (i.e. the date of promotion of last junior officer) but neither orders for consequential benefits were issued by the competent authority

ner ordered by the Hon'ble CAT in his case. Therefore, the pay of Shri B. Mahapatra was notionally fixed w.e.f. 15.12.1995 and annual increments due thereafter have been allowed if but arrear of pay have granted to him from 17.12.1999 (i.e. the date of assumption of charge of Superintending Surveyor on ad-hoc basis) vide SG's letter No. E1-10503/P.F. (B. Mahapatra) dated 17.05.2002 and he is not entitled to arrears from retrospective effect as he did not perform duties of the post.

5. That with regard to the statement made in paras 4.5 & 4.6, of the application the respondents beg to state that it is fact that the seniority list in the grade of Officer Surveyor vide SG's No. C-365/707 dated 12.09.1998 was provisionally circulated in implementation of Hon'ble Court Judgements Order dated 02.09.1998 in OA No. 438/98 filed by Shri S.K. - Chakrabarty and others. Accordingly, applicant was promoted on ad-hoc basis to the post of Superintending Surveyor w.e.f. 17.12.1999. The seniority list was finalised and circulated vide SG's No. C-546/707 dated 29.01.2001 as mentioned in reply to para 4.4 above. Accordingly the applicant alongwith others were promoted as regular Superintending Surveyor vide this office No. C-3550/853-SS dated 26.07.2001 (Annexure-1 of OA) notionally from the date of their senior got promoted i.e. 15.12.1995 and annual increments due thereafter have been allowed but monetary benefits from the 17.12.1999 (i.e. from the date of his ad-hoc promotion), he is not entitled to the arrears from retrospective effect as he has not performed duties of the post and moreover he was not eligible for

promotion to the post of Superintending Surveyor (Group 'A') against the vacancies of 1992 and 1993 as he had not completed 8 years qualifying service in feeder cadre (as Officer Surveyor Group 'B') as provided in Survey of India (Group 'A' Posts) Service Rules of 1989.

6. That with regard to the statement made in para 4.7, of the application the respondents beg to state that the applicant has assumed the charge of Superintending Surveyor on 17.12.1999 on ad-hoc basis which was followed by regular promotion vide SG's letter No. C-3550/853-SS dated 26.07.2001 (Annexure -1) in compliance of Hon'ble CAT, Cuttack (Full Bench) order dated 27.03.2000. Therefore the arrears of pay in respect of applicant was allowed from the date of his ad-hoc promotion i.e. 17.12.1999 vide North Eastern Circle's letter No. A2-7391/4-F-1-2/29 dated 28.11.2001. (Annexure-4). The petitioner was not eligible to be considered for promotion to Superintending Surveyor for the vacancies of 1992 and 1993 (though the DPC was held in 1995) as he did not completed 8 years of qualifying service in the feeder grade of Officer Surveyor (Group 'B') as on 01.01.1992 or 01.01.1993. In compliance of the Hon'ble CAT Cuttack Order since junior has been promoted, senior officer under next below rule, but it does not mean that the arrears are to be allowed to the senior for which he did not perform the duties of the post.

A copy of letter dated 26.07.2001 is annexed herewith and marked as Annexure-1.

A copy of letter dated 28.11.2001 is annexed

herewith and marked as Annexure-4.

7. That with regard to the statement made in para 4.8, 4.9 and 4.10, of the application the respondents beg to state that on examining the case of applicant, represented vide his application dated 18.12.2001 and 29.07.2002, the facts of the case were furnished to the Additional Surveyor General, Eastern Zone, Survey of India, Kolkata vide SG's letter No. C-1640-853-SS dated 29.04.2003 (Annexure -6) for applicant's information with a copy to the Secretary, Department of Science and Technology, New Delhi. The same was communicated to applicant vide Additional Surveyor General, Eastern Zone's letter No. EZ-1703/18-A-17(1) dated 20.06.2003 (Annexure -7 of OA). The facts for non-entitlement of arrears from retrospective effect i.e. 15.12.1995 in above mentioned communication are correct.

A copy of letter dated 29.04.2003 is annexed herewith and marked as Annexure - 8.

A copy of letter dated 20.06.2003 is annexed herewith and marked as Annexure - 7.

8. That with regard to the statement made in para 4.11, of the application the respondents beg to state that Review DPC held on 26.06.2001 for promotion to the grade of Suerintending Surveyor on the basis of revised seniority list issued vide SG's letter No. C-546/707 dated 29.01.2001 in compliance of the Hon'ble CAT, Cuttack (Full Bench) Order dated 27.03.2000 in O.A. No. 438/98 (upholding the order dated 04.05.1998 of Hon'ble CAT Cuttack in OA No. 221/96). The Hon'ble CAT has

not passed any orders for consequential benefits from retrospective effect i.e. from 15.12.1995. It is clear from para 18 of judgement dated 04.05.1998 in O.A. No. 221/1996 that the officers already promoted are DPC appointee of 1985 and accordingly to their eligibility and suitability, they have been promoted. There is therefore no case for quashing their promotions/appointments. Moreover the applicant Shri B. Mahapatra was not eligible to be promoted to the post of Superintending Surveyor (Group 'A') against the vacancies of 1992 and 1993 as he has not completed 8 years qualifying service (his date of promotion of Officer Surveyor 16.07.1987) either on 1st January 1992 or on 1st January 1993 but in compliance of Hon'ble CAT order Review DPC was conducted. The compliance of the Hon'ble CAT order amounted to consideration of his promotion under next below rule subject to fulfilment of other conditions etc. but it does not mean that the senior thus promoted will be entitled to the arrears from retrospective date i.e. 15.12.1995 without performing the duties of the post.

9. That with regard to the statement made in para 4.12. of the application the respondents beg to state that the applicant was LDCE promotee in the post of Officer Surveyor w.e.f. 16.07.87 but their seniority was fixed with the candidates promoted in 1985 as per para 8 of judgement dated 27.03.2000 of Hon'ble CAT Cuttack Bench, Cuttack, which is reproduced below :-

"The present proceedings raise disputes in regard to the seniority to be given to the candidates who have been promoted in 25% quota in 1987 vis-a-vis the candidates who have

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XV

-16-

been promoted in the 75% quota in 1985. As far as the 25% quota promotees are concerned, they on the basis of the aforesaid rule to be found in the scheme, claim to be placed in a slot in ratio of 3:1. In other words, even though they have been promoted in 1987 they claim to be placed in the slot reserved for them in the ratio of 3:1 along with the candidates promoted in 1985"

Further in para 9 of judgement dated 27.03.2000 it is stated that "Promotions granted in 1987 will no doubt take effect from the date of their promotions. Therefore, for all purposes such as receiving pay of the promotional post will be with effect from the date of their actual promotions, namely, 1987 and onwards"

Similarly, the applicant promoted in Review DPC to the post Superintending Surveyor w.e.f. 15.12.1995 notionally (i.e. date of promotion of the junior who was promoted in DPC held in 1995) and annual increments due thereafter have been allowed but he is entitled to pay of promotion post with effect from the date of his actual promotion namely, 17.12.1999 (i.e. the date of his ad-hoc promotion) and regularised vide SG's letter No. C-3550/853-SS dated 26.07.2001. Therefore question for arrear of pay from the retrospective effect does not arise. Moreover the petitioner is not eligible for consideration of DPC against the vacancy of 1992 and 1993 since he did not complete the qualifying service in the feeder grade i.e. Officer Surveyor (date of promotion in Officer Surveyor being 16.07.1987) but in compliance of Hon'ble CAT order Review DPC was held and he has been promoted, thus he is not entitled to the arrears of pay as claimed by him w.e.f. 15.12.1995. He rightly been

given benefits as due to him notionally w.e.f. 15.12.1995 and arrears w.e.f. 17.12.1999.

10. That with regard to the statement made in para 4.13, of the application the respondents beg to state that the applicant in this para is denied. In this connection, it is stated that the Hon'ble Tribunal in it's order dated 04.05.1998 in O.A. No. 221/96 did not issue, any mandamus for applicant's consequential benefit from the date of retrospective effect, but direction was issued in para 17 of judgement that "This manner of fixing of seniority according to recruitment roster, alongwith DPC appointee of earlier year will have to be done only for ~~him~~ Limited Departmental Competitive Examinations of 1986 who was appointed in 1987" and furtherin next para 18 of the judgement it is directed that "after the Respondent bring out the seniority list, in accordance with the directions given above, they should consider the cases of these applicants for promotion to the post of Superintending Surveyor, from the date, their juniors, if any, in the revised seniority list got promotion to the post of Superintending Surveyor".

The respondents have complied with above directions of judgement and the same has been informed to the applicant vide SG's No. C-1640/853-SS dated 29.04.2003 with full facts of the case. Therefore the applicant is not entitled for consequential benefits were issued by the Hon'ble CAT nor admissible as explained in foregoeing paras.

11. That with ~~eg~~ regard to the statement made in para 4.14 of the application the respondents beg to state that communi-

communication made to the applicant vide letters dated 29.04.2003 and 28.11.2001 (Annexure-3 & 4 of applicant) do not violate any rule but contained the full facts of the case. In view of the explanation in foregoing paras the allegations made by the applicant are not admitted.

In view of replies in foregoing paras the applicant is not entitled for arrear of pay from retrospective effect i.e. 15.12.1995 as he was not eligible to be considered by the DPC against the vacancies of 1992 and 1993 as he did not complete the qualifying service of 8 years as provided in Survey of India (Group 'A' posts) Service Rules 1989 in feeder cadre (as Officer Surveyor Group 'B') as on 01.01.1992 and 01.01.1993 (his date of promotion in feeder cadre being 16.07.1987). Therefore the arrears has been granted to him w.e.f. 17.12.1999 i.e. from the date he performed the duties of the post. OA has no merit and is thus liable to be dismissed.

Verification.....

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-19-

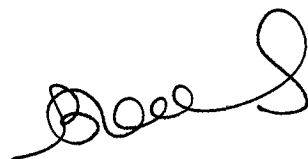
V E R I F I C A T I O N

I,

BRIG. B. D. SHARMA, DIRECTOR,
, being authorised

do hereby solemnly affirm and declare that the statements made
paras A, 1 to 5, 8 to 11 in *paras 6, 7 are true to*
in this written statement are true to my knowledge and infor-
mation and I have not suppressed any material fact.

And I sign this verification on this th day of
2004.



Deponent.

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

20

FAX
SPEED POST

PAGE 01 ANNEXURE-I

46

RVEYS"

091-135 744064

Phone : 0091-135-744064

s@ndia.sanl.net.in

3550/853-SS

24/7/2001

महासर्वेक्षक का कार्यालय
SURVEYOR GENERAL'S OFFICE

डाक बक्सा सं० 37, POST BOX No.37,

देहरादून-248001 (उत्तरांचल)-भारत।

DEHRA DUN-248001 (UTTARANCHAL), INDIA

Dated : 26th July, 2001

The Addl. S.O. : EZ / STI.

The Director : NEC / DMC (Hyd.) / R&D.

PROMOTION OF OFFICER SURVEYORS (GROUP 'B') TO THE POST OF
SUPERINTENDING SURVEYOR (GROUP 'A') - TRANSFER/POSTING OF

In compliance of the Hon'ble CAT, Cuttack, Full Bench Order dated 27-03-2000 in OA No.438/98, (upholding the order dated 04-05-1998 of Hon'ble CAT Cuttack in OA No.21/96), the seniority of Officer Surveyors was revised vide this office letter No.C-546/707 dated 20.01.2001. On the basis of revised seniority, DPC held in 1995 was reviewed on 26-06-2001 for promotion from Officer Surveyor to Superintending Surveyor. As a result of review, the following Officer Surveyors are promoted as Superintending Surveyors and are posted as indicated below. They will assume charge of the Superintending Surveyor at the place of posting :-

| Name | Present Posting | New Posting | Remarks |
|-----------------------|-----------------|----------------------------------|----------------------------|
| Shri J.K. Rath | DMC, Hyderabad | DMC, Dehra Dun | Against existing vacancy. |
| Shri Ram Nath Nahak | STI, Hyderabad | No.17 DO (NWC), Jamnagar | To take over charge of OC. |
| Shri D.K. Shyam Kiran | R&D, Hyderabad | Since retired w.e.f. 30-09-1997. | |
| Shri P.K. Ganguly | DMC, Hyderabad | No.93 P (SA), New Delhi | Against existing vacancy. |
| Shri B. Mahapatra | NEC, Shillong | No.29 P (NEC), Shillong | To take over charge of OC. |

The date of their promotion will be the date their junior got promoted i.e. 15-12-1995 vide this office letter No.C-4497/853-SS dated 15-12-1995.

The Competent Authority have sanctioned creation of five supernumerary posts for the above five officers for the period when they would be adjusted against vacancies of 1994 and immediately following the holding of DPC for 1994 and consequent promotions made there. That is the date of effect of promotions.

The above officers may be relieved of their duties immediately so as they take over the charge of Superintending Surveyor at the new place of posting by 26-08-2001.

Contd. 2/-

4-12-05 0001-135-744064
//2001 13:05 0091-135-744064SURVEYOR DEHRADUN
SURVEYS DEHRADUNPAGE 01
PAGE 02

-2-

5. Necessary certificate of assumption of charge on form 0.115 (Acr) may please be sent to this office, in triplicate, for further necessary action.

6. In case of any vigilance case/disciplinary proceedings or pendency of punishment against any of the above official(s) is noticed at your end, the orders of promotion may not be implemented.

Authority : Ministry of Science & Technology (Department of Science & Technology), New Delhi letter No.SM/01/004/2001 dated 24-07-2001.

[Signature]
[S.P. GOEL]
DEPUTY SURVEYOR GENERAL
for SURVEYOR GENERAL OF INDIA

Copy to :-

1. The Secretary to the Govt. of India, Ministry of Science and Technology, (Department of Science and Technology), Technology Bhavan, New Mehrauli Road, New Delhi-110 016 with reference to their letter No.SM/01/004/2001 dated 24-07-2001
2. The Additional Surveyor General, Northern Zone, Survey of India, Chandigarh.
3. The Director : NWC / S. (Air) / DMC (D.Dun).
4. The Central Pay & Accounts Officer, Survey of India, Dehra Dun.
5. The Regional Pay & Accounts Officer, Survey of India, Hyderabad/Kolkata/Jaipur.
6. The E1 Section (SGO).
7. Files 701-C/707/701-SS.
8. Legal Cell (SGO).

NO.A2-7391 /4-F-1-2/29

22
ANNEXURE-4 (33) 48
SURVEY OF INDIA
NORTH EASTERN CIRCLE OFFICE
POST BOX NO.89
SHILLONG- 793 001 (MEGHALAYA)
DATED THE 28 NOVEMBER 2001

To

O.C. No.29 Party(NEC)
Survey of India
Shillong.

SUB : PAY FIXATION/ P.I.C. - REGARDING

Ref : Your No.1306/1-A (B.Mahapatra) dt.22-11-01
.....

P.I.C. received under your above quoted letter is return herewith duly sanctioned. Arrears of pay in respect of Shri B.Mahapatra, S.S. may be drawn from the date he took-over the charge of No.29 Party(NEC), Shillong (i.e.) 17-12-1999.

Encls : As above

(T.K. BANDYOPADHYAY)
DIRECTOR,
NORTH EASTERN CIRCLE
.....
dc

Distribution :-
1. The Regional Pay & Accounts Officer - Kolkata..
.....

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

Program SUREAST / SUREASTZONE

Telephone

Office: 240-2156/247-6950/280-0196

Fax: 033280-0196

E-mail: soezkol@vsnl.net



पूर्वी क्षेत्र कार्यालय
EASTERN ZONE OFFICE

13, वुड स्ट्रीट, 13, WOOD STREET,

कलकत्ता-16, CALCUTTA-16.

(प.ग.) (W.B.) भारत INDIA

No. No. EZ-

1703 /18-A-17(1)

तारीख Dated

20/6/2003

To

The Director,
North Eastern Circle,
SHILLONG.

SUB : REVIEW DPC, PAY FIXATION & DRAWAL OF ARREARS
IN CASE OF RETROSPECTIVE PROMOTION FROM
15-12-1995.

Ref : Our No. EZ-2658/18-A-17(1) dt 30-8-2002.

A photo copy of S.G.'s letter No. C-1640/853-SS dt 29-4-2003 on the above mentioned subject in respect of Shri B. Mahapatra, Superintending Surveyor, O.C. No. 29 Party(NEC) is forwarded herewith.

Shri B. Mahapatra, Suptdg. Surveyor may be informed of the contents of the above.

Enclo : As above.

(AMIN SAH)
ESTT. & ACCOUNTS OFFICER
for ADDL. SURVEYOR GENERAL(EZ)

भारतीय सर्वेक्षण विभाग
SURVEY OF INDIA

Annexure - 8

EASTERN ZONE OFFICE

Diary No. 2056

File No. 18-A-17(1)

Date 12/6

महासर्वेक्षक का कार्यालय

SURVEYOR GENERAL'S OFFICE

डाक बक्सा सं० 37, POST BOX No.37,

देहरादून-248001 (उत्तरांचल)-भारत।

DEHRA DUN-248001 (UTTARANCHAL), INDIA

Dated : 29 April, 2003

No.C-1640 /853-SS

To

The Additional Surveyor General,
Eastern Zone,
Survey of India,
Kolkata

SUB.: REVIEW DPC, PAY FIXATION & DRAWAL OF ARREARS IN CASE OF
RETROSPECTIVE PROMOTION FROM 15-12-1995.

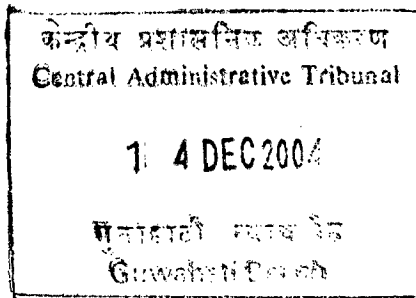
REF.: Your No.EZ-2658/18-A-17 (1) dated 30-08-2002.

Shri B. Mahapatra, Superintending Surveyor, has claimed arrear of pay from the date of his retrospective promotion on the grounds of Courts judgements of different individuals. In case of Shri B. Mahapatra, on account of revision of seniority for implementation of the Hon'ble CAT Bench (Full Bench), Cuttack order dated 27-03-2000, Shri B. Mahapatra stands in the zone of consideration for promotion to the grade of Superintending Surveyor, who was senior to the last officer recommended for promotion in 1995 panel was also considered and the competent authority have approved the appointment of Shri B. Mahapatra to the grade of Superintending Surveyor w.e.f. 15-12-1995 (i.e. the date of promotion of last junior officer) but neither orders for consequential benefits were issued by the competent authority nor in judgement of his Court case. Therefore, the pay of Shri B. Mahapatra was notionally fixed w.e.f. 15-12-1995 and monetary benefit granted to him from 17-12-1999 (i.e. the date of assumption of charge of Superintending Surveyor on ad-hoc basis) vide this office letter No.E1-10503/P.F. (B. Mahapatra) dated 17-05-2002 and he is not entitled for monetary benefit from retrospective effect.

Shri B. Mahapatra may be informed accordingly.

(GIRISH KUMAR) BRIGADIER
DEPUTY SURVEYOR GENERAL
for SURVEYOR GENERAL OF INDIA

Copy to: The Secretary to the Govt. of India, Ministry of Science and Technology,
(Department of Science and Technology), Technology Bhavan, New Mehrauli
Road, New Delhi-110016 with reference to their letter No.SM/01/045/2002 dated
10-09-2002 for information.



*Filed by -
The Applicant
through
Bandana Devi
P. Advocate
G-12-04*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA No.185/03

Bhogirathi Mahapatra

.....Applicant

-VS-

Union of India & ors.

.....Respondents

REJOINDER TO THE WRITTEN STATEMENT FILED BY THE RESPONDENTS

1. That the applicant has been served with a copy of the WS filed by the respondents and has gone through the same. Save and except the statements which are admitted herein below, other statements made in the WS are categorically denied and the statements which are admitted herein below, other statements made in the WS are categorically denied and the statements which are not borne on records are also denied and the respondents are put to the strictest proof thereof.

2. That with regard to the statements made in brief history of the case, the applicant denies the correctness of the respondents have miserably failed to take into consideration the correct legal position and also have failed to take into consideration the direction contained in the judgments passed by the Cuttack Bench as well as Hon'ble Principal bench while deciding the issue. The respondents have implemented only a part of the judgment but

failed to take into consideration the intend and purpose of passing the said judgment.

The applicant instead of repeating the contention made in the OA begs to rely and refer upon them at the time of hearing of the case. It is stated that admittedly the applicant is entitled to be promoted to the higher grade along with his junior w.e.f. 15.12.95 but same has been illegally denied to him and as such not providing him the consequential benefits including arrear salary is per-se illegal and arbitrary. It is pertinent to mention here that the Hon'ble Tribunal Cuttack Bench while discussing the entire matter held in categorical term that a deprivation meted out to the applicant from his legitimate claim of promotion is illegal. Admittedly the applicant who is eligible and willing to be promoted to the grade of Superintendent Surveyor in the year 1995 itself has been illegally deprived of his legitimate claim of back wages and the respondents now filing the WS can not raise the plea that since no order has been issued by the authority nor by the Hon'ble Tribunal in respect of his arrear salary, same can not be granted. In fact the Hon'ble Tribunal implidely has dealt with the matter relating to back wages and consequential reliefs pertaining to the retrospective promotion of the applicant. Since there is a direction for review of the entire selection process, the respondents now can not perk their responsibility of implementing the judgment in part 2 of the Hon'ble Tribunal by raising some irrelevant issues. The law relating to grant of back wages as laid down by Apex Court is very clear that if an officer is illegally prevented from shouldering higher

responsibility in a promotional extend all the consequential reliefs at the event of such promotion. It is pertinent to mention here that the respondents themselves have released the arrear salary from 17.12.99 and as such there is no justification in not releasing the arrear salary w.e.f. 15.12.95 to 17.12.99 pertaining to same promotion.

3. That the applicant begs to state the other contentions made in the WS in various paras nothing but repetition and as such same are categorically denied while reiterating and reaffirming the statements made above as well as in the OA.

The applicant however for better appreciation of factual aspect of the matter begs to enclose the judgments passed in OA No.221/96 dated 4.5.98, OA No.438/98 dated 23.4.99 and the full Bench judgment passed in OA No.438/98 dated 27.3.00 as Annexure-RJ1, RJ2 and RJ3 respectively.

In that view of the matter the OA deserves to be allowed with cost.

VERIFICATION

I, Sri Bhagirathi Mahapatra, aged about 51 years, son of G. Mahapatra, working as Deputy Director, Survey of India, NE Circle, Shillong, Meghalaya, do hereby solemnly affirm and verify that the statements made in paragraphs are true to my knowledge and those made in paragraphs *2 and 3* are also true to my legal advice and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the *6th* day of *December* of 2004.

Signature.

Bhagirathi

(B. MAHAPATRA).

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK Bench: CUTTACK.

ORIGINAL APPLICATION NO. 221 OF 1996.

Cuttack this the 4th day of May, 1998.

C O M M -

THE HONOURABLE MR. SOMNATH SONI, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL).

B e t w e e n :-

- 1) ✓ Bhagirathi Mohapatra,
S/o. Ganeswar Mohapatra,
At. SECO, Survey of India,
PO: R.R. Lab, PS: Shahidnagar,
Dist. Khurda.
- 2) Brajesh Mohanta,
S/o. H.K. Mohanta,
At. SECO, Survey of India,
PO: R.R. Lab,
P.S. - Shahidnagar,
Dist. Khurda.
- 3) Ananta Charan Moharana,
S/o. late Bhimesen Maharana,
PO-R.R. Lab., At-SECO, Survey of India,
PS-Sahidnagar, Dist. Khurda.
- 4) Balri Niranjan,
S/o. late B. Kalia,
At. No. 77(P), Party (SEC),
Survey of India, PO/PS. Khandagiri,
Dist. Khurda.
- 5) Dinesh Kumar Kar,
S/o. late Susanta Sekhar, Kar,
At- No. 76(P), Party (R&D),
Survey of India, PO/PS: Khandagiri,
Dist. Khurda.
- 6) Kusha Chandra Patra,
S/o. late Krushna Chandra Patra,
At. No. 76(P) Party (R&D), Survey of
India, PO/PS. Khandagiri, Dist. Khurda.

By legal practitioners: S.S. Mishra-1, S. Mishra, R.C. Routray,
Advocates.

APPLICANTS

-Versus-

- 1) Union of India, represented through
Secretary, Department of Science & Technology,

Accepted
[Signature]
[Stamp]



- C -

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-2-

Technology Bhawan,
New Mehrauli Road,
New Delhi.

1) Surveyor General of India,
At-Hathibarkala Estate,
Dehradun.

✓ 2) Shri D.R.Panday,
Map Publication Office,
Survey of India,
Hathibarkala Estate,
Dehradun-1.

✓ 3) Shri Ravi Mohan,
G & RS, Survey of India,
17 E.C.Road,
Dehradun-1.

✓ 4) Shri M.M.Jain,
MCC, Survey of India,
17 E.C.Road,
Dehradun-1.

✓ 5) Shri S.N.Kumar,
G & RS Survey of India,
17 E.C.Road,
Dehradun-1.

✓ 6) Shri J.B.Paursey,
Map Publication Office,
Survey of India,
Hathibarkala Estate,
Dehradun-1.

J. J. Verma.

✓ 7) Shri S.S.Rawat,
D.Survey(Air) Survey of India,
West Block No.4,
R.K.Puram,
New Delhi-66.

✓ 8) Shri S.D.Chatterjee, South,
Eastern Circle,
Survey of India, Uppal,
Hyderabad-39.

✓ 9) Shri M.C.Balhar,
South Central Circle,
Survey of India,
3-4-526/38,
Barkatpura,
Kachiguda,
Hyderabad-27.

✓ 10) Shri R.P.Hira,
No.27, Party (RC)

Attended
Advocate

Castle Hill Estate,
Landour Bazar,
MUSKIE-79.

- ✓ 12) Shri H.R. Aich,
Eastern Circle, Survey of India,
13 Wood Street, Calcutta-16.
- 13) Shri Somra Tirkey, No. 74, Party
Survey of India Complex,
Doranda Po. Hindoo,
Ranchi-2.
- ✓ 14) Shri S.N. Jugran,
ICC, Survey of India, 17 EC Road,
Dehradun-1.
- ✓ 15) Shri B.K. Sanna,
Research & Development
Survey of India,
Uppal, Hyderabad-39.
- ✓ 16) Shri J.L. J. Rao,
EMC, Survey of India,
Uppal Hyderabad-39.
- ✓ 17) Shri J.K. Das,
Eastern Zone,
Survey of India,
13 Wood Street,
Calcutta-16.
- ✓ 18) Shri J.C. Khurana,
ICC, Survey of India,
17-EC Road,
Dehradun-1.
- ✓ 19) Shri S.C. Uniyal,
S.G.O. Survey of India,
Mathiberkala Estate,
Dehradun-1.
- ✓ 20) Shri M.S. Rawat,
Northern Circle, Survey of India,
17 EC Road,
Dehradun-1.
- ✓ 21) Shri M.L. Kumar,
Director, Survey Air,
Survey of India,
Plot No. 4, K.P. Puram, New Delhi-66.

Attested
[Signature]
Advocate.

- ✓ 22) Shri S.K. Khatri, S.T.I., Survey of India, Uppal, Hyderabad-39.
- ✓ 23) Shri M.S. Parihar, 2 D.O. (NC), Survey of India, 17 EC Road, Dehradun-1.
- ✓ 24) Shri M.G.R. Nair, No. 41, Party (SC), Survey of India, XXII/414, Kamakshi Niwas, New Street, PO. Nurani, Palghat-4.
- ✓ 25) Shri Bachi Ram, South Central Circle, Survey of India, Barkatpura, Kachiguda, Hyderabad-27.
- ✓ 26) Shri Lalit Prasad, G&RB, Survey of India, 17 EC Road, Dehradun-1.
- ✓ 27) Shri A.K. Uniyal, 44 Party (CC), Survey of India, CGO Complex, Opp. Medical College, Agra Bombay Road, Indore-1 (MP).
- ✓ 28) Shri T.S. Kana, No. 26(P), Party (NL), Survey of India, 17 EC Road, Dehradun-1.
- ✓ 29) Shri J.C. Keshi, No. 32(P) Party (LC), Survey of India, Abu-1.
- ✓ 30) Shri S.D. Samwal, No. 35, Party (NEC), Survey of India, Ganeshguri Chariali, G.S. Road, Dispur, Guwahati-6.
- ✓ 31) Shri Parta Ram, No. 67 (FSP) Party, 20 P.K. Playpout, Ward No. 13, Subramanya Puram, Coimbatore-2.
- ✓ 32) Shri Hari prasad, No. 60 Party (CC), Survey of India, Tansen Road, Gwalior-3.

... .. RESPONDENTS.

FEDERAL PRACTITIONER : Shri Ashok Mohanty, Senior Standing Counsel (Central).

....

[Signature]
Sd/-
Sd/-

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985 6(six) petitioners have prayed for a direction to Respondent No.2 to re-cast the seniority list by properly fixing the inter-se-seniority positions of the petitioners, who passed the L.D.C. examinations 1986 in respect of vacancies of 1984 vis-a-vis the D.P.C. promotees, who were promoted through D.P.C. to the vacancies of the same year in accordance with the 3:1 vacancy roster. There is also a prayer that the order dated 15.12.1995 (Annexure-5) promoting 33(thirty) officer Surveyors to the post of Superintending Surveyors be quashed and Respondent No.2 be directed to issue fresh order of promotion after re-casting the seniority list.

2. The short facts of this case, according to the petitioners are that, the applicants are working under Respondents 1 and 2 as Officer Surveyors prior to 1987. Before, 1983, recruitment to the post of Officer Surveyors, were being made 50% by way of promotion from class-II I Division No.1 cadre and the rest 50% by direct recruitment

Advocate
Advocate.

through the Union Public Service Commission. 50% promotion was being given on the basis of seniority. Survey of India Officer Surveyors Recruitment Rules, 1983 came into force with effect from 27-4-1983. This rule, is at Annexure-1. Under this rule, promotion from feeder cadre of the post of Officer Surveyors was fixed at 75% and it was provided that balance 25% of the post of officer Surveyors, shall be filled up through a Limited Departmental Competitive Examination from Surveyors, Survey Assistants, Scientific Assistants, Geodetic computers and Draftsmen Div. I who have passed Bachelors Degree with Mathematics as one of the subjects and have rendered five years regular service in the respective grade. This has been provided in Schedule-II of the 1983 Recruitment Rules, at Annexure-1. Thus, promotion quota of Limited Departmental Competitive Examination ^{quota} in the post of Officer Surveyors, were to be filled up from the same group of people i.e. Surveyors, Survey Assistants, etc. with eight years regular service in respect of the grade, and the rest 25% post shall be filled up by way of promotion through limited Departmental Competitive Examination from the aforesaid category as stated above, who possesses Bachelor's Degree in Mathematics and have rendered five years regular service in respect of grade. It has also been provided in the said rules, that the examination shall be conducted by the Director, Survey Training Institute, in accordance with the

Attended

Advocate.

scheme to be finalised by the Surveyor General of India in consultation with the Department of Science and Technology. It was also provided that an employee shall not have more than three chances to appear at the said examination during his service period. For appearing at the Limited Departmental Competitive Examination, the scheme for Limited Departmental Competitive Examination, apparently took time to be finalised and this was issued only in order dated 3.12.1985 (Annexure-2). The scheme is for Limited Departmental Competitive Examination (selection to the Grade of Officer Surveyor). In para-9, Recruitment Roster has been dealt with and it has been provided that Vacancies to be filled by promotion by selection through D.P.C. and through the Limited Departmental Competitive Examination scheme shall be fixed on the basis of 3:1 for which a recruitment roster will be maintained by the Surveyor General of India. The inter-se-seniority of those selected in any one year being determined according to the order of merit in which they are placed in the examination. Applicants further state that this is in accordance with the Ministry Home Affairs Office Memorandum dated 22.12.1959 (Annexure-12) regarding relative seniority of direct recruits, and promotees. In this Circular (in para 2.4.1. it has been mentioned that relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees. In this case, there are no

Signature
Signature.

-8-

recruits. The two groups are D.P.C. promotees and promotees through L.D.C. Examination. Applicants case is that according to the provision regarding recruitment Roadster for vacancies to be filled up in a particular year after every three appointments, by way of D.P.C. promotees, one person promoted through Limited Departmental Competitive Examination, will have to be placed. Petitioners case is that they were in the feeder cadre prior to 27-12-1983 when 1983 recruitment rules came into force and they had all the eligibility qualification for appearing in the Limited Departmental Competitive Examn. According to the applicants, on 27.4.1983, the total number of vacancies in the cadre of Officer Surveyors, were 246 of which 185 would have fallen in the promotional quota and 61 in the Limited Departmental Examination quota but in 1983, no vacancies were filled up. Two more vacancies arose during the year 1983 due to retirement and the respective quotas become 187 and 61 as on 1.1.1984. In 1984, three vacancies arose and the respective quotas of the two groups became 189 and 62. In 1985, five further vacancies arose due to superannuation. Hence the numbers of vacancies to be filled up through D.P.C. and through L.D.C. Examn. were 193 and 63. During the same year, out of 193 vacancies in the DPC quota, 175 were filled up by promotion through DPC, thus carrying forward the left over 18 vacancies of DPC quota to the year 1986. In 1985,

Amended
Advocate

75 DPC promotees vacancies were filled up by holding
of DPC and remaining 18 vacancies were carried forward
in the DPC quota in the year 1986. But the Limited
Departmental Examination was not held in 1985 simultaneously
and the 63 vacancies of Limited Departmental Examination
quota were not filled up, though circulars were issued
to hold Limited Departmental Examination during December,
1985. Applicants further state that meeting of the DPC
was held in the year 1984 but 175 persons were given
promotion in 1985. Even though Respondent No. 2 should have
conducted the Limited Departmental Examination simultaneously
while taking steps for selection through DPC; and waited for
the two panels to be drawn up and then fill up the
vacancies by taking names from both the panels according
to the roster, Limited Departmental Examination was not
held in the year 1985. In 1986, 12 vacancies arose; 9 due to
retirement, 3 due to creation of new posts. Of this 9
belongs to DPC quota which become 27 taking into account
the carry over 18 unfulfilled posts and the LLC quota
was three which becomes 66. But no vacancies of neither
categories were filled up in the year 1986. In 1987 two
vacancies arose due to retirement. These two vacancies fell
to the 75% DPC quota. Added with the 27 vacancies of the
D.P.C. quota carried forward from 1986, the number of
vacancies in the DPC quota to be filled up during 1987
became 29. In the year 1987 out of these 29 vacancies, 27

Attended

Advocate.

vacancies were filled up through D.P.C. Ultimately, in August, 1985, written test for Limited Departmental Examin. was held. The interview was held in January, 1987 and 17 persons qualified in the written test and interview and were promoted as Officer Surveyors in 1.7.1987. These six petitioners are amongst those 17 persons. Petitioners case is that, these seventeen persons, should have been given promotion simultaneously with the 175 persons, who were promoted in the DPC quota during the year 1985 and these 17 persons should have been given their due position in the gradation list according to the roster of 3:1. But because of the delay in holding the examination, petitioners were given promotion as late as in the year 1987. It is further stated that these seventeen petitioners were placed enbloc above the DPC promotees of 1987. Petitioners grievance was that these seventeen examination promotees of 1987 were given placement according to 3:1 vacancy roster with the 27 DPC promotees during 1987 instead of giving such placement with 175 DPC promotees. Subsequently, in 1988, some vacancies in the 75% DPC quota were filled up through SPC and some vacancies of 25% LLC examination quota were also filled up through LLC examination. Petitioners

Amended
Advocate.



As in part, 1983 DPC promotees should have been
taken in 1987 and placed along with 1987 DPC promotees
according to roster. It is further stated that in 1988,
one Shri S.N. Jugran and one Shri J.C. Khurana filed
original application No. 1050/1988 and O.A. 1134/1988
before the Central Administrative Tribunal, Allahabad Bench
challenging the seniority list published in 1985 and
1986. The Tribunal, in their order dated 14.2.1992,
quashed the DPC proceedings held in 1984 and the seniority
list of officers Surveyors dated 1.1.1986 and directed
for conducting review DPC. Accordingly all the D.P.C.
proceedings held between 1984 and 1992 were rendered
invalid and a review DPC was held in 1993 and 185 persons
were given promotion in the 75% DPC quota revising the
list of entire DPC promotees during the period from 1984
to 1992. Petitioners' did not know their seniority
positions in the seniority list because the seniority list,
as on 1.1.1988 was circulated for the first time in 1990.
But as the cases including the case of Shri S.N. Jugran
were pending before the Central Administrative Tribunal,
Allahabad, the petitioners had no reason to challenge the
seniority list. In any case, the seniority list was quashed
and fresh seniority list was ordered to be drawn up.
Petitioners filed various representation for giving
their inter-seniority position along with 175 persons
of 1985 promotees but without any result. While the situation
was such and no seniority list has been circulated,

[Signature]
Advocate.

Respondent 1 & 2 promoted certain Officer Surveyors as Superintending Surveyors, who are the Private Respondents in this application before us. Petitioners case is that had they been given their inter-se-seniority, alongwith DPO promotees of 1985 strictly in accordance with Rules and Departmental Instructions, they would have been considered for promotion to the rank of Superintending Surveyors alongwith Respondents 3 to 32. On the above grounds, they have asked for a direction for recasting the seniority list by properly fixing the inter-se-seniority positions and have further asked for quashing the promotion order dated 15.12.1995 of the Private Respondents.

3. Respondents 1 and 2, in their counter, have stated that the Recruitment Rules, 1983, were given effect to on 27-4-1983. After the Recruitment Rules, 1983, came into force, the process of finalisation of the scheme for examination took time. Several representations and suggestions from Surveyors' Association were taken into consideration and there were several discussions with the representatives of the Association and ultimately approval of the Department of Personnel and Training was conveyed and the Department of Science and Technology issued letter on 14-11-1985 only, which is at Annexure-A. Alongwith this annexure, Respondents, have also enclosed a copy of the examination scheme which

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deals with the recruitment roster, referred to earlier. Respondents have stated that the first written examination under the scheme was conducted in August, 1986 and interview was held in January, 1987 and persons, who were qualified in the said examination, were offered promotion to the post of Officer Surveyor in August, 1987. Respondents state that according to the instruction of Government of India, seniority of the applicants, were to be fixed vice-viz 75B of D.P.C. promotees of 1987. Respondents further stated that private respondents 3 to 32 were promoted as Officer Surveyors during, 1985-86 whereas applicants, were promoted to the post of Officer Surveyors by Limited Departmental Competitive Examination appointees in July, 1987. Respondents have denied the suggestion of the applicants that in 1987 Limited Departmental competitive examination, 84 vacancies were filled up. Their stand is that since the scheme of examination could not be finalised, ^{L.D.C.E.} vacancies existing in the year 1984 and relating to DPC promotees of 1985-86, could not be filled up. According to Respondents, on 27.4.1983, there were 199 vacancies of which 150 was for DPC promotees and 49 for LDCE promotees. As regards giving seniority position, respondents have made the following averments in their counter:

"That accordingly, the applicants were treated as appointees of 1986 examination"

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and their seniority was assigned
with the promotees of 1986 vacancy".

It is also stated that persons appointed by promotion against 1986 vacancy, were assigned to 1987. Respondents have further stated that it is settled law that seniority will be fixed on the length of service in a particular grade and since the applicants joined the grade of Officers Surveyor only on 15.6.1987, they can not claim that they will be placed along with promotees of 1986. On the above grounds, they have opposed the prayer of the applicants.

4. Applicants, in their rejoinder, have pointed out that Respondents, in their counter, in para-7 pointed out that seniority of the applicants have been fixed in accordance with the circular dated 3.7.1986 of the Department of Personnel & Training. This circular is at Annexure-12. This is a consolidated order on principles for determining seniority and the relevant portion dealing with seniority of direct recruits and promotees are at para 2.4.1. which has already been noted earlier.

5. In the rejoinder, the applicants have further stated that the ~~fix~~ fixation of seniority, according to recruitment roster is strictly in accordance with para 2.4.1. They have further stated that according to Rules and the recruitment roster, L.D.C. examination promotees should find place along with DFC Promotees of the

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vacancies relating to the same year irrespective of the fact when these vacancies were filled up. Applicants, have stated that they were given delayed promotion in 1987 against the vacancies of 1983-84. On the above grounds, applicants have re-iterated the fact in the rejoinder.

6. Respondents have filed supplementary counter in which they have stated that promotion of the applicants on L.D.C.E. quota, having taken place in June, 1987, the seniority will be determined in accordance with DEPT order dated 7.2.1986 which is at Annexure-13. They have further re-iterated that since applicants were appointed on 15.6.1987, they can count their seniority only from that date and not prior to that date.. In this counter, the Respondents have referred to the decision of the Hon'ble High Court of Karnataka in Writ Petition No. 165 of 1979 in the case of Shri T.V. Rajendran Vrs. Union of India and others which was also confirmed by the Hon'ble Supreme Court of India in 1990. The quotation from the judgment has been given in this counter though it is not clear whether it is quotation from the decision of the Hon'ble Supreme Court or Hon'ble High Court of Karnataka.

Attested
Advocate.

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The quotation lays down when persons are promoted or appointed to a particular cadre, by whatever source, it may be, they can reckon their services only from dates of the appointment and they can not reckon their services prior to their appointments. In this counter, respondents have also worked out the quota for LPC appointees/promotees and LECE appointees/promotees.

7. We have heard Shri S. Mishra-I, learned counsel for the applicants and Shri Ashok Mohanty, learned Senior Standing Counsel appearing on behalf of respondents 1 & 2. The private respondents 3 to 32 have not entered appearance even though notices were issued to them. We have also perused the records.

8. Learned Counsel for the applicant, has filed written note of submission and the factual statement which have also been taken note of. Even though, parties have filed voluminous documents, the dispute essentially falls within a very small compass.

9. Admittedly, according to the recruitment rules, 1983, after coming into force the 1983 Rules, the vacancies, that were existing on 27.4.1983, 75% of the vacancies of Officer Surveyors, were to be filled up by LPC appointees and 25% by LECE appointees. Admittedly, the Departmental

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Authorities delayed in holding the Limited Departmental competitive examination and the applicants got promotion only in June, 1987. They say that as their quota of vacancies relate to 27.4.1983, they should be given their position according to recruitment roster along with 175 DPC recruits who were taken in 1985. The Respondents, on the other hand, claimed that as these applicants joined as Officer Surveyors, only in June, 1987 and the seniority should count from the date of their appointment in the concerned cadre, they can not get seniority along with 175 DPC recruits who were taken in 1985.

10. We have given our anxious consideration to the rival submissions of the parties. From the counter, filed by Respondents, we note that even though applicants, were appointed in June, 1987, the Departmental Authorities treated them as appointees against 1986 examination along with and their seniority were assigned / promotees of 1986 vacancies. This is mentioned in the counter and this portion has already been extracted by us. From this, it appears that Respondents have put the petitioners, who have actually been recruited in 1987 above the 1987 LDC promotees enblock. They have themselves mentioned that seniority of the applicants have been assigned with

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 Advocates.

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the promotees of 1986 vacancies. Petitioners, have, however, stated that these 17 L.D.C.E. appointees, who joined in June, 1987 have been placed enblock above, 1987 DPC recruits. The Recruitment Roster, specifically provides that after 3(three) DPC promotees, one LDC appointees will have to be placed. This has not been done by the Departmental Authorities. The other aspect is whether, they should be placed alongwith 1985 DPC recruits or 1986 DPC recruits which has already been done. Before considering this, it has to be noted that in 1985, 175 DPC promotees were appointed. Strictly, speaking along with 175 DPC promotees, had the examination been held in time and 58 persons been available from the LDCE quota, then 58 candidates from LDCE quota, would have been taken.

But even when the examination was held in 1986 and viva-voce in 1987, only 17 persons qualified in the LDCE examination. As the Respondents have delayed in holding the examination and as the applicants qualified in the first examination which was held and as according to their averments, which has not been denied in the counter, on 27.4.1983, they were qualified to take the examination had it been held alongwith promotion of DPC candidates, the petitioners can not be allowed to suffer. In view of this the correct procedure would be, to give these petitioners their rightful position one after every three

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Advocate

DPC promotions of 1985. The arguments of the Respondents that they can not be given seniority from a date prior to their initial appointment in the cadre is without any merit for the following reasons.

11. Firstly, the Respondents have not given reference to the decision of the Karnatak High Court, referred to above, in their supplementary counter and it has not been possible for us to look into this reference. From the extract quoted, it is not clear whether it is the observation of the Hon'ble Supreme Court or the Hon'ble High Court of Karnataka. Moreover the extract appears to be only a portion of one sentence. Therefore, it would not be correct to rely on the part of one sentence and deny the claim of the applicants on that basis.

12. The second aspect of the case is that on the basis of Annexure-13 relied on by the applicants, prior to coming into force of this circular of 7.2.1986, such placement in the seniority list even prior to joining was being done. In the circular it has been mentioned that where appointment to a grade is to be made 50% by direct recruitment and 50% by promotion from a lower grade, the seniority of different recruits and promotees is determined on 1:1 basis. It is further provided that while the above mentioned principle was working satisfactorily in cases where direct recruitment and promotion kept pace

Advocate.

With each other and recruitment could also be made to the full extent of the quotas as prescribed, in cases where enough number of direct recruits or promotees did not become available, there was difficulty in determining seniority. In such cases, the practice followed at present is that the slots meant for direct recruits or promotees which could not be filled up, were left vacant, and when direct recruits or promotees became available through later examinations or selections, such persons occupied the vacant slots, thereby became senior to persons who were already working in the grade on regular basis. In some cases, where there was shortfall in direct recruitment in two or more consecutive years, this resulted in direct recruits of later years taking seniority over some of the promotees with fairly long years of regular service already to their credit.

13. From the above, it is clear that even in cases where direct recruits or promotees are not available, in spite of holding the examination of selection the later recruits, in direct or promotion quota took their position in the slots meant for their respective quotas. Thus, for occupying the slots, the date of joining in their respective grade was not considered at that time. Because of this, in this circular, it has been stated that if adequate number of direct recruits do not become available in a particular year, rotation of quotas for purpose of


Advocate.

- III -

Seniority would take place only to the extent of the available direct recruits and the promotees. In other words, to the extent direct recruits not available, the promotees will be bunched together at the bottom of the seniority list, below the last position upto which it is possible to determine seniority on the basis of rotation of quotas with reference to the actual number of direct recruits. Vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year. This envisages a situation, where even after holding the examination direct recruits were not available in sufficient number.

14. In this case, the LDCE appointees were not available in 1985 against the DPC promotees because the examination was not held even though persons were qualified for taking the said examination. Therefore, in this case, the applicants must be shown in between 1985 DPC appointees according to the roster point.

15. The contention of the respondents that they can not be shown in the seniority list on a date prior to the date of their appointment as officer surveyors, is belied by their own averments that these LDCE recruits of 1987 have been assigned their position amongst the DPC appointees of 1986. If they have been given already one year's advantage, presumably because examination could not be held, there is no reason why recruitment roster should not

Attested
Advocate.

be worked out in this case and the applicants should be made to suffer thereby.

14. The next question is that even though as against 175 DPC promotees, there were 58 slots for LDCE appointees, only 17 qualified - out of which, 6 persons are the applicants in this Original Application. Applicants have not stated what their inter-se position is amongst the 17 persons who qualified in the examination. While giving them their position, according to recruitment roster, amongst the 175 DPC appointees, the relative position of these six applicants will have to be taken note of by the Respondents. In other words, if applicant No. 1 has occupied 5th position, out of 17 qualified examinees, then his position would come after the 19th person amongst the 175 DPC appointees and he would occupy the 20th position. We are unable to order inter-se fixation of position in respect of the eleven LDCE appointees, who are not before us. But their position, can not be usurped by the present applicants. The applicants, who must be given position, according to their inter-se-position, amongst the 17 qualified persons. Respondents, should also consider giving relative position to the other eleven LDCE appointees, according to recruitment roster who are not before us, and therefore, about whom, we are not in a position to pass any orders. After the 17 persons are assigned positions as above, rest of DPC appointees will have to be bunched together because in their case, even though

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Advocate.

examination was held, adequate number of LDCE appointees, did not qualify and were not available in requisite number.

17. This matter of fixing of seniority, according to recruitment roster, along with DPC appointees of earlier year will have to be done only for LDCE examinees of 1986 who was appointed in 1987. In the subsequent LDC examinations, this situation would not arise because either, on the date of their examination, they will not have been eligible to appear in the examination or if they had appeared in the examination, they would not have qualified. First prayer of the applicants, is, therefore, allowed to the extent indicated above.

18. As regards the second prayer for quashing the promotion of Private Respondents 3 to 32, the prayer is without any merit. Admittedly they are D.P.C. appointees of 1985 and according to their eligibility and suitability, they have been promoted. There is, therefore, no case for quashing their promotions/appointments. It is, however, ordered that after the respondents bring out the seniority list, in accordance with the directions given above, they should consider the cases of these applicants for promotion to the post of Asst. Conveyer, from the date, their juniors, if any, in the revised seniority list got

Amended

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACKORIGINAL APPLICATION NO. 438 OF 1998
Cuttack this the 22nd day of April, 1999CORAM:THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

THE HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

1. Sapan Kumar Chakravarty, aged about 52 years,
Son of Late Upendra Kumar Chakravarty,
Officer Surveyor, No. 77(P) South Eastern Circle,
Survey of India, Khandagiri,
Bhubaneswar-30, Dist: Khurda
2. Mihirresh Bhattacharjee, aged about 55 years,
Son of Late Hemanta Kumar Bhattacharjee,
Working as Officer Surveyor, No. 11, O/O (S.E.C.)
Survey of India, 4th Floor, Nayapalli,
Bhubaneswar-13, Dist: Khurda

Applicants

By the Advocates : Mr. K.C. Kanungo

-Versus-

1. Union of India represented through
Secretary, Department of Science and Technology
Technology Bhawan, New Mehrauli Road,
New Delhi
2. Surveyor General of India,
At: Hathibarkala Estate,
Dehradun
3. Bhagirathi Mohapatra,
S/o. Jameswar Mohapatra,
At: SECO, Survey of India, PO: R.R. Lab.
P.S.: Sahidnagar, Dist: Khurda
4. Brajamohan Mohanta,
S/o. H.K. Mohanta,
At: SEC, Survey of India,
PO: R.R. Lab, PS: Sahidnagar,
Dist: Khurda
5. Ananta Charan Moharana,
Son of Late Bhimsen Moharana,
At: SECO, Survey of India,
PO: R.R. Lab., PS: Sahidnagar, Dist: Khurda

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6. Bairi Niranjana,
S/o. Late B. Kalia,
At: No. 77(P), Party (SEC)
Survey of India, PO/PS: Khandagiri,
Dist: Khurda

7. Dinesh Kumar Kar,
S/o. Late Susanta Sekhar Kar,
At: No. 76(P), Party (Road D),
Survey of India, PO/PS: Khandagiri,
Dist: Khurda

8. Kusha Chandra Patra,
S/o. Late Krushna Chandra Patra,
At: No. 76(P) (Road D),
Survey of India, PO/PS: Khandagiri,
Dist: Khurda

By the Advocates :

Mr. A. K. Bose
Sr. Standing Counsel
(Central)
(For Res. 11 and 12)

M/s. S. N. Mishra
R. C. Prahara
B. Dash,
B. Mishra

(For Res. 3 to 8)



ORDER

MR. G. NARASIMHAM, MEMBER (J):

Applicants, Sapan Kumar Chakravarty and
Mihir Bhattacharjee and Res. 3 to 8 are Officers
Surveyors in Survey of India under the Department of
Science and Technology (Res. 1), serving under Surveyor
General (Res. 2). Inter se seniority among them as
Officers Surveyors is in dispute in this application.
Res. 3 to 8 were appointed as Officers Surveyors in July,
1987. Earlier they preferred Original Application
No. 221/96 for direction to Surveyor General to regularise
the seniority list by fixing their position in respect of
the vacancies in that Grade occurred in the year 1984 for

Advocate

Limited Departmental Competitive Examination (in short L.D.C.E.) examinee vis-a-vis the D.P.C. promotees. There was also a prayer in that application for quashing order dated 15.12.1995 giving promotions to some of the Officers Surveyors as Superintendent Surveyors. This Original Application was disposed of on 4.5.1998 by the then Division Bench presided over by a Hon'ble Vice-Chairman Shri Somnath Som and the then Hon'ble Member (Judicial) Shri S.K. Agarwal. Prayer for quashing the promotion order dated 15.12.1995 was disallowed. There were, however, directions to the Department to show the position of Res. 3 to 8 in between 1985 D.P.C. promotees according to roster point.

In that case the present applicants, who are 1985 D.P.C. promotees were not impleaded as parties. In this application there is prayer for issuing direction to Department not to fix up inter se seniority of Res. 3 to 8 and other similar L.D.C.E. promotees of 1987 along with D.P.C. promotees of 1985 and not to act upon the order in O.A.221/96 (Annexure-2). In other words, the sum and substance of the prayer in this application is that decision in O.A.221/96 has not been correctly taken according to law and as such should not be acted upon.

During hearing of this application, we have perused the records in O.A.221/96. Respondents 1 and 2 representing the Ministry and Department are common in both the applications. Res. 3 to 8 who were applicants in O.A.221/96 herein after will be referred as private respondents in this order.

2. In order to understand the scope of these two

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Advocate

Original Applications, it is necessary to know the relevant provisions for appointment to the cadre of Officer Surveyors which is Gazetted (Group B) under Officer Surveyor Recruitment Rules 1983 (in short 1983 rules). Prior to the framing of 1983 rules, in exercise of powers conferred under Article 309 of the Constitution, 50% of vacancies in that cadre were to be filled up by direct recruitment through Union Public Service Commission and the remaining 50% by promotion on the basis of seniority. Under the 1983 rules (Annexure-1) direct recruitment through U.P.S.C. has been dispensed with. These rules introduced two categories of promotions from the feeder cadre. 75% of the vacancies would be filled up by promotion from the feeder cadre on the basis of seniority and the remaining 25% through Limited Departmental Competitive Examination amongst employees belonging to five categories of feeder cadre, who have passed Bachelor Degree in Mathematics as one of the subjects and rendered five years of regular service in that Grade and such L.D.C.E. examination shall be conducted in accordance with the Scheme (Annexure-5) to be finalised by the Surveyor General in consultation with the Department of Science and Technology. This scheme was finalised in order dated 3.12.1985. The Scheme, while laying down the subjects for the examination with maximum marks and other procedures, specifically lays down that a penal of successful candidates in order of merit drawn up depending upon the number of vacancies available in the Department for filling up through L.D.C.E. Scheme.

All such selected candidates will be under probation for

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two years. Vacancies to be filled by promotion by selection through D.P.C. and through Limited Departmental Competitive Examination shall be fixed on the basis of 3:1 for which a recruitment roster will be maintained by the Surveyor General of India. The inter se seniority of those selected in any one year being determined according to order of merit in which they are placed at the examination. It has been further provided in the scheme that should there be any doubt as to the interpretation etc. of any of the provision of the Scheme, the same shall be referred to the Surveyor General of India, whose decision in the matter shall be final and binding.

After finalisation of the Scheme dated 3.12.1985, the first written examination under the Scheme was conducted in August, 1986 and interview in January 1987 and the employees, who were qualified in that examination they were offered promotion to the post of Officers Surveyors in July, 1987.

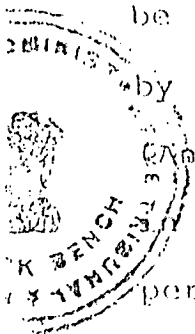
In Original Application No. 221/96 filed on 11.3.1996, the private respondents pleaded that they were to be adjusted against L.D.C.E. quota vacancies for the year 1984. The Department took the plea that the private respondents were treated as appointees of 1986 examination and their seniority was assigned to the promotees of 1986 vacancies. It was further pleaded by the Department that settled legal position is that seniority would be fixed on the length of service in a particular Grade and since the private respondents joined in the Grade of Officers Surveyors in middle of 1987, they could not be in par with promotees of 1985.

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As earlier stated, the then Division Bench ultimately directed the Department to place these private respondents in par with 1985 D.P.C. promotees as per the roster mentioned in the Scheme.

In the present application, the position of seniority of the two applicants and similar other persons being the D.P.C. promotees of the year 1985 having been affected because of inclusion of private respondents and similar other L.D.C.Es appointees on promotion in the year 1987 as against the vacancies available in the year 1985, they plead that the promotees under L.D.C.E. cannot be treated as direct recruits, as it has been laid down by Karnataka High Court in V.T.Rajendran case (Annexure-2/A) and confirmed by the Hon'ble Supreme Court order dated 10.7.1990 in S.L.P. 2058/87 that when persons are promoted or appointed to a particular cadre, by whatever source it may be, they can reckon their service only from the date of their appointments and they cannot reckon their service prior to their appointments. On the basis of this decision, according to applicants, Ministry of Science and Technology, i.e. Res.1, in letter dated 19.6.1992 (Annexure-3) addressed to Surveyor General of India, issued instructions that there is only one method of recruitment, i.e. by promotion and persons promoted against 75% quota on the basis of seniority-cum-fitness as well as those promoted against 25% through the competitive examination are both promotees only; that the seniority should be fixed on the basis of length of continuous service; confirmation should be made on the basis of seniority; that in view of



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This position, there is no question of fixing inter se seniority of persons promoted through 75% quota and those promoted through 25% quota in the ratio of 3:1 and inter se seniority may be fixed with reference to the date of promotion and confirmation made strictly on the basis of seniority; and that the earliest date of joining by person belonging to a particular batch of L.D.C.E. or D.P.C. may be taken as the relevant date for all the persons belonging to that batch of L.D.C.E. or D.P.C., as the case may be. In other words, the applicants as well as the private respondents being departmental officers hailing from the same feeder cadre through different streams are to be reckoned as promotees.



It has been further pleaded that recasting of further seniority list as pronounced in the year 1985 on the basis of decision in O.A.221/96, cannot but disturb the settled position prevailed for about 13 years and such settled position should not be allowed to be unsettled after a gap of 13 years, because, pursuant to such seniority prevailing in 1985, many may have already got promotion to Group A posts and some even may have also retired in the meantime. The applicants have been assessed by the D.P.C. for promotion to Group A posts and they are ultimately expecting their promotion in time and this legitimate expectation has been blocked by the decision in O.A.221/96. Representations of applicants dated 22.2.1998 and 23.7.1998 (Annexure-A series) are without any response.

Original Application No.221/96 also suffered from non-joinder of parties. The applicants, who were

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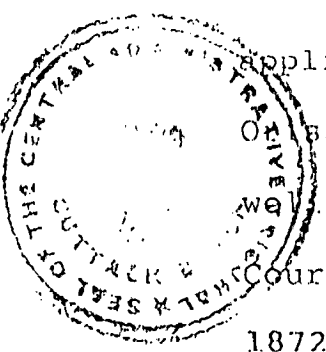
promotees
of the year 1985, and also other D.P.C. promotees of that year were necessary parties, as the private respondents in that application wanted that they should be adjusted against the vacancies of the year 1984.

Further Original Application No.221/96, according to applicants, was barred by limitation since the seniority list prevalent in the year 1985 was challenged in the year 1996, even though the private respondents got the appointments on promotion in the year 1987 itself.

Because of the grievances mentioned above, the applicants, at first approached the Hon'ble High Court of Orissa in O.J.C. No.9913/98. However, in view of the well-known legal position settled by the Hon'ble Apex Court in Gopabandhu Biswal case reported in AIR 1998 SC 1872, the O.J.C. was permitted to be withdrawn by the order of the Hon'ble High Court dated 25.8.1998 (Annexure-9) and two days thereafter this application has been filed.

The Department in their counter take the stand that in view of the decision in O.A. 221/96, they are bound to recast the seniority as per the directions given therein.

The private respondents reiterated their stand in O.A.221/96. Their further plea is that with effect from 1991 requirement of subject Mathematics for L.D.C.E examinees has been revised by fixing simple Graduation as the eligibility criterion. The L.D.C.E. scheme, according to respondents is an inseparable part of 1983 rules and they cannot suffer on account of delay in preparation of



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Advocate

the scheme and consequent conduction of examination as laid down in the scheme. As per the scheme fixation of seniority on the basis of quota rota between two categories of promotees is to be followed. As against the point of limitation raised by the applicants, the private respondents state that the gradation list as on 1.1.1986 and consequently all the gradation list of Officers Surveyors were quashed by the Judgment dated 14.2.1992 of Allahabad Bench of Central Administrative Tribunal in O.A.1050/88 and two other O.A.s in the case of S.N. Jugran and others. As those cases were filed in the year 1988 before the Allahabad Bench challenging the gradation list of 1986, they had to wait till the disposal of the Jugran's case and revised seniority list, as instructed in Jugran's case, in fact was not finalised by the time O.A.221/96 was filed. It is further submitted by them that the applicants were not necessary parties in O.A.221/96, because the Department represented their interest. Principle decided in V.T. Rajendran case is not applicable to their cadre because the issue in that case related to seniority of U.D.C.s for the purpose of confirmation. In this way the private respondents pray for dismissal of this Original Application defending the decision taken in O.A.221/96.

In the rejoinder, while reiterating their stand as in the Original Application, the applicants submit that in Mahendra Kumar's case, ultimately confirmed by the Hon'ble Supreme Court, the Chandigarh Bench of C.A.T. held that any administrative authority cannot categorise promotees as direct recruits just to suit

Attested
Advocate.

administrative convenience. In fact in letter dated 20.8.1990, the Surveyor General intimated all concerned that Administrative Reforms Commission and 3rd Pay Commission have recommended that there should be no direct recruitment to Group B service and that is a promotion shown from Group C staff and this in view of the fact that very few candidates selected by the U.P.S.C. joined the post of Officers Surveyors. The direct recruitment to the post of Officers Surveyors was stopped and the L.D.C.E. scheme was introduced to provide incentive to the qualified departmental staff. It has been further averred in the rejoinder that Jugran's case (Annexure-12), inter se seniority of D.P.C. promotees only was rearranged without change in positions of L.D.C.E. promotees.

9. In this Original Application the applicants prayed for stay operation of the decision in O.A.221/96. During hearing on this interim prayer, the then learned Senior Standing Counsel Shri Ashok Mohanty, representing the Department gave us to understand that the Department had already decided to implement the order of the Tribunal in O.A.221/96 and pursuant to this, a provisional seniority list would be drawn up and circulated among all concerned before finalisation of the seniority list. Since no immediate prejudice was going to cause to the applicants, we, in order dated 2.9.1998 directed that such seniority list to be circulated by the Department would be treated as provisional seniority list awaiting objections from the employees affected thereby. It was also made clear that the applicants would be at liberty to approach the Tribunal in case any injury is

Attested
Advocate

apprehended by them and/or they are affected by the seniority list so prepared.

7. In the ^{instant} last date of hearing of this application, eight L.D.C.E promotees of the year 1987 and two such promotees of 1989 and 1990 (in total 10) filed an application on 5.3.1999 praying to be impleaded as interveners. This application has been registered as M.A.122/99. On 19.3.1999, we heard all concerned and observed that orders on this would be passed along with the regular order to be passed in O.A. and it was orally indicated that in case the petition for intervention would be allowed, then the original applicants would be given liberty to reply. We have considered this M.A.122/99. So far as L.D.C.E. promotees of 1987 are concerned, the decision in O.A.221/96 is clear. In that decision in para-17 of the order, it has been made further clear that the decision would not be applicable to L.D.C.E. promotees of subsequent years. In view of this observation in O.A.221/96, this intervention petition cannot be entertained. Accordingly, M.A.122/99 is dismissed.

8. Heard Shri K.C.Kanungo, learned counsel for the applicants. Shri Kanungo presses this application by advancing the following contentions :-

- a) As the applicants and the private respondents are promotees from the same feeder cadre, their inter se seniority will be determined not only the principle of quota rota, but on the length of service reckoned from the actual date of promotion.
- b) 1983 rules are basically rules of promotion and not of seniority.
- c) Judgement in O.A.221/96 is not binding on the applicants as they were not parties in that case and the Department did not effectively represent their interest.

- d) Private respondents having joined in the cadre in July, 1987, on promotion could not have approached the Tribunal at a belated stage of 9 years thereafter in the year 1996 to unsettle the settled seniority of the applicants and other D.P.C. promotees of the year 1985.

9. In support of his contention, the seniority has to be determined on the length of service from the actual date of promotion in the cadre. Shri Kanungo placed reliance on the following decisions:-

- i) Mahendra Kumar vs. R.P.F. Commissioner in O.A. No.T-556/86, disposed of by Chandigarh Bench of the Tribunal on 23.1.1987
- ii) Ashok Meheta vs. R.P.F. Commissioner, Full Bench Judgment reported in F.B.Judgments(CAT) Vol-3, 194
- iii) Nityananda Sethi vs. Central Board of Trustees decided by Cuttack Bench of the Tribunal (reported in All India Services Law Journal(SLR) (1990), 2 CAT 49)
- iv) V.T.Rajendran vs. Union of India & Others decided by High Court of Karnataka on 20.11.1987 and not interfered by the Hon'ble Supreme Court in Civil Appeal No.2558/87 decided on 10.1.1990

A true copy of judgment in Mahendra Kumar's case has been filed by the applicants. Inter se seniority of the U.D.Clerks in the Office of R.P.F. Commissioner Chandigarh was in dispute in that case. As per the relevant rules prevalent then, 50% of the vacancies in the U.D.C. cadre were being filled up on promotion from the feeder cadre on the basis of seniority subject to rejection of unfit and the other 50% by promotion from the same feeder cadre through a competitive examination. There was no mention of any direct recruitment. Yet the appointees, on promotion through competitive examination from the feeder cadres were treated as direct recruits

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and the seniority was assigned in the ratio of one D.P.C. promotee : 34 LDCE Promotees as per Rule 7 of the seniority rules. Chandigarh Bench ultimately held that promotee U.D.Cs who secured promotion by qualifying in the departmental examination did not become direct recruits, just because the R.P.F. Commissioner had chosen to call them as such and quashed the seniority list prepared on the basis of quota rota principle. This decision was not interfered by the Hon'ble Supreme Court in their order dated 11.8.1989 when challenged in S.L.P. This order of the Hon'ble Supreme Court finds quoted in Ashok Meheta case reported in Full Bench Judgements(CAT) Vol 3 194 at page 199. The relevant order of the Apex Court runs as follows:-

" We see no reason to entertain this S.L.P. One ground in respect of this petition was there is contrary decision by one of the Benches of the Administrative Tribunal. That difficulty will not continue by refusing to grant leave. We are of the view that the ~~proper~~ appropriate rule for determining seniority of the officers is the total length of service in the promotional post which would depend upon the actual date when they were promoted".

The aforesaid observation of the Hon'ble Supreme Court in Mahendra Kumar case was also the subject matter of interpretation by the Full Bench of C.A.T.(FB) in Ashok Meheta case reported in FB(CAT) Vol 3 194. In this case also inter se seniority of the U.D.C. OF THE R.P.F. Commissioner was under dispute. This Ashok Meheta case deals with percentage of quota promotion as 1984 rules, which speak of Division Bench referred the matter to Full Bench for determination of certain points. The Full Bench after taking note of of the decision in

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Direct Recruits Class II Engineering Officers Association case reported in J.T. 1990(2) SC 264, Keshab Chandra Joshi in AIR 1991 SC 284, Nirmal Kumar Chaudhury's case reported in 1998(Suppl) SCC 107 and R.D.Gupta case reported in F.B.Judgments of C.A.T. (vol.2) page 137, answered that officers promoted on the basis of seniority subject to rejection of unfit and those promoted on the result of competitive examination shall be treated as promotees and their inter se seniority has to be determined on the basis of their total length of service which will be reckoned from the actual date of their promotion in accordance with relevant recruitment rules; that rota quota principle is not applicable for determining the seniority to the cadre of U.D.Cs in this case; and that the order of the Hon'ble Supreme Court in Mohendra Kumar case constitutes a binding precedent, even after the judgment of the Hon'ble Supreme Court in Direct Recruits Class II Engineering Officers Association case.

Nityananda Sethy case was disposed by the then Division Bench of C.A.T., Cuttack on 31.1.1989 basing also in regard to inter se seniority in the cadre of U.D.Clerks in the Office of R.P.F. Commissioner, Bhubaneswar, taking note of Lamba's case reported in AIR 1985 SC 1019, K.M.Mishra case reported in AIR 1986(2) CAT 270, S.C.Jain case in A.T.R. 1986(2) CAT 346 and N.K.Chauhan's case in AIR 1977 SC 251 and also order dated 11.8.1987 of the Apex Court in Mohendra Kumar case and held that the seniority in the case has to be determined on the basis of total length of service rendered by them in the promotional post and length of service should be reckoned from the date on which they

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were actually promoted.

10. Perusal of record in O.A.221/96 would reveal that none of these decisions have been placed before the then Division Bench by the Departmental respondents 1 and 2 though had some bearing on the point at issue. The learned counsel for the private respondents Shri S.Mishra, however, contended that those decisions cannot be applicable to the principle in dispute in this application, because centre round the dispute inter se seniority of U.D.Cs of different Departments. The learned counsel also contended by drawing difference between "selection" and "non-selection" posts. Issue involved in this case is determination of inter se seniority and not method of selection adopted by the D.P.C., i.e., whether seniority-cum-suitability subject to rejection of unfit. It cannot be said that the decisions referred above have no bearing at all on the point at issue in this application, because of of the seniority issue of different Departments dealt therein. At least V.T.Rajendran case decided by the Karnataka High Court on 11.1.1981 concerned with the Department of Res.2. Inter se seniority of U.D.Clerks as on 1.1.1978 were the subject matter of dispute in that case. Narration of facts therein revealed that according to relevant recruitment rules of the Department, promotions of U.D.Cs were made through regular promotion and also through selection in an examination conducted for the in-service candidates. It was held that when persons are promoted or appointed to a particular cadre, by whatever source it may be, they can reckon their service only from the dates of their appointments and they cannot reckon their



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services prior to their appointments and confirmations against permanent vacancies that arose in the Department must necessarily conform itself to the principle of seniority and the available number of vacancies in the Department; and that in making confirmation quota rota rule cannot by any stretch of imagination be made applicable. Certified copy of this decision has been annexed as Annexure-2/A. The Department challenged this decision before the Apex Court in Civil Appeal No.2858/87 and the Hon'ble Apex Court through their order dated 10.7.1990 disposed of the appeal by observing as follows

" We accept the reasoning of the High Court. We see no reason to interfere with the findings. The appeal is dismissed".

Certified copy of this order of the Hon'ble

Supreme Court is at Annexure-A/2.

As earlier stated, while narrating the facts, on the basis of this decision of the Hon'ble Supreme Court, the Ministry of Science and Technology, in letter dated 16.6.1992 (Annexure-3) addressed to Surveyor General of India (Res.2) issued instructions which have been quoted in extenso above. It cannot remain unnoticed that even full reference of the decision of Rajendran case and confirmed by the Hon'ble Supreme Court, and also the consequent instructions dated 19.6.1996 under Annexure-3 had not been placed before the previous Division Bench by the respondents-department.

It is true that Rajendran case deals with inter se seniority of U.D.Cs of this Department. Yet the principle enunciated therein cannot be brushed aside as having no bearing on the inter se seniority of the



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Officers Surveyors, after coming into force 1983 rules. It has been pleaded in the counter by the private respondents that Rajendran case is distinguishable, because, there is no provision of rotation fixing of seniority of U.D.C.s. If that be so, this instruction dated 19.6.1992 under Annexure-3, the genuineness of which has not been questioned either by the private respondents or by the Department in their counter, is meant for fixing up inter se seniority of Officers Surveyors, because in para-3 of this instruction, it has been mentioned that in view of the judgment confirmed by the Hon'ble Supreme Court, there is no question of fixing inter se seniority of persons promoted through 75% quota and those promoted through 25% quota in the ratio of 3:1. Yet, as already observed, the Department for the reasons best known, did not bring this instruction to the notice of the previous Division Bench.



In view of the legal position discussed above, with reference to the above cited decisions, which were placed before the previous Division Bench, there was no scope for the previous Division Bench to arrive at a definite finding on the question of inter se seniority. More over, it has been held by the C.A.T., Allahabad Bench in S.N.Jugran case (certified copy Annexure-12) that 1983 rules in short appeared to be recruitment rules and not seniority rules.

11. Applicants were promotees to the present cadre through D.P.C. 1985. Admittedly they were not parties in the previous O.A.221/96. The decision in that O.A. adversely affected their inter se seniority vis-a-vis the

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private respondents who were promoted through L.D.C.E. to this cadre in the year 1987. Their interest does not appear to have been properly represented by the Department in that case, as discussed above. Still it cannot be said that this judgment is not binding on them. In Ajit Babu case decided by the Apex Court (as quoted at para-17 of decision T.Narayana vs. C.P.F. Commission of C.A.T., Bangalore Bench, reported in (1998) 38 A.T.Cases 555 Page 555 at page 562, the Apex Court, while holding that in service matter, an order in a case may adversely affect even those who were not parties to that case and that such an order would not be a judgment in personam, but a judgment in rem and the remedy available to an aggrieved person, not a party to earlier case is to file an Original Application and that application has to be decided in accordance with law and that if the Tribunal disagrees with the earlier view, the matter has to be referred to the Full Bench. The same also appears to be reviewed by the Supreme Court in Gopabandhu Biswal case reported in 1988(3) SLJ 120. Hence this being the position, the judgment in O.A.221/96 will be binding on the applicants till it is not set aside by any larger Bench, if any.

12 The private respondents joined in the cadre in July, 1987 on being promoted through selection by L.D.C.E. They filed O.A.221/96 on 11.3.96 claiming seniority from 1984 onwards. Long prior to their joining, applicants and similar other D.P.C. promotees were assigned seniority from the dates of their joining on promotion in the year 1985. It is in this context, the



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applicants contended that prayer of the private respondents in O.A.221/96 to annul seniority against vacancy of 1984, was belated and could not have been entertained to unsettle the settled seniority of the applicants and other DPC promotees of the year 1985. The private respondents in this connection submitted that since Jugran's case before Allahabad Bench was filed for quashing the gradation list published on 29.1.1985 and 11.2.1985, they awaited till the disposal of that case. Ultimately in judgment dated 14.2.1992 these two gradation lists were quashed and with a direction to maintain inter se seniority of the applicants with Res.3 in that case in the Green List as on 1.1.1984 and this revised list as per the direction in Jugran case, according to private respondents is yet to be prepared.

In order to appreciate the rival contentions on this point, it is necessary to know the real point at issue involved in Jugran case. Applicants in that case were Selection Grade Surveyors and Surveyors is one of the feeder posts of Officer Surveyors. The gradation list of Officers Surveyors was published on 29.1.1985 and 11.2.1985 after the publication of 1983 rules without notice or opportunity to the applicants, as they being Selection Grade Surveyors were to have been placed above the Surveyors of ordinary grade. In this background, the Allahabad Bench of the Tribunal held that 1983 rules were not rules giving guidelines for fixing up seniority. Hence revision of seniority with reference to these rules was without any basis and as such seniority list of feeder cadre placed before the D.P.C. was not the proper

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 Advocate

list; that 1983 rules are to be applied prospectively and not retrospectively. Thus in Jugran's case there was no dispute as to the seniority between the DPC promotees and LDCE promotees. As such interest of private respondents in the case before us was in noway involved in Jugran's case. Without waiting for the final outcome of Jugran's case they could have as well approached the Tribunal at the earliest point of time claiming their seniority as prayed in O.A.221/96. Moreover, Jugran's case was disposed of in February, 1992. This application was filed four years thereafter. Hence, there appears to be some force in the contentions of the applicants that the claim of the private respondents as to seniority in O.A.221/96 was barred by limitation and at a belated stage this application could not have entertained to unsettle the settled seniority list. These points were also urged and placed before the previous Division Bench by departmental respondents.

13. We heard the aforesaid legal positions discussed above being placed before the previous Division Bench, possibility of that Bench arriving at a different conclusion than that was decided cannot be ruled out. It is, therefore, felt that the present controversy should be referred to Full Bench for determination. Seniority list, if any, finalised in the meanwhile, on the basis of the decision in O.A.221/96 will be subject to the result of this case on the basis of the findings of the Full Bench.

14. For the reasons stated above, the subject matter of this application is referred to Full Bench for determination on the following points :-

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1. Whether principle of seniority decided by the Full Bench in Ashok Meheta case and by Karnataka High Court in Rajendran case confirmed by the Hon'ble Supreme Court in order dated 10.7.1990 is applicable in determining seniority of Officers Surveyors promoted under 1983 rules?
2. Whether the private respondents (applicants in O.A.221/96) having for the first time joined as Officers Surveyors on promotion in July, 1987 were justified under law in approaching this Tribunal 9 years thereafter, i.e. on 11.3.1996, claiming seniority from the year 1984?



Sd/-Somnath Som.
Vice-Chairman

Sd/-G.Narasimham
Member (Jud)

B.K.SAHOO

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Section Officer,
Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Attested
[Signature]
Associate:

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...tion to the post of Supt. Surveyor. This prayer,
it, therefore, disposed of with the above directions.

10. In the result, therefore, the Original Application,
allowed in part in terms of the directions and
observations made above. There would be no order as
to costs.

S. K. Agarwal
Member (A)

Sd/- S. Som
Vice-Chairman

RE/CN.

TRUE COPY

Section Officer: 08.05.98
Joint Administrative Tribunal
Cuttack Bench, Cuttack.

Attested

[Signature]

Advocate.

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 438 of 1998
Cuttack, this the 27th day of March, 2000

CORAM:

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

-
1. Sapan Kumar Chakravarty, aged about 52 years, son of late Upendra Chandra Chakravarty, Officer Surveyor, No.77(P), South Eastern Circle, survey of India, Khandagiri, Bhubaneswar-30, District-Khurda.
 2. Mihiresb Bhattacharjee, aged about 55 years, son of late Hemanta Kumar Bhattacharjee, working as Officer Surveyor, No. 11, D/O (SEC) Survey of India, 4th Floor, Nayapalli, Bhubaneswar-13, District-Khurda.
-Applicants

Advocate for applicants - Mr.K.C.Kanungo

Vrs.

1. Union of India, represented through Secretary, Department of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi.
2. Surveyor General of India, At-Hathiberkala Estate, Dehradun.
3. Bhagirathi Mohapatra, son of Jameswar Mohapatra, At-SECO, Survey of India, PO - R.R.Lab., P.S-Sahidnagar, District Khurda.
4. Brajamohan Mohanta, son of H.K.Mohanto, At-SECO, Survey of India, PO-R.R.Lab., P.S-Sahidnagar, District-Khurda.
5. Ananta Charan Moharana, son of late Bhimsen Moharana, At-SECO, Survey of India, PO-R.R.Lab., P.S-Sahidnagar, District-Khurda.
6. Bairi Niranjana, son of late B.Kalia, At-No.77(P), Party (SEC), Survey of India, PO/PS-Khandagiri, District-Khurda.
7. Dinesh Kumar Kar, son of late Susanta Sekhar Kar, At-No. 76(P), Party (R&D), Survey of India, PO/PS- Khandagiri, District-Khurda.

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Advocate.

8. Kusha Chandra Patra, son of late Krushna Chandra Patra, At. No. 76(P) Party (R&D), Survey of India, PO/PS-Khandagiri, Dist. Khurda.

Respondents

Advocates for respondents -Mr. A.K. Bose
Sr. C.G.S.C.
for R 1 & 2
and
Mr. S.N. Mishra
for R 3 to 8.

O R D E R
(ORAL)

HON'BLE ASHOK AGARWAL, CHAIRMAN

Though couched in different language the present Original Application, for all practical purposes, questions the correctness of a decision rendered by a Division Bench of this Tribunal in the case of Bhagirathi Mohapatra and others v. Union of India and others, being OA No. 221 of 1996, decided on 4.5.1998.

2. The case pertains to promotions from the posts of Surveyors, Survey Assistants, Scientific Assistants, Geodetic Computers and Draftsmen Division I to the post of Officer Surveyor, (Group B). Prior to 27.4.1983 appointments to the post of Officer Surveyor (Group B) were regulated by 1962 Rules which are to be found at Annexure-A/3, The Rule provided as follows:

"50 percent of the vacancies will be filled by selection on the basis of merit from among specially deserving officers of Class III (Division I) Topographical Establishment of the Survey of India on the recommendation of the Departmental Promotional Committee. The remaining 50 percent vacancies will be filled up by competitive examination vide part II of the rules."

3. Under the said rule 50% of the vacancies were to be filled up by promotion and remaining 50% from the open market by way of competitive examination.

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Advocate

4. The eligibility criteria for direct recruitment were stringent. Hence not many candidates became available for filling up the 50% of the vacancies earmarked for direct recruits through competitive examination. Therefore, the aforesaid 1962 Rules were superseded by 1983 Rules which came into force with effect from 27.4.1983. A copy of the 1983 Rules is to be found at Annexure-A/1. The rule in so far as is relevant for the enquiry at hand provides as under:

" In case of recruitment by promotion/deputation/transfer/grades from which promotion/deputation/transfer to be made

PROMOTION

- i) 75% of the promotion quota by selection from Surveyors, Survey Assistants, Geodetic computers and Draftsman div.1 with at least 8 years regular service in the respective grade, including service if any, rendered in the Selection Grade of the above categories of posts.
- ii) 25% of the promotion quota by limited departmental competitive Examination from Surveyors, Survey Assistants, Scientific Assistants, Geodetic Computers and Draftsman Div.1 who have passed the Bachelors Degree with Mathematics as a subject and have rendered 5 years regular service in respective grade. The examination shall be conducted by the Director, Survey Training Institute, Hyderabad in accordance with the scheme as may be finalised by the Surveyor General of

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Advocate

India in consultation with the Department of Science & Technology from time to time. An employee shall not avail of not more than three chances to appear at the said examination during his service period."

5. Appointment to the post of Officer Surveyor, Grade-D, under the 1983 Rules was by promotion. 75 per cent of the promotion quota is by way of selection from the feeder posts. A period of eight years regular service is made the eligibility criteria for the aforesaid promotion. The remaining 25% of the promotion quota is filled up by way of promotion through a Limited Departmental Competitive examination. Five years regular service is made the eligibility criteria for the said promotion. The examination is to be conducted in accordance with a scheme which was to be finalised by Surveyor General of India. Not more than three chances can be availed of by a candidate during his entire service period. The aforesaid Rules as already indicated came into force with effect from 27.4.1983. A Scheme was thereafter framed and was brought into force with effect from 3.12.1985. A copy of the said Scheme is to be found at Annexure-A/5. The Scheme relates to holding of limited departmental competitive examination. Clause 9 of the Scheme reads as follows:

RECRUITMENT ROSTER : Vacancies is to be filled by promotion by selection through D.P.C. and through the Limited Departmental Competitive examination Scheme shall be fixed on the basis of 3:1 for which a recruitment roster will be maintained by the Surveyor General of India

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 Advocate

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6. As far as the present proceedings are concerned, various decisions have been relied upon by the contending parties to advance their respective contentions. However, in our view, a reference to the same is unnecessary as the Rules which now hold the field are clear and unambiguous. If the same are followed, we find no difficulty in resolving the disputes which have been raised before us.

7. After coming into force of the 1983 Rules several promotions in the 75% quota were granted in the year 1985. However, as far as the promotions in the 25% quota are concerned, the same could not be granted along with the promotions of the 75% quota. A Scheme was required to be framed under the 1983 Rules which scheme came into force only with effect from 3.12.1985. A Limited Departmental Competitive Examination for the promotion in 25% quota came to be held only in August 1986. The results were declared only in 1987 and it is only in 1987 that promotions to the 25% quota were granted.

8. The present proceedings raise disputes in regard to the seniority to be given to the candidates who have been promoted in 25% quota in 1987 vis-a-vis the candidates who have been promoted in the 75% quota in 1985. As far as the 25% quota promotees are concerned, they on the basis of the aforesaid rule to be found in the scheme, claim to be placed in a slot in ratio of 3:1. In other words, even though they have been promoted in 1987 they claim to be placed in the slot reserved for them in the ratio of 3:1 along with the candidates promoted in 1985. This claim of the candidates promoted

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Advocate


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in the 25% quota is challenged by the candidates promoted in 75% quota.

9. The aforesaid rule in the 1983 Rules and the rule in the aforesaid Scheme leave no manner of doubt that the candidates promoted in the 25% quota have to be fixed on the ratio of 3:1 in a roster to be maintained for the purpose. If this is done, it follows that after three candidates of the 75% quota there has to find place one candidate from 25% quota. If this is to be achieved, one candidate from 25% has to find his place after three candidates of the promotees of 75% quota. Promotions granted in 1987 will no doubt take effect from the date of their promotions. Therefore, for all purposes such as receiving pay of the promotional post will be with effect from the date of their actual promotions, namely, 1987 and onwards. However, after the promotions are so granted a roster will have to be prepared and in the roster, after three candidates of the 75% quota, one candidate of 25% quota has to find his place. It goes without saying that this will be subject to the candidates possessing eligibility of five years regular service and Bachelors Degree with Mathematics as a subject in 1985 when the earlier promotions to the 75% quota were granted. In other words, in case a candidate does not possess the eligibility criteria of five years regular service in the feeder post and Bachelors Degree with Mathematics as a subject in 1985, he will not be considered eligible for being granted the aforesaid benefit.

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10. The decision in Bhagirathi Mohapatra's case (supra) which has taken the view similar to the one we have taken in the present case is accordingly upheld.

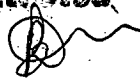
Attested

Advocate

11. The present original application is disposed of with the above clarification. No order as to costs.

Sd/-
(ASHOK AGARWAL)
CHAIRMAN

Sd/-
(SOMNATH SOM)
VICE-CHAIRMAN

Sd/-
(G. NARASIMHAM)
MEMBER (JUDL.)

Attested

Ad