

CASE NO.:
Appeal (civil) 349 of 1991

PETITIONER:
P.S.N.RAO

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 29/07/2002

BENCH:
S.RAJENDRA BABU & D.P.MOHAPATRA.

JUDGMENT:

D.P.MOHAPATRA, J.

The appellant, Shri P.S.N.Rao, who was a Joint Director of Industries, then working as Principal, College of Accountancy and Management Studies at Cuttack filed the writ petition OJC No.1621 of 1980 in the High Court of Orissa against the Government of Orissa represented by Secretary to Govt., Industries Department, Shri R.J.Jachuck, Joint Director of Industries, then working as General Manager, IPICOL, Orissa and Shri Khageswar Das, Director of Technical Education & Training, Orissa seeking the reliefs inter alia :-

"(i) Quashing of the Government Orders appointing the opposite parties 2 and 3 (described as such in the writ petition) to Class I (Jr.) grade and to Class-I (Sr) grade posts earlier than the petitioner's appointment to these grades;

(ii) Quashing of the Industries Department notification No.14016-I dated 17/20th August, 1960 in which the pay scale of the post of lecturer (Mining) was upgraded from the scale of pay of Rs.200-700/- to the scale of pay of Rs.300-860/-;

(iii) Quashing of the appointment of opposite party no.3 to the class-I pay scale of Rs.300-860/- vide Industries Department notification No.9659-I dated 20th June, 1961 without consideration of the case of the others including the petitioner;

(iv) The Public Service Commission advertisement no.9 dated 29th June, 1962 in which only bachelor's degree in Mining Engineering was prescribed as the required qualification for the

post of Principal, Orissa School of Mining Engineering, Keonjhar;

(v) Quashing of the Industries Department notification No.20290-I dated 21.12.1961 in which the opposite party no.3 was appointed as the Principal of the School of Mining Engineering, Keonjhar on ad hoc basis and Industries Department notification No.23352-I, dated 10.12.1962 in which the said opposite party no.3's appointment as Principal was regularized;

(vi) Quashing of the Industries Department order in which the post of Principal, Orissa School of Mining Engineering, Keonjhar was upgraded to the rank of Joint Director retrospectively and Govt. order promoting opposite party no.3 to that post with effect from 15.10.1968;

(vii) Quashing of the Industries Department notification No.6400-I dated 12.3.1980 in which the opposite party no.3 was appointed as Director of Technical Education and Training without consideration of the case of the petitioner;

(viii) For issue of a writ of mandamus directing the opposite party no.1 to restore petitioner's seniority over opposite party no.2 and opposite party no.3 and redetermine the petitioner's seniority in each class and grade;

(ix) For issue of a writ of mandamus directing the opposite party no.1 to consider the case of the petitioner for promotion to the post of Joint Director of Industries from 15.10.1968 and to the post of Director of Technical Education and Training from 12.3.1980 with all consequential service benefits etc."

The gist of the case of the petitioner (in the writ petition) set out in the writ petition was that on being selected by the Orissa Public Service Commission, he was appointed as an Assistant Engineer on 14.10.1955 in Class-II of Orissa Engineering Service in the pay scale of Rs.200-700 and he joined the post on 18.10.1955. The opposite party no.2 (in the writ petition) was appointed as a District Industries Officer in the Industries Department in Class-II of the State service in the scale of Rs.200-700 and he joined the post on 8th March, 1957. The opposite party no.3 was appointed as a lecturer in mining in the Orissa School of Mining Engineering, Keonjhar on 6th February, 1960 also in the scale of Rs.200-700. The petitioner and the opposite parties nos.2 and 3 who were appointed in the same scale were placed under the administrative control of three different departments; while the petitioner was placed under the Works Department, opposite party no.2 was placed under the Industries Department and opposite party no.3 was placed under the Mining & Geology Department. It was the case of the

petitioner that reckoned from the date of appointment he was senior to opposite party nos.2 and 3. It was the further case of the petitioner that after his appointment in the department he was transferred to the Berhampur Engineering School with effect from 30th November, 1956. Then the Berhampur Engineering School was a private institution; its management was taken over by the State Government on 12th November, 1958 and the institution was placed under administrative control of the Industries Department. Likewise the Orissa School of Mining Engineering was transferred to the administrative control of the Industries Department with effect from 1.4.1960. According to the petitioner after this date all the three appointees, himself and opposite party nos.2 and 3, were placed under the administrative control of the Industries Department and were entitled to be considered at par for the purpose of promotion; on the other hand contended the petitioner that the treatment meted out to him was discriminatory and unfair. He was not considered as a member of the General Industries cadre since he was assigned a place in the teaching cadre of the Department; consequently he was not considered for any higher post on the general side till 4.9.1973 and was also not considered for any post in the Orissa School of Mining Engineering, Keonjhar. The petitioner made a grievance of the order of appointment issued to him as lecturer in the Berhampur Engineering School with effect from 1.3.1959 contending that by the said order he lost the service for the period from 18.10.1955 to 1.3.1959. The further grievance of the petitioner was that he was not considered for promotion to the post of Deputy Director (Small Scale) when the opposite party no.2 was considered and promoted to that post on 7th April, 1962 on the erroneous ground that the petitioner was in the teaching cadre whereas the promotional post was in the general cadre, subsequently the said opposite party no.2 was promoted to the post of Principal of Rourkela Polytechnic vide Industries Department notification no.7448-I dated 13.4.1967 bypassing the case of the petitioner. At that time the ground for non-consideration of the case of the petitioner for promotion to the post which was in the teaching cadre was that the opposite party no.2 had already got Class-I (Jr) grade post of Deputy Director earlier. The process of unfair treatment towards the petitioner continued and opposite party no.2 was once again considered and promoted as Joint Director of Industries with effect from 15.10.1968 to the exclusion of the petitioner. The petitioner further contended that he was not considered to higher posts in general cadre on the same plea that he belonged to the teaching cadre of the department; he was not considered for promotion to posts in Class-I (Jr) grade, Class-I (Sr) special grade against posts of Principals and Special Officers and finally for posts of Joint Director in Class-I (Sr) grade when several officers junior to him like Opposite Party No.2 Shri R.J.Jachuk, Shri R.N.Pujhari, Shri B.B.Das, Shri D.C.Mahapatra, Shri N.C.Mishra and Shri B.P.Pal were considered and promoted. All these officers were considered and appointed in Class-I (Jr.)grade, Special grade and Class-I (Sr) grade on 7.4.1962, 13.4.1967 and 15.10.1968 respectively but always excluding the petitioner from consideration. In the circumstances the petitioner claimed to be entitled to be considered for promotion to the aforesaid ranks from the respective dates when the officers junior to him were considered.

So far as Shri Khageswar Das, opposite party no.3 was concerned the case of the appellant was that the said opposite party was not considered for promotion to the post of Joint Director along with opposite party no.2 on the ground that he belonged to the Orissa School of Mining Engineering which was an ex-cadre institution. Shri Das did not make a grievance out of it so long he was getting benefits of being alone considered for promotion to Class-I in the Orissa School of Mining Engineering to the exclusion of the every body else in the Department including the petitioner. It was only when he found that there was no post of an equivalent rank of Joint Director of Industries in the Orissa School of Mining Engineering, he filed a writ petition, OJC No.129 of 1970 in the High Court challenging the appointment of Shri R.J.Jachuck to the post. In that case the High Court held that with the transfer of the Orissa School of Mining Engineering to the administrative control of the Industries Department, Shri Khageswar Das was brought to the common cadre of the Industries Department with effect from 1.4.1960 when the Orissa School of Mining Engineering had been taken over. Accordingly, the High Court directed the Government to consider him for promotion to the post of Joint Director with effect from 15.10.1968 when Shri R.J.Jachuck had been considered and promoted to that rank. The Supreme Court upheld the decision of the High Court and dismissed the appeal filed by the State Government. The State Government carried out the order of the High Court by upgrading the post of Principal of the Orissa School of Mining Engineering to the rank of Joint Director of Industries retrospectively with effect from 15.10.1968 and placed Shri Khageswar Das against the upgraded post and thus he became a Joint Director of Industries. Here again the appellant made a grievance that the posts of Principals of other Engineering Schools though in the cadre were not upgraded nor the case of the petitioner was considered for promotion to the upgraded post of Principal of that school on the old plea that the Orissa School of Mining Engineering was an ex-cadre institution and other officers of the cadre had no right of being considered for the post in the said institution. The petitioner claimed that he should also have been considered for the post of Principal of Orissa School of Mining Engineering along with Shri Khageswar Das. As a consequence of the order of the High Court that Shri Khageswar Das was taken to have been in the common cadre of the Department right from 1.4.1960 on which date the Orissa School of Mining Engineering, Keonjhar had been transferred from the Mining and Geology Department to the administrative control of the Industries Department the officers of the Department including the petitioner who had not been considered for promotion to the post of Principal of that School along with Shri Khageswar Das on the footing that he was an ex-cadre officer, should also have been considered for promotion after the decision of the High Court. But that was not done. It was the further case of the petitioner that Shri Khageswar Das who was a lecturer in Class-II in the School of Mining Engineering said to be holding an ex-cadre post was given an advantage when the post held by him was upgraded to Class-I whereas other posts of lecturer in the other branches of Engineering such as Civil, Electrical and Mechanical in other Engineering Schools remained in Class-II. Thus, Shri Khageswar Das was given advantage of holding higher post against which others could not make any grievance since the stand of the State

Government was that the Orissa School of Mining Engineering was an ex-cadre institution and holders of the posts therein were ex-cadre officers. Even for filling up the post of principal of the Orissa School of Mining Engineering by promotion the qualification of a bachelor's degree in Mining Engineering was prescribed on account of which the petitioner was not considered for promotion and Shri Khageswar Das who was the sixth candidate and who alone had that qualification was given the appointment. A further promotion was given to Shri Khageswar Das by appointing him as Director of Technical Education and Training vide Industries Department notification No.6400-I dated 12.3.1980. The grievance of the appellant was that on such appointment the petitioner who was senior to Shri Khageswar Das by about 5 years was made to work as junior to him.

On the premises noted above the petitioner raised the following contentions :

"(1) That petitioner's seniority in Class-II is to count from the date of his appointment as Asst.Engineer vide Works Department notification dated 14.10.55 (Annexure-I);

(2) That there was no legal ground to exclude his period of service in the Berhampur Engineering School from 30.11.56 to 1.3.59.

(3) That the Berhampur Engineering School being a full fledged Govt. owned, financed and Govt. managed Engineering School it was malafide to treat it as a private institution and to make a faade of taking it over to the administrative control of Industries Department with effect from 12.11.58.

(4) That since the petitioner joined the Berhampur Engineering School after being relieved from his post of Assistant Engineer on terms to work as a lecturer (Civil) on deputation, subsequent refusal to treat his service in the Engineering School as on deputation by way of accepting his earlier conditional resignation vide works Department Notification No.633-3E-IM-399/56-E dated 8.1.57 was illegal, invalid and inoperative in law, specially when many other Engineers of the Works Department had been given deputation facility (Annexure 2 & 3).

(5) That petitioner's date of joining in the Berhampur Engineering School being 30.11.56 petitioner is senior to O.P.No.2 Shri R.J.Jachuck and as such petitioner was due to be considered for promotion to the post of Joint Director with effect from 15.10.68 when Shri Jachuck was considered and appointed as such.

(6) That even conceding for sake of

argument that petitioner's seniority is to count with effect from 12.11.58 when the Berhampur Engineering School was transferred to the administrative control of the Industries Department, even then petitioner is senior to opposite party no.3, Shri Khageswar Das whose service has counted with effect from 1.4.60, when the Orissa School of Mining Engineering was brought under administrative control of the Industries Department.

(7) That the Govt. had upgraded the post of lecturer (Mining Engineering) from the pay scale of Rs.200-700/- to Rs.300-800/- with effect from 20.8.60 on the ground that "it had not been possible to fill up the post", the Govt. were liable to upgrade the posts of lecturer in the other branches of engg. with effect from the same date because there were also the same difficulties to fill up those posts Annexures 6 & 9.

(8) That since after decision of this Hon'ble Court the Orissa School of Mining Engineering was an Institution within the cadre, Government was bound to treat the post of Principal of that School as a promotion post like the posts of Principals in other Engineering Schools and to consider the petitioner for promotion to it with effect from 26.12.1961 when O.P.No.3 Shri Khageswar Das appointed to that post. Annexure 13.

(9) That since O.P.No.3, Shri Khageswar Das has been appointed to the rank of Joint Director by upgrading the post of Principal of the Orissa School of Mining Engineering with effect from 15.10.68 petitioner has a legal right to be considered for promotion to the rank of Joint Director with effect from 15.10.68.

(10) That since O.P.No.3 Shri Khageswar Das has been promoted as Director of Technical Education & Training with effect from 12.3.80 petitioner, as of a legal right, is to be considered for promotion to that post with effect from the said date.

(11) That after consideration of petitioner's case for promotion to the posts as aforesaid if he is found suitable he is to get all consequential benefits including arrears of pay etc."

On the above averments the petitioner prayed for the reliefs noted earlier.

The opposite party no.1-State Government in its counter affidavit refuted the allegations of unfair, biased

and discriminatory treatment against the appellant and in favour of opposite party nos.2 and 3. It was the case of the opposite party no.1 that the petitioner after his initial appointment in the Public Health Department had tendered his resignation which was accepted and he was relieved on 26.11.1956. Thereafter the petitioner served in the Berhampur Engineering School which was under the private management till 12.11.1958 and the institution was taken over by the State Government with effect from 12.11.1958. The contentions of the petitioner that during the period he worked in the Berhampur School of Engineering he was on deputation from government service was denied. The specific case of the opposite party no.1 in this regard was that according to the terms of the take over of the Berhampur School of Engineering the petitioner was appointed in Class-II with effect from 1.3.1959 and the Public Service Commission recommended his case for promotion for absorption in Class-II in its letter dated 20th October, 1962. Therefore, the petitioner could not claim to be senior to opposite party no.2 who was appointed to Class-II on 8th March, 1957. As regards opposite party no.3 the stand taken by the opposite party no.1 was that he was appointed as lecturer in Orissa School of Mining Engineering on 6.2.1960 and his appointment was concurred by the Public Service Commission on 25th March, 1960. Further, the post of lecturer in Class-II held by opposite party no.3 was subsequently upgraded with effect from 20th August, 1960 and as such the petitioner could not claim to be senior to opposite party no.3 nor could he claim to be considered for promotion to the upgraded post of Lecturer in Mining held by opposite party no.3. The further case of the opposite party no. 1 was that the post of Principal, Orissa School of Mining Engineering which fell vacant after opposite party no.3 had been given the upgraded Class-I scale with effect from 20.8.1960 as Lecturer, was filled up by open advertisement through the Public Service Commission. The qualifications prescribed for the post of Principal of Orissa School of Mining Engineering were different from the qualifications for other Engineering Schools in view of the specific requirement of the post. The qualification prescribed for the said post in the Orissa School of Mining Engineering was a bachelor's degree of Mining Engineering. Therefore, the contention of the petitioner that the post of Principals of other Engineering Schools should also have been upgraded, has no merit. He could not also make any claim to be considered for the post of Principal, Orissa School of Mining Engineering as he did not possess the prescribed qualification. Similarly, as regards the appointment of opposite party no.2 to the post of Principal, Rourkela Polytechnic in 1967, the stand of the State Government was that the post was filled up by open advertisement and through the Public Service Commission and therefore, the petitioner could not claim any right of consideration for the post merely by holding the post of Principal in the common cadre. Regarding the grievance relating to the subsequent appointment of opposite party no.2 as Joint Director it was contended on behalf of the State Government that the petitioner's name was also sent to the Public Service Commission along with other ten officers but the Commission recommended opposite party no.2 and as such the petitioner could not have any justifiable grievance on that score.

Regarding the objection taken to the upgradation of the post of Principal held by opposite party

no.3 to the rank of Joint Director with retrospective effect the case of the State Government was that the step for upgradation was taken in pursuance of the decision of the High Court; therefore, there was no justification for upgrading the posts of Principals of other Engineering Schools as claimed by the petitioner. Regarding the objection of the petitioner to the appointment of opposite party no.3 to the post of Director of Technical Education & Training in 1980, it was contended on behalf of the State Government that the said post fell vacant in 1980 which was filled up by promotion from amongst the Joint Directors. Accordingly, the proposal for selection of a suitable officer for appointment to the said post was referred to the Public Service Commission in letter dated 12.2.1980. The cases of all the nine Joint Directors in the cadre including the petitioner along with their C.R.s were referred to the Commission for consideration and recommendation. The Public Service Commission in its letter dated 26.2.1980 recommended only two officers viz. Shri Khageswar Das (opposite party no.3) and Shri R.J.Jachuck (opposite party no.2) in the order of merit. The recommendation of the Commission was accepted and Shri Khageswar Das, (opposite party no.3) who was given the first position by the Commission, was appointed as Director of Technical Education and Training in the notification dated 12.3.1980. The opposite party no.1 contended that there was nothing irregular and illegal in the said appointment.

When the writ petition was pending in the High Court, the case came to be transferred to the Orissa Administrative Tribunal (for short 'the SAT') under Section 29 of the Administrative Tribunals Act, 1985. The SAT by a detailed judgment considered the contentions raised on behalf of the parties and dismissed the writ petition vide its judgment dated 9th August, 1988. The said judgment is under challenge in the present appeal.

From the case pleaded and the reliefs sought in the writ petition, it is clear that the grievances made by the appellant relate to the period from his very entry into service and at different stages during the period of his service. He has made a grievance that by treating 1959 to be the year of his entry into service he lost a period of four years of service as a consequence of which he lost his seniority over respondents 2 and 3. Thereafter he has made the grievance about upgrading the scale of pay of Lecturer-Mining in 1960, giving respondent no.3 Class-I scale of pay in 1961, his appointment to the post of Principal, Orissa School of Mining Engineering, Keonjhar done by the Public Service Commission in 1962, his appointment as Joint Director with effect from 1968 and finally his appointment as Director of Technical Education and Training in 1980. As noted earlier, the writ petition was filed in the High Court in 1980 which subsequently stood transferred to the SAT. By then more than two decades had elapsed since the appellant's entry to the service. Appointment to higher posts of Principal of the School of Mining Engineering, Joint Director of Industries and Director of Industries were made in consultation with the Public Service Commission and appellant's name was sent to the Commission when the appointment to the posts of Joint Director and Director were considered. The Commission did not consider him suitable for appointment to the said posts. For the post of Principal, the appellant was not possessed of the prescribed qualification of a Degree in Mining Engineering and therefore, the question

of considering him for appointment did not arise. It cannot be disputed that the State Government had the power to prescribe proper qualification for the post keeping in view the job requirement, nature of work to be handled by the holder of the post and other relevant factors. Therefore, no exception could be taken to the order of the State Government prescribing a Degree in Mining Engineering as eligibility qualification for the post of Principal, Orissa School of Mining Engineering. It may be noted here that the entire case of the appellant is based on his assumed seniority over respondents 2 and 3. But it was not his case that appointment/promotion to the higher posts noted earlier was to be made solely on the basis of seniority. It is trite law that in making appointment to higher posts merit assumes importance. Therefore, even assuming that the appellant was senior to respondents 2 and 3 thereby he could not have claimed as matter of right to be appointed to the higher posts.

In the context of the facts and circumstances of the case, the Tribunal cannot be faulted for having come to the conclusion that the writ petition filed by the appellant was devoid of merit. Further, any interference in the matter at such a belated stage would have resulted in disturbing chain of settled positions and would have created confusion and complications in the cadre. Therefore, the Tribunal rightly dismissed the writ petition filed by the appellant. Accordingly, the appeal is dismissed, but in the circumstances of the case without any order for costs.