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**(2009) 01 OHC CK 0045**  
**In the Orissa High Court**

Kapilaswar Das and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 30-01-2009

**Acts Referred:**

Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 — Section 11A(2)(b)

**Citation :** (2009) 107 CLT 501 : (2009) 1 OLR 567

**Hon'ble Judges :** Pradip Mohanty, J;L. Mohapatra, J

**Bench :** Division Bench

**Final Decision :** Allowed

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**Judgement**

Pradip Mohanty, J.—In this writ application challenge has been made to the order dated 15.12.1998 passed by the Vice-Chairman, Orissa Administrative Tribunal in O.A. No. 1697 of 1992.

2. The brief fact of the case is that opposite party No. 4 filed O.A. No. 1697 of 1992 in the Orissa Administrative Tribunal seeking a direction to opposite party No. 2-Principal Chief Conservator of Forests, Orissa, Bhubaneswar to promote him to the post of Section Officer Level-II as per Orissa Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975. His grievance is that he belongs to Scheduled Caste and was appointed as a Lower Division Assistant in the office of opposite party No. 2. Subsequently, he was promoted as Senior Assistant. In the said office of opposite party No. 2, the ORV Act and Rules were not observed for promotion to the post of Section Officer, Level-II up to the year, 1989. Even though a post of Section Officer Level-II earmarked for S.C. in the roster fell vacant, a candidate belonging to general category was promoted. In the year 1990, four Senior Assistants belonging to general category were promoted. In 1991, one Assistant belonging to S.T. and another belonging to general category, who is present petitioner No. 2, were promoted. In the year 1992, another Assistant belonging to general category who is present petitioner No. 3, was promoted.

3. No counter was filed in O.A. No. 1697 of 1992. However, the learned Standing Counsel had produced the parawise comments. The Tribunal after hearing opposite party No. 4 and counsel for opposite party Nos. 1 and 2 disposed of the O.A. without waiting for the petitioners to enter appearance with a direction to consider promotion of opposite party No. 4 to the post of Section Officer Level-II earmarked for S.C. according to the roster by a meeting of the D.P.C. on the basis of separate zone of consideration and if there was nothing that would make him unfit for promotion, then he should be promoted against that vacancy. The Tribunal further directed that the seniority of opposite party No. 4 and his present pay should be determined by granting him notional increments from the date of notional promotion. Against that order, the petitioners have preferred the present writ application.

4. Mr, Mishra, learned Counsel for the petitioners submitted that the petitioners had not got any notice from the Tribunal. Therefore, they could not contest the case by filing their counter. Without giving any opportunity of hearing to the petitioners, the Tribunal illegally allowed the Original Application by directing to promote opposite party No. 4 to the post of Section Officer Level-II earmarked for S.C. according to roster on the basis of separate zone of consideration. He further submitted that the Government of Orissa in Tribal Welfare Department vide Resolution dated 4.12.1992 has clarified that as the Specially Declared Gazette posts have been assigned status higher than Class-III, the provision of Section 11-A (2) (b) of the ORV Act read with Section 6 and 7 of the said Act shall regulate filling of the reserved vacancies in promotional appointment. The Tribunal failed to appreciate the aforesaid notification and the provisions of the Act. Therefore, the impugned order of the Tribunal is liable to be quashed.

5. Mr. Rout, learned Additional Government Advocate admitted the above fact. He also filed a counter affidavit annexing the notification dated 4.12.1992 issued by the Government of Orissa in the Tribal Department.

6. Mr. Sengupta, learned Counsel for opposite party No. 4 submitted that there is no illegality committed by the Tribunal in the above order. The D.P.C. met in the year 1989 to consider four vacancies, out of which three vacancies were for the year 1990. But the DPC clubbed both the reserved as well as general vacancies and considered on the basis of common zone of consideration and promoted the petitioners to the above post. He further submitted that there is no bar to consider the case of a reserved candidate against general vacancy if he comes within the zone of consideration. If any such person is promoted, he cannot be considered as a reserved candidate, rather his promotion will not fulfil the quota meant from the reserved candidates. He submitted that as the DPC committed gross irregularity, the Tribunal was justified in directing the Government to reconsider the case of opposite party No. 4 in a DPC by following separate zone of consideration.

7. Perused the case record, the notification dated 4.12.1992 and the provisions of Section 11-A(2)(b) of the ORV Act-read with Sections 6 and 7 of the said Act.

The crux of the case is, while making selection for promotion to the post of Section Officer Level-II whether there should be a common zone of consideration or a separate zone of consideration in case of S.C. and S.T. candidates. Undisputedly, Section Officer level-II post is a specially declared Gazetted post i.e., higher than Class-III and below Class-II. For ready reference Section 11-A(1) and (2) is quoted hereunder:

11-A(1) Where promotion is to be made on the basis of selection, the procedure for filling up of the reserved vacancies shall be as may be prescribed and the number of reserved vacancies will be determined on the basis of the reserved points shown in the roster maintained u/s 5.

(2) Except the promotions mentioned in Sub-section (3) of Section 10;

(a) there shall be a separate zone of consideration for Scheduled Caste and Scheduled Tribe candidates in respect of promotions to Class III posts and within Class III posts;

(b) there shall be a common zone of consideration in respect of promotion other than those specified in Clause (a).

Since the post is higher than Class-III and below Class-II, Section 11 -A (2) (b) will apply. The notification dated 4.12.1992 issued by the Government is clear to this effect. But the Tribunal directed opposite party Nos. 1 to 3 to reconsider the case of opposite party No. 4 by a meeting of the DPC on the basis of separate zone of consideration, which is illegal.

8. For the reasons stated above, this Court sets aside the impugned order of the Tribunal and restore the earlier selection made by the opposite parties. The seniority of the petitioners and present pay shall be determined accordingly by granting them notional increments from the date of their promotion.

In the result, the writ application is allowed. L. Mohapatra, J.

I agree.