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**(2009) 09 OHC CK 0059**  
**In the Orissa High Court**  
**Case No : Writ Petition (C) No. 159 of 2003**

Miss Kabita Jena

APPELLANT

Vs

State Election Commissioner and Others

RESPONDENT

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**Date of Decision :** 16-09-2009

**Acts Referred:**

Constitution of India, 1950 — Article 16(4)  
Orissa Civil Services (Criteria for Promotion) Rules, 1992 — Rule 3  
Orissa State Election Commission (Method of Recruitment and Conditions of Services of Staff) Rules, 1996 — Rule 10, 24(1), 24(2), 6(2), 6(5)

**Citation :** (2009) 09 OHC CK 0059

**Hon'ble Judges :** P.K. Tripathy, J;B.N. Mahapatra, J

**Bench :** Division Bench

**Advocate :** R.B. Mohapatra and S.K. Behera, for the Appellant; Susanta Kumar Das, for the Respondent

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## Judgement

B.N. Mahapatra, J.—The Petitioner, in this Writ Petition, challenges the Order Dated 30.12.2002 (Annexure-8) by which prayer of the Petitioner under Annexure 7 for promotion to the post of Senior Assistant has been rejected. Challenge has also been made to the Order of promotion dated 10.12.2002 (Annexure 6) by which Opp. Party No. 8-Saroj Kumar Pattnaik & Opp. Party No. 9-Sujata Boipai have been given promotion to the post of Senior Assistants & Order Dated 03.08.1999 (Annexure-9) by which Opp. Party No. 7-Uttam Kumar Parida was appointed in the post of Senior Assistant on the ground that such promotion & appointment has been made in clear violation of 80 Point Model Roster & in contravention of the provisions of Rule-10 of the Orissa State Election Commission (Method of Recruitment & Conditions of Services of Staff) Rules, 1996 (hereinafter referred to as "the Rules, 1996") read with Rule 3 of the Orissa Civil Services (Criteria for Promotion) Rules, 1992 (hereinafter referred to as "the Rules, 1992").

2. The facts & circumstances giving rise to the present case are that on 11.8.1994 two posts of Junior Assistant & eight posts of Senior Assistant were

created in the Office of the State Election Commission. On 01.11.1994, further eight posts of Junior Assistants were sanctioned, but out of the eight posts of Senior Assistant earlier created, four posts were subsequently abolished. Out of the remaining four posts of Senior Assistant, Opp.Party No. 6-Bankanidhi Sarangi on 8.3.1996 joined against one such post on deputation from Panchayatiraj Department, which was reserved for Scheduled Tribe. Thereafter, on 5.2.1999 through regular recruitment, the present Petitioner was appointed in the post of Junior Assistant along with nine others. On 3.8.1999, Opp. Party No. 7-Uttam Kumar Parida was brought from the Home Department & was appointed against the unreserved post of Senior Assistant. On 13.11.2002, the Selection Board met for consideration of the eligible candidates from amongst the Junior Assistants for promotion to the remaining two vacant posts of Senior Assistant. Saroj Kumar Pattnaik (O.P.8) & Sujata Boipai (O.P.9) were promoted to the post of Senior Assistant against said two vacancies vide Order Dated 10.12.2002 (Annexure-6) issued by Opposite Party No. 1. Being dissatisfied by the said order, on 16.12.2002 the Petitioner made a representation (Annexure-7) to Opposite Party No. 1, which was rejected by Opposite Party No. 1 under Annexure-8. Hence, this petition.

3. Mr. R.B. Mohapatra, Learned Counsel appearing for the Petitioner vehemently argued that the Order Dated 10.12.2002 passed by Opposite Party No. 1 giving promotion to Opposite Parties 8 & 9 to the post of Senior Assistant & appointment of Sri Uttam Kumar Parida (O.P.7) vide Office Order Dated 3.8.1999 under Annexure-9 without considering the case of the Petitioner for promotion to the post of Senior Assistant are in clear violation of 80 Point Model Roster prescribed by the Government & the Rules referred to above. Appointment of Uttam Kumar Parida (O.P. 7) straightway in the post of Senior Assistant vide Order Dated 03.08.1999 (Annexure-9) & continuance of B.N. Sarangi, who had been brought from Panchayatiraj Department on deputation & placing him in the post of Senior Assistant have blocked the promotional avenue of the Junior Assistants working in the Commission. It was further argued that the Petitioner belongs to SEBC category, but, the Commission has committed a serious error of law in not following 80 Point Model Roster of Reservation, according to which, the four vacancies in the post of Senior Assistant should have been filled up in the following order, i.e., (i) Scheduled Tribe, (ii) Un-reserved, (iii) SEBC & (iv) Schedule Caste. Shri Mohapatra, further submitted that the Petitioner was selected in due process of selection made by the Commission for the post of Junior Assistant & her position in the select list was at Sl. No. 1 amongst the ten selected candidates & therefore she has accrued the right to be considered for promotion to the post of Senior Assistant.

4. Mr. S.N. Das, Learned Counsel appearing on behalf of the Opp. Parties contended that the post of Senior Assistant is a promotional post, & when recruitment to base level post of Junior Assistant was not initiated, the Commission filled up one out of four posts by bringing Sri B.N. Sarangi, Senior Assistant of Panchayatiraj Department on deputation in the year 1996 in terms of

Rule 24(2) of the Rules, 1996. Similarly, another post of Senior Assistant was filled up by way of regular appointment bringing Uttam Kumar Parida (O.P. 7) from the office of the Principal Resident Commissioner, Government of Orissa at Orissa Bhawan, New Delhi in the year 1999 exercising power vested with the Commissioner under Rule 24(1) of the said Rules. Therefore, the grievance of the Petitioner that she was deprived of getting promotion against the vacant post occupied by the deputationist is not correct. To fill up the remaining two vacant posts of Senior Assistant by way of promotion from amongst the Junior Assistants, the Selection Board constituted under Rule 6(2) of the Rules, 1996 met on 13.11.2002. The criteria prescribed for selection to the post of Senior Assistants are merit & suitability with due regard to seniority as laid down under Rule 3 of the Rules, 1992. The Selection Board scrutinized the confidential character rolls of ten Junior Assistants pertaining to preceding three years & made an overall assessment of their merit & suitability & selected Sri Saroj Kumar Pattnaik (O.P. 8) against un-reserved vacancy & Miss. Sujata Boipai against the vacancy reserved for ST. The State Election Commission (hereinafter referred to as "the Commission") approved the recommendation of the Selection Board strictly in terms of Rule 6(5) of the Recruitment Rules. The Petitioner belongs to SEBC category & 80 Point Model Roster prescribed by the Government does not provide reservation for SEBC category in promotional post. The Commissioner after careful consideration rejected the representation dated 16.12.2002 made by the Petitioner. Hence, the Writ Petition is liable to be rejected.

5. We have considered the rival submissions made by the Learned Counsel for the parties & perused the record.

6. Now the questions that fall for consideration by this Court are as follows:

(i) Whether 80 Point Model Roster prescribed by the Government provides any reservation to SEBC candidates in promotional posts?

(ii) Whether the appointment of Shri Uttam Kumar Parida (O.P. 7) as Senior Assistant in the Office of Opposite Party No. 1 made in the year 1999 was in accordance with the provisions of law or in violation of Rule 10 of the Rules, 1996?

(iii) Whether any right had accrued for promotion of the Petitioner to the post of Senior Assistant because of her position at Sl. No. 1 in the entry level merit list.

(iv) prepared for appointment of Junior Assistants? Whether continuance of Shri B.N. Sarangi as Senior Assistant from 08.03.1996 who had been brought on deputation from P.R. Department to the Office of Opposite Party No. 1 blocks the promotional avenue of the Junior Assistants working in the office of Opposite Party No. 1?

7. To deal with the first question, as to whether 80 Point Model Roster prescribed by the Government provides for any reservation for SEBC candidates in the

matter of promotion, it is very much useful to examine what is contemplated in Article 16(4-A) of the Constitution, which reads as follows:

Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes & the Scheduled Tribes which in the opinion of the State are not adequately represented in the services under the State.

Paragraph 6 of Resolution No. SC18442 dated 26.06.1996 issued by the G.A. Department, Government of Orissa on the question of implementation of 80 Point Model Roster in services/posts under the State Government reads as follows:

There is no reservation in promotion for the members not belonging to SC & ST categories. Therefore, their Roster will not be applicable, while filling up the vacancies by promotion, insofar as the members not belonging to SC & ST are concerned."'' Note-4 appended to 80 Point Model Roster further clarifies that for filling up of the reserved vacancies by way of promotion the Roster will be applicable for the members belonging to SC & ST only.

Thus, the Government Resolution dated 26.06.1996 & 80 Point Model Roster prescribed by the Government make it amply clear that the Roster will not apply while filling up of vacancies by way of promotion in respect of the members not belonging to SC & ST. Since the Petitioner belongs to SEBC category, 80-Point Model Roster is of no help to her in relation to promotion.

8. To deal with the second question regarding appointment of Uttam Kumar Parida (O.P. 7) in the post of Senior Assistant, it is necessary to examine what is contemplated in Rule 10 & Rule 24 (1) of the Rules, 1996. Relevant portions of the said two Rules are quoted below:

10. Appointment of Senior Assistants- The posts of Senior Assistant shall be filled- up by way of promotion from amongst the following categories of employees, namely;

(a) Junior Assistants, completing three years of service as such in the Office of the Commission on the day on which the Selection Board meets;

(b) Senior Typist who have completed ten years of service as such in the Office of the Commission & have passed Intermediate or equivalent examination by the date on which the Selection Board meets.

Provided that their quota shall not exceed ten per cent of the total vacancies in the post of Senior Assistant subject to the maximum of 10 in a year.

24. Commissioner's power of appointment-(1) Notwithstanding anything contained in these rules the Commissioner on the recommendation of the Selection Board & for good & sufficient reasons may appoint a person to a post, if such person is, (a) working under the Government in a post identical with the post in Commission; or (b) working under the Government in a post lower in

rank to the post under the Commission provided that such person otherwise qualifies for appointment to the higher post & no qualified candidates in the office of the Commission are so available for consideration & appointment.

Rule 10 of the Rules, 1996 deals with appointment of Sr. Assistants. According to the said Rule, the posts of Senior Assistants shall be filled up by way of promotion from amongst the Junior Assistants completing 3 years of service in the Office of the Commission by the date on which the Selection Board meets, & from the cadre of Senior Typists who have completed 10 years of service in the Office of the Commission & have passed. Intermediate or equivalent examination by the date on which Selection Board meets. However, their quota shall not exceed 10% of the total vacancy in the post of Senior Assistant subject to maximum 10 in a year.

Rule 24 (1) of the said Rules deals with Commissioner's power of appointment. This rule says that the Commissioner on the recommendation of the Selection Board & for good & sufficient reasons may appoint a person to a post, if such person is (a) working under the Government in a post identical to the post in the Commission, or (b) working under the Government in a post lower in rank to the post under the Commission provided that such person otherwise qualifies for appointment to the higher post & no qualified candidates in the Office of the Commission are so available for consideration & appointment.

Rule 24 (1) starts with a non-obstante clause, i.e., "notwithstanding anything contained In these Rules....." Therefore, Rule 24 has overriding effect over & above all other provisions of the Rules including Rule-10. This Rule empowers the Commission to appoint a person in a post with the recommendation of the Selection Board.

In the present case, it is not in dispute that at the time of appointment of Uttam Kumar Parida (O.P. 7) as Senior Assistant in the Office of the Commission in the year 1999, no other qualified candidate in terms of Rule 10 was then available in the Office of the Commission for consideration to the post of Senior Assistant. The Selection Board constituted to consider the appointment of Senior Assistants met on 03.08.1999 & considered the application of Uttam Kumar Parida (O.P. 7) who was working as Store Assistant in Orissa Bhawan, New Delhi & recommended for his appointment as Senior Assistant against the vacant post in the Commission. The Commissioner approved the said recommendation of the Selection Board.

In view of the above, the appointment of Uttam Kumar Parida (O.P.7) as Senior Assistant in the Office of the Commission in the year 1999 is valid & held to be in accordance with the Rules.

9. The third question is as to whether any right has accrued in favour of the Petitioner for promotion to the post of Senior Assistant because of her position as Sl. No. 1 in the entry-level merit list prepared for appointment of Junior Assistant.

The criteria for promotion to the post of Senior Assistant are merit & suitability with due regard to seniority. Rule 7(3) of the Rules, 1996 says that in case of appointment on promotion the Selection Board would prepare a list of successful candidates which shall be equal to the number of vacancies for different posts on the basis of merit & suitability with due regard to seniority. The above Rule makes it clear that in case of promotion, merit plays a dominant role & comes first as the criteria under the statutory rule being merit & suitability with due regard to seniority. If the question of merit of three employees namely, the Petitioner Kabita Jena, Opp. Party No. 8-Saroj Kumar Patnaik & Deepak Ranjan Mohanty is taken into consideration, the rating in CCR of Deepak Ranjan Mohanty is found better than the two other employees. It appears, Petitioner-Kabita Jena got "good" rating in all the three preceding years, Deepak Ranjan Mohanty got three "outstanding" ratings in the CCRs & Saroj Kumar Pattnaik (O.P. 8) got two "outstanding" ratings & one "very good" ratings in three preceding years. So far as the question of merit is concerned, amongst all the three, Deepak Ranjan Mohanty is found to have got higher ratings & as the Petitioner has got "good" rating in all the three preceding years, she was not found suitable for promotion by the Selection Board. Therefore, we do not find any wrong with the Commissioner for not giving promotion to the Petitioner to the post of Senior Assistant in spite of the fact that the position of the Petitioner was at Sl. No. 1 in the entry-level merit list prepared for appointment to the posts of Junior Assistants.

10. To deal with the fourth question regarding continuance of Shri B.N. Sarangi in the post of Senior Assistant, it is necessary to examine what is contemplated in Rule 24(2) of the Rules, 1996.

Rule 24(2) of the State Election Commission (Method of Recruitment & Condition of Services of Staff) Rules, 1996 deals with the power of the Commissioner to bring any staff on deputation from Government. The said Rule reads as follows:

Notwithstanding anything contained in these Rules the Commission may bring any staff on deputation from Government for such period as deemed necessary.

As it appears by exercising power conferred under Rule 24(2), the Commissioner may bring any staff on deputation from Government for a temporary period. This power may be exercised by the Commissioner ordinarily when no eligible candidate for any post is available in the establishment itself.

Law is well settled that there is no vested right in a deputationist to continue for long on deputation. Apex Court in *State of Punjab v. Inder Singh and Ors.* AIR 1998 SC 7 held as under:

Concept of "Deputation" is well understood in service law & has a recognized meaning. "Deputation" has a different connotation in service law & the dictionary meaning of the word "deputation" is of no help. In simple words, "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say,

to another department on a temporary basis. After the expiry period of deputation, the employee has to come-back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules.

The Apex Court in *Kunal Nanda Vs. Union of India and Another*, , held as under:

The basic principle underlying deputation itself is that the person concerned can always & at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments & there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.

The Apex Court in AIR 1988 1033 (SC) , held as under:

Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service & fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate & stagnation kills the desire to serve properly.

The Apex Court in *Council of Scientific and Industrial Research and Another Vs. K.G.S. Bhatt and Another*, held that every management must provide realistic opportunities for promising employees to move upward. The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale & ineffectual performance, among both non managerial employees & their supervisors. There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions.

In *Dr. Ms. O.Z. Hussain Vs. Union of India and others*, , the Hon''ble Supreme Court again stressed upon the need of providing promotional avenues to increase efficiency in public service as the stagnation reduces efficiency & makes the service ineffective.

Moreover, the expression "for such period as deemed necessary" appearing in Rule 24(2) suggests that this provision empowers the Commission to bring any staff on deputation from Government for temporary period as deemed necessary. The discretion vested in the Commissioner by this Rule is expected to be exercised reasonably, judiciously & fairly & not to be exercised in a whimsical & arbitrary manner.

11. In the present case, B.N. Sarangi (O.P.6) was appointed in the post of Senior Assistant on basis of deputation in the year 1996 when no eligible candidate for the said post was available. In the year 2002, ten Junior Assistants were working in the Commission who had completed three years of service, were eligible to be considered for promotion to the posts of Senior Assistants. However, the Commissioner has considered the case of ten Junior Assistants only for two

promotional posts instead of three because one of such posts was occupied by B.N. Sarangi (O.P. 6) on deputation. Needless to say that an employee always works with devotion & sincerity with a hope to get promotion in time to the next higher post. If due importance is not given to such legitimate expectation of the employees that will create discontentment in the minds of the sincere employees, which should be avoided for smooth functioning of any Department in the Government. Be that as it may; in view of Rule 24(2), the order of deputation of Mr. B.N. Sarangi can not be termed as illegal nor that order needs our interference. However, we desire, Opp. Party No. 1 shall examine the this aspect keeping in view the decisions of the Apex Court & the opinion expressed by us hereinabove.

12. The Writ Petition is accordingly disposed of.