

**(2008) 10 OHC CK 0067**  
**In the Orissa High Court**  
**Case No : OJC No. 2675 of 1999**

Mohammad Rahemat Hossain

APPELLANT

Vs

The Registrar, Orissa Administrative Tribunal, Principal Bench,  
Bhubaneswar 12 and Others

RESPONDENT

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**Date of Decision :** 23-10-2008

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19, 20, 21

**Citation :** (2008) CLT 535 Supp

**Hon'ble Judges :** L. Mohapatra, J; B.K. Patel, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

B.K. Patel, J.—By the common order dated 30.10.1998 impugned in this writ application, the Orissa Administrative Tribunal dismissed Petitioner's application u/s 19 of the Administrative Tribunals Act, 1985 bearing O.A. No. 1231 of 1996 and other three original applications filed by other applicants. In this writ application the Petitioner has prayed for quashing of that part of the order dated 30.10.1998 by which O.A. No. 1231 of 1996 was dismissed. The aforesaid O.A. was filed by the Petitioner challenging the promotion order dated 13.5.1996 of opposite parties 4 to 19 to the post in the rank of Junior Class- I Agricultural Service on ad hoc basis.

2. Facts of the case are that the Petitioner having B.Sc. Degree In Agriculture was appointed as Supervisor on 29.12.1967 and subsequently was promoted to the rank of Junior Agriculture Officer in Class-II General Cadre. The private opposite parties 4 to 19 were appointed as Supervisors subsequent to the appointment of the Petitioner. From the very inception of Agriculture Service promotion to Agriculture Class-II was always made by promotion from the Supervisors. However, in 1977 an advertisement was made for recruitment to Class-II Specialist Cadre. In the gradation list his position was at serial No. 520. It may be stated here that there was No. rule governing the recruitment and

service conditions of the officers borne in Agriculture Service before the State Government issued resolution No. 30623 dated 30th August, 1978. Prior to that the initial appointments were used to be made at the level of Agriculture Overseers from among Agriculture and Non-Agriculture Graduates and all other posts in the cadre were used to be filled up by promotion from the lower ranks except Class-II Specialists cadre which were to be filled up entirely by direct recruitment through O.P.S.C. By the 1978 resolution the post of Agriculture Supervisor was re-designated as Junior Agriculture Officer and the entry qualification for the said post was fixed as Graduate Degree in Agriculture. The Junior Class-II General cadre was abolished and the existing posts were upgraded to Senior Class-II (General) which were to be filled up by promotion from the rank of Junior Agriculture Officer. The 1978 Resolution created Junior Class-II (Specialists Cadre) to be filled up entirely by direct recruitment by candidates with Post-Graduate Degree in the appropriate discipline. Like wise vacancies in Class-II Senior Specialists cadre was decided to be filled up by promotion from the Junior Class-II (Specialists Cadre) and the post of Deputy Director (Agriculture) was decided to be filled up by way of promotion from amongst the persons in Senior Class-II General and Specialist cadres and for this purpose it was decided that the seniority should be reckoned from the date of promotion to the Senior Class-II General and Senior Class-II Specialists ranks. The Petitioner was promoted to the Class-II rank on 4.7.1988. On 19.12.1989 the Agriculture Department circulated a provisional gradation list in which opposite parties 4 to 19 who were junior to him, in the grade of Junior Agriculture Officer were shown seniors to him. He made representation for restoration of his seniority but the Government without considering the same promoted Respondents 4 to 19 to the Junior Class-I cadre basing on the provisional gradation list. Case of the Petitioner is that incumbents from the cadre of Junior Agriculture Officers were always being promoted to Class-II General Cadre on the basis of seniority-cum-merit and Junior Agriculture Officers with post-graduate qualification were being promoted to the Class-II Specialist cadre. By virtue of the 1978 Resolution opposite parties 4 to 19 were treated as senior to the Petitioner in Class-II gradation list and were promoted to Junior Class-I. Although under 1969 Government order the Petitioner was senior to the opposite parties 4 to 19 but by virtue of the 1978 resolution officers belonging to Class-II Specialist cadre became senior to him and got promotion to higher rank. Further case of the Petitioner is that although Class-II (Senior Specialist cadre) was intended to be constituted under the 1978 resolution but No. such cadre was in fact constituted. Therefore, No. person belonging to Specialist cadre existed and all officers therefore belonged to the General cadre and, hence, promotion to Junior Class-I should have been considered on the basis of the seniority in the Class-II General cadre. Some of the employees belonging to the General cadre had filed O.J.C. No. 1282 of 1980 challenging the 1978 Resolution before this Court which was transferred to the Orissa Administrative Tribunal and was renumbered as T.A. No. 270 of 1986. After hearing, though the Tribunal held the promotion of opposite parties 2 to 7 therein as illegal and unsustainable in law,

since it was of the view that quashing their promotion at such belated stage would amount to unsettling of the settled position and as by that time those opposite parties had already retired, the Tribunal held that their promotion cannot be allowed to act to the detriment of the claims of the Petitioners therein and directed that the Petitioners therein were entitled to be considered for promotion from the date on which opposite parties 2 to 7 were promoted to the Class-I.Agriculture service. The Tribunal dismissed the O.A. filed by the present Petitioner holding that the Respondents 3 to 20 therein became senior to the Petitioner and other applicants in the connected O.As. in the rank of Class-II by virtue of their direct appointment to Class- II Specialist cadre. The Tribunal came to hold that the Petitioner was senior to the Respondents 3 to 20 therein in the rank of Junior Agriculture Officer, but pursuant to an advertisement in 1977 for filling up certain Specialist Class-II posts in different disciplines except Agriculture Chemistry, Respondents 3 to 18 who had Post-Graduate qualifications in different disciplines applied for the posts and got selected through the O.P.S.C. and were given appointment to the Class-II Specialist cadre in 1978 and Respondents 19 and 20 having such qualification were directly appointed to Class-II Specialist cadre in 1982. As the applicant-Petitioner became junior to the Respondents-opposite parties 3 to 20 on their direct recruitment to Class-II (Specialist) posts, they got promotion rightly and validly to the next higher rank of Junior Class-I.

3. Counter-affidavit has been filed on behalf of the opposite party No. 2. It has been stated therein that as per 1978 resolution the post of Deputy Director (Agriculture) shall be filled up by way of promotion from amongst the persons in Senior Class-II General and Senior Class-II Specialist cadre and the seniority shall be counted from the date of appointment in the respective cadre. It is the further case of the opposite party No. 2. that in the absence of statutory rules, appointment to the Class-II and Class-I Agriculture service were and are being made on the basis of Government orders, resolutions and executive instructions issued from time to time and the 1978 Resolution provides for a new set of guidelines issued by the Government with a view to streamline appointments to various cadres of Agriculture service and holds the field. The opposite parties were directly appointed to the Junior Class-II Specialist post earlier to the promotion of the Petitioner to the Class-II post and their seniority having been counted from the date of such appointment, the Petitioner cannot have any legitimate grievance against the same. The averment of the Petitioner to the effect that the 1978 Resolution has been overruled by the Tribunal in T.A. No. 270 of 1986 has been denied. It has further been stated that direct recruitment to the Specialist posts continued from 1978 to 1980-81. This fact has also been admitted by the Petitioner in paragraph 12 of the writ petition. Therefore the averment of the Petitioner that the one time attempt of recruiting a few persons to Class-II Specialist cadre only in 1977 has resulted in change of seniority list by erroneously taking the Specialists into the ambit of General cadre for future promotion i.e. Junior Class-I has been denied. The Petitioner was promoted to

the Class-II rank on 4.7. 1988 whereas the opposite parties were appointed directly to the Class-II Specialist cadre in the year 1978 and 1982. Therefore, admittedly they were senior to the Petitioner in Class-II cadre. Hence, the Tribunal has rightly rejected their claim.

4. The Petitioner filed a rejoinder to the counter affidavit filed by opposite party No. 2. in which mainly the averments made in the writ application are reiterated. However, in the rejoinder the Petitioner has categorically admitted that the private opposite parties were directly recruited to Class-II Senior Branch through O.P.S.C. and joined in the cadre on 11.07.1978, i.e., before 1978 Resolution came into force. Nonetheless, the Petitioner has contended therein that he having been promoted to Class-II General post on 13.06.1985, the opposite party Nos. 4 to 20 who were junior to him in the rank of supervisor cannot claim seniority over him in the general gradation list and that they should have waited to be enlisted in the general gradation list till 13.06.1985. In this connection, the Petitioner relies upon the instructions stated to be contained in the resolution issued in the year 1969. It is also pertinent to note that at Paragraph 27 of the rejoinder the Petitioner has averred that the seniority of persons other than opposite party Nos. 4 to 20 should have shown as junior to the Petitioner in the impugned gradation list. The tenure of the rejoinder reveals that the Petitioner has sought reliance from the order of the Tribunal passed in above referred T.A. No. 270 of 1986. The Petitioner has contended that, when the Class-II cadre consisted of promotees as well as direct recruitees from junior branch and specialist branch, No. discrimination should have been made while promoting officers of the Class-II cadre to the higher cadre and that though opposite party Nos. 4 to 20 were directly recruited, in substance they were all promoted from the feeder cadre of Junior Agriculture Officers/Supervis Ors.

5. Out of the private opposite parties, opposite party No. 13 has filed counter affidavit supporting the impugned order. The material averments in the counter affidavit are that the Tribunal in T.A. No. 270 of 1986 did not declare the 1978 Resolution to be invalid though there was a prayer made in that application to quash the 1978 Resolution for which such prayer has to be deemed to have been rejected. It is also averred that there is No. scope for the Petitioner to challenge the recruitment of the private opposite parties by the O.P.S.C. in the year 1977 as late as in the year 1996 in view of the bar contained u/s 21 of the Administrative Tribunals Act, 1985. Also, it is averred that as the Petitioner has admitted to have filed representation against the gradation list after the publication thereof, there is No. scope for the Petitioner to approach the Tribunal after expiry of one year and six months from the date of filing of the representation in view of bar contained u/s 20 of the Administrative Tribunals Act, 1985. As the Petitioner was not in the Class-II cadre in the year 1978 he has No. scope to challenge non-inclusion of his name in the Class-II gradation list.

6. Having heard from both the sides and upon close scrutiny of materials on record, it is found that though the Petitioner assails the promotion of the private

opposite parties from Class-II cadre to junior Class-I, his real grievance is against appointment of the private opposite parties in the Class-II cadre. The Petitioner assails the gradation list in the Class-II cadre which is admittedly published in 1989. The Petitioner also admits to have filed representation against the gradation list. However, he does not appear to have pursued the representation by approaching the Tribunal within the period of limitation prescribed u/s 21 read with Section 20 of the Administrative Tribunals Act, 1985. Even if No. final order was passed on the representation made by the Petitioner, he could have approached the Tribunal after expiry of six months from the date of submission of the representation by submitting original application within a period of one year thereafter. By filing the present application the Petitioner has sought to raise an issue which has been finalized since long. Unless the gradation list is held to be illegal, there is No. scope to hold that promotion of the private opposite parties to the higher grade was invalid. The Petitioner cannot be allowed to indirectly challenge the gradation list which could not have been otherwise challenged after the expiry of the period of limitation.

7. On merit also, in view of admission of the Petitioner referred to above, there is No. basis for the Petitioner to claim seniority over the private opposite parties in Class-II cadre. The private opposite parties might have been junior to the Petitioner as Supervisor. However, the Petitioner admits that the private opposite parties were directly recruited to and appointed in Class-II cadre long before he was promoted to that cadre. The Petitioner entered into Class-II cadre by promotion whereas private opposite parties were directly recruited to that cadre. Direct recruitment was made in accordance with Government instructions in existence during that period. The Petitioner did not choose to challenge the process of direct recruitment earlier. Therefore, at this stage, there is absolutely No. scope for the Petitioner to contend that the private opposite parties were not senior to him in the Class-II cadre.

8. Reliance of the Petitioner on the order of the Tribunal passed in T.A. No. 270 of 1986 is also misplaced. The extract of the copy of the said order filed by the Petitioner goes to show that the applicants in T.A. No. 270 of 1986 had challenged the disturbance of their seniority without any notice and without even any provisional gradation list. By the year 1986 when T.A. No. 270 of 1986 was instituted No. seniority list had also been circulated. In the present case there is No. scope for the Petitioner to contend that there was No. gradation list in the Class-II cadre. Also in the present case the private opposite parties were appointed by way of direct recruitment in the Class-II cadre and not promoted as was the case in T.A. No. 270 of 1986.

9. In such view of the matter, we do not find any infirmity in the impugned order. Therefore, the writ petition stands dismissed.

L. Mohapatra, J.

10. I agree.