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**(2003) 01 OHC CK 0010**

**In the Orissa High Court**

**Case No : O.J.C. No's. 6160, 6161 and 6162 of 1999**

Regional Director, Employees' State Insurance Corporation

APPELLANT

Vs

Dharanidhar Dixit and Others

RESPONDENT

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**Date of Decision : 30-01-2003**

**Acts Referred:**

**Citation : (2003) 2 LLJ 781**

**Hon'ble Judges : B.P. Das, J;B. Panigrahi, J**

**Bench : Division Bench**

**Advocate : B.S. Tripathy and M.K. Rath, for the Appellant; P.V. Ramdas and P.V. Balakrishna Rao, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

B. Panigrahi, J.—These three writ petitions arise out of a common order passed by the Central Administrative Tribunal, Cuttack Bench in O.A. No. 456 of 1990 and O.A. Nos. 131 and 132 of 1991 whereby and whereunder the petitioner has been directed to convene a Review Departmental Promotion Committee to consider the cases of the opposite party No. 1 -in all the writ petitions afresh. On the basis of the recommendation of the Review D.P.C., the promotion and/or their seniority/regularisation of their services shall be maintained.

2. The skeletal picture of the facts: emerged in these writ petitions are as follows:

The opposite party No. 1 in the above writ petitions had challenged their supersession by their juniors even after the Departmental Promotion Committee found them suitable for the purpose of holding the promotional post. The Departmental Promotion Committee in its meeting held that opposite party Nos. 2 and 3 were suitable to hold the promotional post. Therefore, the applicants who are O.P. No. 1 in the above cases, challenged before the Tribunal about the propriety of the resolution of the Departmental Promotion Committee. Opposite party No. 1- Dharanidhar Dixit in O.J.C. No. 6160/1999 was holding a post of Head Clerk in the Regional Office of the Employees State Insurance Corporation,

Bhubaneswar. A prayer was made by opposite party No. 1 for directing the petitioner to convene a Review D.P.C. to consider his case for regular promotion as Head Clerk w.e.f. 1986 and for fixation of his seniority in the cadre of Head Clerk above opposite party Nos. 2 and 3 and for regularisation of his service as Head Clerk from August 12, 1982, when he was given ad hoc promotion in the post of Head Clerk. The Central Administrative Tribunal after considering the respective contention raised before it, held that the opposite party No. 1 was illegally and unlawfully superseded by opposite party Nos. 2 and 3 as a reason whereof they directed the petitioner to convene a Review Departmental Promotion Committee. Therefore, being aggrieved by such order, the petitioner has filed these cases. It may be stated here mat the parties who are directly affected by such order have not challenged the order of the Tribunal. The opposite party No. 1, Dharanidhar Dixit joined on April 20, 1971 as L.D.C. in the Corporation. It is found that in course of service, he being found suitable, was promoted to the rank of U.D.C. with effect from February 1, 1977. He was confirmed in the post of Upper Division Clerk on and from March 16, 1983 but was given ad hoc promotion to the rank of Head Clerk from August 12, 1982.

3. Similarly, the opposite party No. 1, Saroj Kumar Routray in O.J.C. No. 6161 of 1999 joined as L.D.C. in the petitioner-Corporation on January 14, 1972 against a regular vacancy. He was promoted as U.D.C. on ad hoc basis w.e.f. February 1, 1977. His appointment was regularised on and from July 17, 1981. His service as U.D.C. was continuous and uninterrupted from February 1, 1977 till July 17, 1981. He was promoted to the post of Head Clerk/Assistant on August 25, 1982 on ad hoc basis and has been continuing from that date.

4. The opposite party No. 1 A.B. Ghose in O.J.C. No. 6162 of 1999 joined as a Lower Division Clerk against a regular vacancy on and from May 10, 1971. He was promoted to the rank of Upper Division Clerk on and from February 1, 1977 and he was subsequently regularised on July 17, 1981. He rendered continuous and uninterrupted service as senior Division Clerk from July 17, 1981. His ad hoc service as Upper Division Clerk from December 1, 1977 to July 17, 1981 was continuous and uninterrupted. The opposite: party No. 1 was promoted as Head Clerk/Assistant/Manager Grade-III on August 20, 1982 and regularised as such w.e.f. May 15, 1989. The opposite party No. 2 R,K. Nayak joined the Corporation on April 3, 1976 as L.D. Clerk much after opposite party No. 1 joined as such. He was also given promotion after opposite party No. 1 got promotion in the rank of U.D.C. The opposite party No. 2 similarly was allowed to officiate in the rank of Head Clerk-Cum-Assistant w.e.f. May 15, 1989 which was after the promotion given to opposite party No. 1.

5. The petitioner's case is that the recruitment/promotion to various posts under the Corporation is being regulated under the provisions of the Employees' State Insurance Corporation (Recruitment) Regulations, 1965. As per Clause 28 of the 1965 Regulations, promotion to the post of Head Clerk/Assistant is to be made in the following manner.

(a) 50 per cent of the vacancies are to be filled up by promotion on the basis of selection on merit with due regard to seniority, and

(b) The remaining 50 per cent vacancies are to be filled up on the basis of seniority subject to the rejection of unfit.

6. The promotion to the post of Head Clerk was usually being given on the basis of all-India seniority. But the promotion system was decentralised by virtue of the order dated November 15, 1990 and the Regional Directors were authorised to fill up the posts of Head Clerks. After such decentralisation, the Regional Director time and again used to convene a Departmental Promotion Committee for filling up of the posts of Head Clerk. The D.P.C. used to follow the rules and instructions scrupulously which were in force at the relevant time. The stand taken by the petitioner is that while considering the promotion of opposite party No. 1, the D.P.C. could not have taken into consideration about the ad hoc promotion of opposite party No. 1. The Department of Personnel and Training has issued a Circular on April 10, 1989 which reads as follows:

"(1) Having regard to the levels of the posts to which promotions are to be made, the nature and importance of duties attached to the posts, a bench-mark grade would be determined for each category of posts for which promotions are to be made by selection method. For all Group "C", Group "B" and Group "A" posts upto (and excluding) the level of Rs. 3700- 5000/-excepting promotions for induction to Group-A posts or services from lower groups, the bench-mark would be good. All officers whose overall grading is equal to or better than the bench-mark should be included in the panel for promotion to the extent of the number of vacancies. They will be arranged in the order of their inter se seniority in the lower category without reference to the overall grading obtained by each of them provided that each one of them has an overall grading equal to or better than the bench-mark of "good".

7. On perusal of the proceedings of the Departmental Promotion Committee, it appears that they have overlooked the Circular dated April 10, 1989 and recommended promotion of opposite party Nos. 2 and 3 ignoring the claim of opposite party No. 1. Therefore, the Tribunal has rightly held that the petitioner could not have overlooked such an important Circular and recommended the cases of opposite party Nos. 2 and 3 for their promotion. The sitting of the Departmental Promotion Committee was undisputedly convened on May 4, 1989. The important guidelines issued by the Department of Personnel and Public Grievance is quoted hereinbelow:

Preparation of Year-wise panels by D.P.C. where they have not met for a number of years.

"6.4. 1. Where for reasons beyond control, the D.P.C. could not be held in an year(s), even though the vacancies arose during that year (or years), the first D.P.C. that meets thereafter should follow the following procedures:

(i) Determine the actual number of regular vacancies that arose in each of the previous year(s) immediately preceding and the actual number of regular vacancies proposed to be filled in the current year separately.

ii) Consider in respect of each of the years those officers only who would be within the field of choice with reference to the vacancies of each year starting with the earliest year onwards.

(iii) Prepare a "Select List" by placing the select list of the earlier year above the one for the next year and so on."

8. In our view the Tribunal was perfectly justified in directing the petitioners to convene a Review D.P.C. since the petitioner did not take into consideration the guidelines issued by the Government of India while the Departmental Promotion Committee took up for the promotion of different categories of employees. It has been indicated in the guidelines as (1) outstanding, (2) very good, (3) Good, (4) average and (5) unfit.

9. Mr. Ramdas, learned counsel appearing for opposite party No. 1 submits that on a comparative perusal of the C.C. Rs., it is found that his client possesses a better C.C.R. than opposite party Nos. 2 and 3. We, therefore, feel it unnecessary to go into such details. It will amount to usurping the function of the Departmental Promotion Committee while considering the case of the opposite parties. It is, therefore, left to the discretion of the authorities to take a decision in terms of the Circular dated April 10, 1989.

10. Accordingly, in the light of the above discussions, the writ petitions are dismissed. In the facts and circumstances of the case, there will be no order as to costs.

B.P. Das, J.

11. I agree.