

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OA) No.1627 of 2019

Ramesh Chandra Mishra .. Petitioner

-versus-

State of Odisha & another .. Opp. Parties

For Petitioner

Mr. Dayananda Mohapatra,
M.R. Pradhan, M. Mohapatra
J.M. Barik and
P.K. Singhdeo

For Opposite Parties :

Mr. P.C. Das,
Addl. Standing Counsel

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 19.05.2022 | Date of Judgment: 14.10.2022

A.K. Mohapatra, J. :

1. The instant writ application, which has been registered as WPC(OA) No.1627 of 2019, has been registered after re-registering O.A. No.1627 of 2019, which was transferred to this Court after abolition of the Odisha Administrative Tribunal.

2. Initially, the Petitioner as applicant had filed the O.A. before Odisha Administrative Tribunal, Principal Bench, Bhubaneswar with the following prayer:-

- “I. The final gradation list as under Annexure-22 may be quashed and the order dated 20.03.2017(Annexure-23) may be declared as incorrect, and
- II. The respondent no.1 may be directed to declare the applicant as promoted to the rank of Section Officer w.e.f. 12.01.1998/16.11.1998 when Sri Gagan Bihari Tripathy was so promoted, or
- III. In the alternative declare the applicant as promoted as Section Officer w.e.f. 22.12.2006 when Sri Hare Krushna Panda was promoted as Section Officer, and
- IV. Issue appropriate direction to pay the actual financial benefit w.e.f. 12.01.1998 or 22.12.2006 as the case may be to the applicant on the basis of such retrospective promotion.
- V. Pass any appropriate order/direction as per deem fit and proper for which the applicant shall ever pray.”

3. Heard Mr. D. Mohapatra, learned counsel appearing on behalf of the petitioner and Mr. P.C. Das, learned Additional Standing Counsel appearing on behalf of the State opposite parties. Perused the pleadings of the respective parties, the documents filed as Annexures and relied upon by the parties.

4. The case of the petitioner, as culled out from the writ petition as well as rejoinder filed by him, is that the applicant joined in service initially as an L.D. Assistant in the High Court

of Orissa (subsequently re-designated as Junior Assistant) on 01.03.1982. On being relieved from service by the Hon'ble High Court of Orissa on 17.12.1985, the applicant joined in the judgeship of Puri on 20.12.1985 and was posted as Junior Clerk, he was allowed to join on deputation as Junior Assistant in Odisha Administrative Tribunal and as such joined at new place of posting as Junior Assistant in the Odisha Administrative Tribunal on 01.10.1986. Thereafter while working in the Odisha Administrative Tribunal, the petitioner was promoted to the post of Senior Assistant on 30.01.1990. It may not be out of place to mention here that one Sri Gagan Bihari Tripathy joined at the Odisha Administrative Tribunal on deputation on 31.10.1990 as Senior Assistant.

5. While the matter stood thus, on 29.12.1995, a provisional gradation list concerning the Senior Assistants working in the Odisha Administrative Tribunal was published showing the name of Sri Gagan Bihari Tripathy above the present petitioner. Although objections were called for before finalizing the gradation list, however, after considering such objections, the final gradation list was published on 06.02.1998 showing the above named Sri Gagan Bihari Tripathy above the present

petitioner. However, it has also been asserted by the petitioner that before the final gradation list was published on 06.02.1998, the above named Sri Gagan Bihari Tripathy was promoted as Section Officer on 12.01.1998 on officiating basis for a period of six months. Challenging the final gradation list dated 06.02.1998, the petitioner approached the Orissa Administrative Tribunal by filing O.A. No.1962 of 1998 on 29.10.1998. The above named Gagan Bihari Tripathy was arrayed as respondent no.6 to the above noted O.A. Sri Gagan Bihari Tripathy was regularly promoted to the post of Section Officer on 16.11.1998. Though OAT while taking up the above noted O.A. passed an interim order to the effect that any further action taken / to be taken in pursuance of the gradation list shall be subject to result of O.A. and in case the final gradation list is setting aside and quashed and the petitioner is declared as senior to the private respondent, they would be entitled to past benefits. It is pertinent to mention here that O.A. No.1962 of 1998 along with O.A.1990 and O.A. No.197 of 1999 were heard analogously and allowed vide judgment dated 13.04.2007 thereby quashing the provisional gradation list of Senior Assistants dated 29.12.1995 and final gradation list dated 06.02.1998 and further directed the opposite party authority to prepare a fresh gradation list in accordance with Orissa

Administrative Tribunal (Recruitment and Conditions of Service of Officers and Staff) Rules, 1999 (hereinafter referred to as “the Rules, 199”)

6. The common judgment dated 13.04.2007 passed in O.A. No.1962 of 1998 along with a batch of similar other matters was challenged before this Court by filing a writ petition bearing W/P.(C) No.10114 of 2007. The order passed by the Orissa Administrative Tribunal was confirmed by this Court vide judgment dated 09.03.2011 in W.P.(C) No.10114 of 2005 and judgment dated 21.04.2011 in W.P.(C) No.10717 of 2007. Thereafter, again another revised gradation list of Senior Assistants was published on 10.11.2013. In the said gradation list, the petitioner was placed at Sl. No.8 below his juniors. It has also been mentioned that on the basis of the seniority of the present petitioner, he should have been placed at Sl. No.01 in the gradation list dated 10.10.2013.

7. The petitioner being aggrieved by the action of the opposite parties authorities, filed another O.A. bearing O.A. No.2152(C) of 2013, which was allowed on 11.03.2015 directing that the applicant should be given all consequential benefits service and financial benefits from the date when his juniors got

such benefits. It is further relevant to mention here that the order of the Tribunal in O.A. No.2152(C) of 2013 was confirmed by this Court in W.P.(C) No.6318 of 2015, which was filed by one Goura Prasad Pattanaik and another and another writ petition bearing W.P.(C) No.1238 of 2016 at the instance of the Registrar, OAT.

8. The order/direction passed by the Tribunal in O.A. No.2152(C) of 2013 was confirmed by this Court and the same was not challenged by anybody thereafter. The limited grievance of the petitioner in the present writ petition is that pursuant to the order/direction passed by the OAT in O.A. No.2152(C) of 2013, the petitioner was given retrospective promotion by the Opposite parties as Section Officer vide order dated 20.03.2017. However, the said retrospective promotion was given w.e.f. 20.11.2013 when Sri Pavash Chandra Mishra, who was posted as Senior Assistant on 30.03.1990 after the applicant, was promoted as Section Officer instead of giving promotional benefits w.e.f. 12.01.1998 when Sri Gagan Bihari Tripathy (retired since 30.06.2005) was promoted as Section Officer.

9. On careful examination of the pleadings, it appears that the present case involves a dispute with regard to inter se seniority

of the employees of OAT and further the discriminatory treatment meted out to the petitioner while consider his case for promotion to the post of Section Officer to decide the issue involved in the present writ petition certain dates are important which are mentioned herein below:-

Sl. No.	Name of the candidate	Date of entry into the present grade	Reference
1.	Ramesh Chandra Mishra	01.03.1982	The petitioner was appointed as L.D. Assistant in High Court of Orissa
2.		20.12.1985	The petitioner was transferred to the judgeship of Puri.
3.		01.10.1986	The petitioner was brought in deputation to the Orissa Administrative Tribunal.
4.		30.01.1990	The petitioner was promoted to the post of Sr. Assist. On regular basis.
5.	Pravash Chandra Mishra	30.03.1990	Pravash Chandra Mishra appointed as Sr. Assist. In OAT
6.	Gagan Bihari Tripathy	31.01.1990	Gagan Bihari Tripathy appointed as Sr. Assist. In OAT
7.		12.01.1998	Gagan Bihari Tripathy was promoted as Section Officer (Level-II for officiating basis.
8.		16.11.1998	Gagan Bihari Tripathy was given regular promotion as Section Officer Level-II.
9.		06.02.1998	Final gradation list was published
10.		30.06.2005	Gagan Bihari Tripathy retired from his service
11.		13.04.2007	O.A. No.1962 of 1998 was allowed thereby quashing the provisional as well as final gradation list.
12.		09.03.2011	Order of OAT dated 13.04.2007 was confirmed

13. 10.10.2013 by this Court. Another final gradation list of Sr. Assist. was published placing the petitioner under his juniors therein. O.A. No.2152(C) of 2013 was filed by the petitioner challenging the gradation list dated 10.10.2013.
14. 13.11.2015 One Pravash Chandra Mishra was promoted to the post of Section Officer.
15. 11.03.2015 O.A. No.2152(C) of 2013 was allowed thereby quashing the final gradation list and with a direction to prepare a fresh gradation list following the Rule-5(2) of the Recruitment Rules.
16. 03.12.2016 W.P.(C) No.6318 of 2015 filed challenging the order dated 11.03.2015. W.P.(C) No.6318 of 2015 was dismissed confirming the order dated 11.03.2015 passed by the Tribunal.
17. 03.03.2017 Another final gradation list of Sr. Assist. was published pursuant to the order dated 11.03.2015. However, the petitioner was not given as due promotion as he is entitled to as per law.
18. 20.03.2017 The petitioner was promoted as Section Officer w.e.f. 20.11.2013 and showing Pravash Chandra Mishra as his immediate junior. However, the seniority of the petitioner vis-à-vis Gagan Bihari Tripathy, who had directed by then, has not been considered by the opposite parties authorities.
19. 15.12.2017 The petitioner submitted representation claiming the benefit at par Gagan Bihari Tripathy.
20. 27.06.2019 Representation submitted

21.	2019	by the petitioner was rejected by the authority O.A. No.1627 of 2019 was filed, which was later on transferred to this Court and re-registered as WPC(OA) No.1627 of 2019.
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10. Both the opposite parties have filed joint counter affidavit opposing the prayer made in the writ petitioner. On a careful examination of the pleading in the counter affidavit, this Court observed that the opposite parties have taken stand that since Gagan Bihari Tripathy and Harekrushna Panda have retired from their services in the meantime and their promotion have been specifically challenged in O.A. No.2152 (C) of 2013, raising such an issue at this stage would be barred by limitation. Further by referring to Rule-5(2) of the Rules, 1999, the opposite parties have asserted that they have acted in conformity with the said Rules, 1999. Further, it has been asserted on behalf of the opposite parties that the gradation list under Annexure-9 which was quashed by the Tribunal vide order dated 11.03.2015 in O.A. No.2152 (C) of 2013, the name of Sri Gagan Bihari Tripathy was not there in the said gradation list as he had retired by then and it has also been stated that the names which were included in the said gradation list have been taken into consideration vis-à-vis the

seniority of the present petitioner and accordingly final remedy has been worked out and the petitioner has been given promotion.

11. In paragraph-5 of the counter affidavit, it has been stated that in the year 1998 when Sri Gagan Bihari Tripathy was promoted to the post of Section Officer, the present petitioner was not eligible for consideration for promotion to the post of Section Officer as he had not completed 9 years of service as Senior Assistant in OAT. In O.A. No.1962 of 1998, it was argued by learned counsel for the State that as per the observation in the said order the persons who have already retired and have got benefit out of the absorption their cases would not be reopened. Therefore, learned Additional Standing Counsel submits that the petitioner cannot claim parity with Sri Gagan Bihari Tripathy and Sri Harekrushna Panda as they have already retired from their services by the time final gradation list was published. Considering the said submissions and further examining the relevant order, this Court is of the considered view that the aforesaid order was only intended to protect the two employees, who had already retired by then and as such it was directed by the OAT not to reopen their cases and further this Court is of the considered view that there is no bar in law to consider the case of

the petitioner by taking into consideration the facts pertaining to aforesaid two employees. Moreover, the order of the Tribunal passed earlier and confirmed by this Court, wherein a direction was given to re-draw the gradation list cannot be given a narrow and restrictive interpretation whereby the employees who had retired by the time final gradation list was published are to be ignored and further the petitioner is debarred to claim parity with the aforesaid two employees merely because they have retired in the meantime. It appears that the opposite parties have interpreted the direction of the OAT according to their sweet will and not in terms of the direction issued by the Tribunal and confirmed by this Court. This issue shall be dealt elaborately later on in the judgment.

12. It is contended by learned counsel for the State that pursuant to the direction of the Tribunal confirmed by this Court a DPC meeting was held on 10.03.2017 to consider the case of the present petitioner and to give him retrospective promotion at par with the Section Officer who were continuing their service at that time. Further, it is submitted that one Sri Pavash Chandra Mishra was the senior most Section Officer at that time, who got his promotion w.e.f. 20.11.2013. Accordingly, the DPC has

recommended for granting retrospective promotion to the petitioner and consequential benefits w.e.f. 20.11.2013. Further, on careful reading of the pleadings at paragraph-6 of the counter affidavit, it is seen by this Court that the opposite parties have categorically stated in their counter affidavit that pursuant to the order dated 11.03.2015 passed by the OAT objections were invited and pursuant to such invitation, the petitioner along with another person, namely, Sri Pramod Chandra Pattanaik submitted their objections. It has also been stated in the counter affidavit that the petitioner submitted his objection inter alia claiming seniority of Section Officer from the year 1998 at par with Sri Gagan Bihari Tripathy. Further, it is stated that after due consideration, the representation of the petitioner was rejected and final gradation list was published. Therefore, learned counsel for the State emphatically submits that the direction issued by the Tribunal in OA No.1962 of 1998 and OA No.2152(C) of 2013 has been carried out in its letter and spirit and as such, the opposite parties have not committed any wrong/illegality. Besides the contentions of learned counsel for the State, this Court clearly observed that the petitioner in his representation has raised issue of his seniority above or at par with Sri Gagan Bihari Tripathy although the same was rejected by the authorities.

13. The petitioner has filed rejoinder affidavit in reply to the counter affidavit jointly filed by the respondents. In the rejoinder affidavit, the petitioner has categorically asserted that he was appointed to the rank of Senior Assistant on 30.01.1990 whereas the above named Sri Harekrushna Panda and Sri Gagan Bihari Tripathy were appointed in the Tribunal as Sr. Assistants on 28.08.1990 and 31.10.1990 respectively. Further, it has been mentioned in the rejoinder that the petitioner was allowed a scale of pay of Rs.1400/- whereas the other two employees referred hereinabove were allowed a scale of pay of Rs.1200/- before they entered into the cadre of Odisha Administrative Tribunal. It has also been stated in the rejoinder affidavit that the first O.A. bearing O.A. No.1962 of 1998 was filed by the petitioner challenging the promotion of the above named two persons and since then the litigation is continuing although in the meantime above named two persons have retired from their services. It is further contended that the above named two persons were also opposite parties in O.A. No.1962 of 1998. Further, it has been stated that most unfortunately in their show-cause affidavit filed in C.P. No.214(C) of 2018 arising out of O.A. No.2152 (C) of 2013 they have misled the Court and made false and wrong statement by stating that they were not arrayed as party in O.A.

No.1962 of 1998. On such grounds, learned counsel for the petitioner vociferously argued that the grounds taken by the opposite party to the effect that the claim is barred by limitation, is unsustainable in law in view of the facts mentioned hereinabove. In the rejoinder affidavit it has also been stated on behalf of the petitioner that the Tribunal was misled by the opposite parties by suppressing the 2nd proviso Rule-5(2) of the OAT Recruitment Rules, 1999. The said proviso reads as follows:-

“Provided further that the service rendered by an officer/employee in the Tribunal before the commencement of these rules shall be reckoned towards counting of seniority and eligibility for promotion to the next higher grade in the Tribunal.”

14. Further, it has also been clarified in the rejoinder that though the above named Sri Gagan Bihari Tripathy was a party in the first O.A., but he was not arrayed as opposite party to the subsequent O.A. which was filed by the petitioner as Sri Gagan Bihari Tripathy had retired from his service by then. The petitioner has reiterated his assertion with regard to his seniority over Sri Gagan Bihari Tripathy. Moreover, it has been contended that the order dated 13.04.2007 passed in O.A. No.1962 of 1998

does not affect the rights of the present petitioner adversely and the observations made in the said order which is only intended to protect the financial benefits released in favour of the retired employees and further nowhere in the said judgment, the relief sought for by the petitioner has been either denied and made subject to certain conditions. The direction of the Tribunal vide order dated 13.04.2007 was very clear and comprehensive i.e. to consider the case of the petitioner and to prepare gradation list afresh in terms of the rules governing the field.

15. Having heard learned counsel for the respective parties and upon careful consideration of the pleadings of the respective parties, this Court is of the considered view that to resolve anomaly, the directions/order issued earlier by the Tribunal and confirmed by this Court needs to be looked into at the first instance and thereafter the applicability of the rules governing the field to the facts of the present case shall also be considered by this court. On perusal of the order dated 13.04.2007 passed in O.A. No.1962 of 1998 and a batch of other cases, it appears that the said O.A. was disposed of with the following directions:-

“9. In conspectus, we dispose of the application with the following directions:-

(i) Annexure-6 (dated 29.12.1995), 7 (dated 29.12.1995) and 12(dated 6.2.1998) are quashed in so far as these apply to deputationists including the applicants and private party respondents.

(ii) All the persons other than direct recruits to the Tribunal who came from different departments will have to go now through the fresh process of absorption. They would have to be asked for their willingness for absorption; they would be given terms and conditions as contained in the Rules and thereafter on the basis of their option they would be considered for absorption in the Tribunal. Surviving liens on the date of absorption which were unilaterally terminated by the borrower would stand revived if an employee is not willing to be absorbed in the Tribunal and wishes to revert to his parent department at his own risk. The modalities of revival of lien will however be settled in consultation with the lending Department. The date of absorption in respect of the members of a cadre at the entry grade in the Tribunal would be one single date. Their inter se seniority would be in accordance with the Rules.

(iii) A gradation list will be published on the basis of seniority so determined. Promotions already made be reviewed in the light of this decision.

(iv) Those who have already retired and have got any benefit out of the absorption orders now quashed, their cases would not be reopened.

(v) This entire exercise be completed within a period of three months from the date of receipt of a copy of these

orders. Until then, status quo as on the date be maintained.”

On a careful reading of the aforesaid directions, it appears that :-

- (i) Both the gradation list of the year 1995-1998 were quashed which includes private respondents and such private respondents including Sri Gagan Bihari Tripathy-respondent no.6 and Sri Harekrushna Panda-respondent no.8.
- (ii) The date of absorption in respect of the members of a cadre at the entry would be one single date and their inter se seniority would be in accordance with rules.
- (iii) Gradation list would be prepared afresh on the basis of the seniority, so determination and promotion already made be reviewed in the light of the decision.
- (iv) Those who have already retired and have got the benefits absorption orders and now quashed, their cases should not be reopened.
- (v) The entire exercise shall be completed within a period of three months from the date of receipt of copy of the order and until then status quo as on the date be maintained. Therefore, it is crystal clear that the provisional gradation list and final gradation list, 1998 were quashed by the Tribunal. Further it is clarified that the same shall be applied to the private respondent nos.6 and 8. Further, a direction was given to review the promotion already given in paragraph-9.

(vi) The direction issued by the Tribunal, which is being interpreted by the opposite parties to restrict the petitioner's promotion from the year 2013, according to this Court can only be interpreted in only one way i.e. the benefits which has accrued and release in favour of the retired employees shall not be reopened and reconsidered and as such, a limited protection was given to the retired employees with regard to the financial benefits that has been paid to them in the meantime. Thus, on conspectus of the order dated 13.04.2007, this Court is of the humble view that there exists absolutely no ambiguity in the said order, which has been confirmed by this Court in W.P.(C) No.10114 of 2007 vide judgment dated 09.03.2011 and the same has attained finality as the judgment of this Court has not been challenged any further. Moreover, while disposing of the said writ petition, a Division Bench of this Court has categorically held that the Tribunal has recorded valid cogent and reason for setting aside the impugned order challenged in the Tribunal and we do not find any good reason to interfere with the same and that no prejudice is likely to be caused as the matter is being remanded to be considered for regularization / absorption of employees in accordance with the Rules.

16. After the matter was remanded the authority again prepared final gradation list dated 10.10.2013 without considering the case of the present petitioner in the light of the direction issued by the Tribunal earlier vide their order dated 13.04.2007. The petitioner had no alternative than to challenge the same by filing another O.A. No.2152(C) of 2013 wherein the private

parties were also arrayed as opposite parties except Sri Gagan Bihari Tripathy, who had retired by then. After hearing learned counsel for the respective parties and upon a careful consideration of records and the facts presented before the Tribunal, the Tribunal vide its well reasoned and detailed order dated 11.03.2015 has come to a definite conclusion that in the earlier O.A. which was confirmed by this Court, the only requirement was to prepare a fresh gradation list by following the rules and fresh gradation list so prepared and which was not challenged in O.A. No.2152 (C) of 2013 has not been prepared by following rules, therefore, such gradation list was again set aside and the matter was again remanded back to the authorities to consider the case afresh and to prepare gradation list following (the proviso to Rule-5 of the Rules, 1999 within a period of two months from the date of receipt a copy of the order and further it was directed to place the petitioner at the appropriate position taking into consideration his past service in High Court w.e.f. 01.03.1982 and to extend all consequential service and financial benefits to him from the date his juniors got such benefits. The order dated 11.03.2015 was further challenged in W.P.(C) No.6315 of 2015 and a Division Bench of this Court disposed of the said writ petition vide judgment dated 03.12.2016 by categorically holding

that the Tribunal has not committed any error in passing the order and accordingly, the writ petition was dismissed and the order passed by the Tribunal was confirmed.

17. After disposal of the O.A. and the writ petition, the DPC was again held on 10.03.2017 and considered the case of the present petitioner. Upon consideration of the case of the petitioner, the petitioner was promoted to the post of Section Officer in the scale of pay of Rs.9300-34,800/- with grade pay Rs.4600/- per month with usual D.A. and other allowances from time to time w.e.f. 20.11.2013. It is further stated that by virtue of an office order dated 20.03.2021 under Annexure-23, the promotion was given w.e.f. 20.11.2013 A.N. i.e. on which date the immediate junior to the petitioner one Sri Pravash Chandra Mishra had joined as Section Officer on promotion. Thereafter, the petitioner again submitted his representation dated 15.12.2017 questioning the action of the DPC in giving him promotion w.e.f. 20.11.2013 and further a specific stand was taken by the petitioner that the order dated 20.03.2017 and the decision of the DPC held on 10.03.2017 is not in conformity with the direction issued by the Tribunal which has been confirmed by this Court. Further, in the representation the petitioner has taken a specific

stand that the petitioner is a promote to the rank of Senior Assistant whereas one Sri Gagan Bihari Tripathy is a direct recruitee to the rank of Senior Assistant. He has further asserted that the said Sri Gagan Bihari Tripathy was not eligible to be promoted to the post of Section Officer as he had not rendered nine years of service as Senior Assistant and further employees senior to him was available for promotion at the relevant point of time.

18. So far as the case of the petitioner is concerned, the petitioner claimed seniority and the promotion to the post of Section Officer either above or at par with one Sri Gagan Bihari Tripathy and Harekrushna Panda. Admittedly, both of them joined as Senior Assistant in the Tribunal after the petitioner was promoted to the post of Senior Assistant w.e.f. 30.01.1990. Further on careful reading of the earlier orders passed by the Tribunal and confirmed by this Court, it appears that the sum and substance of such orders passed by the Tribunal is that the gradation list was set aside and the matter was remanded to consider the seniority and the gradation list afresh strictly in terms of the rules. Therefore, to decide the issue involved in the present case, it is imperative that the Rule-5 be looked into at this stage.

Rule-5 of the Orissa Administrative Tribunal (Recruitment of service of Officers and staffs) Rule, 1999, provides as follows:-

“Rule-5: Appointment by way of Deputation.

(1) The Officers or employees who come to the Tribunal on deputation from different Departments of the Government, State Government Undertakings, High Court or the Subordinate Judiciary may be absorbed in the Tribunal on exercising option, on the orders of the Chairman passed in consultation with the concerned lending authority.

(2) The Officers or employees so absorbed in any post or the service shall not claim seniority accrued to them in their parent Departments or Offices :

Provided that the seniority *inter se* of the officers or the employees so absorbed in the Service shall count from the date of their absorption in any cadre of the Service and if two or more persons are absorbed in a particular grade on the same day, their *inter se* seniority shall be decided by taking into consideration the period of their past services rendered in their parent Departments/Offices:

Provided further that the services rendered by an officer/employee in the Tribunal before the commencement of these rules shall be reckoned towards counting of seniority and eligibility for promotions to the next higher grade in the Tribunal.”

19. The fact of the present case, it is needless to say depends on the interpretation of the Rules 1999. The first limb of the rule

provides that the officers and employees who have been appointed on deputation from Government/Departments may be absorbed in the Tribunal on exercising option and the officers and the employees so absorbed shall not claim seniority accrued to them in their parent departments or offices. Therefore, it is crystal clear that service rendered by an employee in the parents department cannot be taken into consideration for determination of the inter se seniority and in this context, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court. Therefore, there is no dispute with regard to the proposition that counting of past service in the parent department or office towards seniority is no more open for adjudication in this case in view of the aforesaid clear pronouncement of law. Moreover, in order to determine the inter-se-seniority, the Rule-5 provides a clear procedure to be followed:-

“Only expectation is that when it is found that two or more employees have been absorbed on a particular grade on the same day, their inter se seniority shall be dived by taking into consideration the part of their past service rendered in their parent department/office.”

20. So far the promotion in the next higher grade is concerned, proviso to Rule-5 provides that the service rendered

by an officer and an employee before joining at the Tribunal and before commencement of the relevant Rules shall be reckoned towards counting of seniority to be eligible for promotion to the next higher grade in the Tribunal. On a careful consideration of the impugned judgment, it appears that the Tribunal has proceeded by accepting 09.03.2011 as a single date for entry into the grade in question in the Tribunal. Moreover, the tribunal has already rightly held that the undertaking of the petitioner while he was continuing in service in Puri Judgeship to the effect that he shall not claim seniority and would be treated as a junior most clerk is a condition and undertaking vis-à-vis other employees in Puri Judgeship. Therefore, the petitioner is not bound by such undertaking in the facts of the present case, which is completely different.

21. Language is used in Rule-5 of 1999 Rules, is very clear and un-ambiguous. Therefore, the case of the petitioner is to be considered strictly in terms of Rule-5. On perusal of the letter dated 20.09.1986 (Annexure-1), it appears that the petitioner was appointed, initially, for a period of two years on deputation with the condition that subject to suitability he would be permanently absorbed. Thereafter, vide letter dated 30.01.1990 under

Annexure-2, the petitioner along with others were provisionally promoted to the rank of senior assistant till they are considered for regular appointment under the recruitment rules in the Tribunal. Similarly, Sri Pravash Chandra Mishra was provisionally promoted to the rank of Senior Assistant by order dated 30.03.1990. Further vide order dated 19.10.1990 under Annexure-4 Sri Gagan Bihari Tripathy, Senior Clerk in the office of the Deputy Director, was appointed as Senior Assistant on deputation for a period of two years subject to conditions that if found suitable, he will be absorbed in the Tribunal. Further a careful scrutiny of order dated 29.12.1995 publishing the provisional gradation list, it is seen as follows:-

Sl. No.	Name	Date of entry into present grade	Date of confirmation
1.	Jagannath Mohanty	11.7.86	-
2.	Gangadhar Mohanty	13.4.87	-
3.	Gagan Bihari Tripathy	31.10.90	30.10.92
4.	Basanta Kumar Nath	28.2.87	28.2.89
5.	Sunakar Jena	6.3.87	6.3.89
6.	Srikanta Dhal	31.1.90	31.1.91
7.	Biraj Kumar Routray	3.2.88	3.2.89
8.	Harekrushna Panda	28.8.90	28.8.91

9.	Saroj Ku. Pattnaik	30.10.90	30.10.92
10.	Dharanidhar Mallik(S.C.)	26.10.90	30.10.92
11.	Kabiraj Muduli	30.1.90	30.1.91
12.	Bibhuti Bhusan Das	30.1.90	30.1.91
13.	Ajit Kumjar Panigrahi	30.1.90	
14.	Ramesh Chandra Mishra	30.1.90	30.1.91
15.	Madhab Ch. Dash	30.1.90	30.1.91
16.	Hadibandhu Behera (S.T.)	30.1.90	30.1.91
17.	Nidhiram Panda	30.1.90	30.1.91
18.	Pravash Chandra Mishra	30.3.90	30.3.91
19.	Pramod Ch. Pattnaik	13.1.93	
20.	Gour Prasad Pattnaik	30.3.90	30.3.91
21.	Prasant Ku. Sahu	30.3.90	
22.	Nimai Ch. Panda	13.1.93	
23.	Pravash Ch. Mohapara	13.1.93	
24.	Asish Ku. Pattnaik	30.3.90	30.3.91
25.	Amulya Ku. Dhalasamanta	13.1.93	

Although the said gradation list was quashed by the Tribunal, however, facts stated therein would be referred to for the limited purpose of considering the date of entry and the date of confirmation mentioned therein which are undisputed.

22. On a careful scrutiny of such facts, it appears that the present petitioner had joined in the grade of Junior Assistant prior to Gagan Bihari Tripathy and Harekrushna Panda as well as Pravash Chandra Mishra. Further his date of confirmation is also much prior to the confirmation of service of the persons referred to hereinabove. However, ignoring the said fact the OAT issued a letter on 12.01.1998 availability promoting the above named Gagan Bihari Tripathy to the post of Section Officer. Prima facie it appears that the said promotion has been given in violation of the rules as well as by ignoring the rule of seniority. Therefore, the gradation list prepared by the OAT has been rightly set aside by the Tribunal as well as by this Court.

23. Now by applying principle laid down Rule-5, the petitioner, who had joined in the rank of senior assistant on 30.01.1990 and accordingly confirmed on 30.01.1991 should have been considered for promotion to the next higher level i.e. Section Officer prior to or along with the above named Gagan Bihari Tripathy in view of the provisions contained in Rule-5. This Court is utterly surprised to learn that such clear and unambiguous rule has not been understood by the officers of the Administrative Tribunal thereby compelling the petitioner to repeatedly approach

the Tribunal as well as this Court thereby causing mental harassment. Such conduct and approach on the part of the Registry of the Tribunal is viewed very seriously by this Court. However, since the Tribunal has already been abolished, there is no meaning in giving direction to again consider the gradation list and place the petitioner as per his seniority in the said gradation list. Further by now all the employees must have been retired from service. This Court is also of the considered view that the decision of the DPC to give promotion was held on 10.03.2017 by giving promotion to the petitioner w.e.f. 20.11.2013 equating the petitioner with his junior Pravash Chandra Mishra, who had also been given promotion on that date, is clearly illegal and is an act of blatant violation of the rules. Accordingly, the order dated 20.03.2017 under Annexure-23 and all consequential orders thereto are hereby quashed. The opposite parties are directed to give promotion to the petitioner w.e.f. the date the above named Gagan Bihari Tripathy was given promotion i.e. w.e.f. 12.01.1998 if there are vacant post available otherwise a post be created for a limited purpose and the petitioner be given notional promotion and accordingly the financial benefits be calculated and paid to the petitioner expeditiously. It is further directed that the entire exercise as directed hereinabove be carried out within a period of

two months from the date of production of a certified copy of this judgment.

24. With the aforesaid observation/direction, the writ petition stands disposed.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack.

The 14th day of October, 2022. /Jagabandhu.P.A.

