

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 476/1989
Transfer Application No. _____ Date of decision 12-2-97

R. N. Mishra _____ Applicant(s)

Sri V. K. Barman _____ Counsel for the
applicant(s)

VERSUS

Union of India & others _____ Respondent(s)

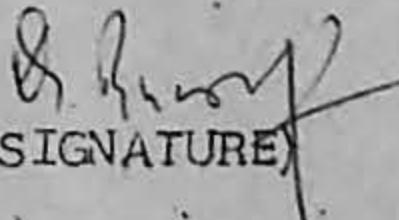
Sri A. V. Srivastava _____ Counsel for the
Sri J. J. Mukherjee _____ respondent(s)

COURT :-

Hon'ble Dr. R. K. Saxena JM

Hon'ble Mr. D. S. Bawali AM

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordship wish to see the fair copy of the judgement ?
4. Whether to be circulated to all Benches ?


(SIGNATURE)

Pandey

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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH
ALLAHABAD.

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Allahabad this the 12th day of February 1997.

Original application No. 476 of 1989.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

R.N. Mishra, a/a 49 years, S/o
Sri S.N. Mishra, R/o 370, Moh. Turkmanpur,
Near National Convent School, Gorakhpur,
at present working as Sr. Telephone
Operator, Rly Telephone Exchange, N.E. Rly.,
Gorakhpur.

..... Applicant.

C/A Sri V.K. Barman

Versus

1. Union of India through Secretary, M/o Railways, New Delhi.
2. General Manager, N.E. Rly., Gorakhpur.
3. General Manager (P), C.P.O., N.E. Rly. Gorakhpur.
4. R.B. Singh, Head Telephone Operator, Railway Telephone Exchange, N.E. Rly., Gorakhpur.
5. Afzal Ahmed Khan, Head Telephone Operator, Railway Telephone Exchange, N.E. Rly., Gorakhpur.
6. Zaaigham Hussain, Head Telephone Operator, Railway Telephone Exchange, N.E. Rly., Gorakhpur.

..... Respondents.

C/R Sri A.V. Srivastava
Sri J.J. Munir

O R D E R

Hon'ble Mr. D.S. Baweja, AM

This application has been filed challenging the seniority list with the following reliefs:-

(a) To quash the order dated 17.2.89 as per which the seniority list dated 9.2.89 has been cancelled. Also issue direction to modify the seniority list dated 9.2.89 of Telephone Operators by placing the applicant at

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S.No. 1 treating ^{the} seniority ~~list~~ as per orders dated 2.5.83 and 19/20.9.88 and in accordance with seniority list dated 1.4.88 and make further promotions on that basis.

(b) To direct respondents to recall the seniority list dated 1.10.89 and issue it after such corrections as the Tribunal may direct.

2. The applicant joined services in Group D. He was promoted on temporary basis as Telephone Operator by the order dated 25.3.74 in the scale Rs. 260-400. Vide order dated 24.6.77, his services as a Telephone Operator were regularised. In the seniority ~~list~~ issued on 1.4.79, he was shown at S.No. 10. In the same seniority list, the seniority of respondent No. 4,5 and 6 S/Sh. Ram Briksh Singh, Afzal Ahmed Khan and Zaigham Hussain was shown at S.No. 6,8 and 9 respectively. These employees had come on transfer on their own request, and ~~their~~ seniority was to be reckoned from the date of joining. But they were given higher seniority than ^{the} applicant. The applicant made a representation against the same. Chief Personnel Officer (CPO) decided to revise the seniority of the applicant and vide order dated 2.5.83 he was placed below S/Sh. K.K. Saksena, G.S. Pandey and K. Lal. Since in the seniority list issued on 1.4.79, Sri K. Lal was at S.No. 5, the applicant by virtue of ^{the} order dated 2.5.83 became senior to all the persons after S.No. 5 and respondents 4, 5 and 6. In the seniority list issued on 1.4.88, the applicant was shown at S.No. 1 having entered the service on 25.3.74. However suddenly thereafter, vide impugned order dated 17.2.89, his seniority list had been revised. Applicant tried to find out the reasons for the same, but could not get any details except it was given to understand that seniority has been revised on the representation made by S/Sh. Ram Briksh Singh,

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Afzal Ahmed and Zaigam Hussain. Being aggrieved by this revision of seniority, the present application has been filed on 15.6.89.

3. The applicant has assailed the impugned seniority list on the following grounds :-

(a) The seniority list allowed vide order dated 2.5.83 on representation by the applicant was not challenged by the respondent No. 4,5 and 6.

(b) The applicant was promoted as Telephone operator after passing selection in 1974. While the respondents 4,5 and 6 came on transfer to the Railway on own request in 1977 and therefore were junior to the applicant.

(c) Revision in seniority list has been done without affording reasonable opportunity.

In view of these facts, the order dated 17.2.89 is arbitrary, illegal and without jurisdiction.

4. The respondents have opposed the application by filing counter reply. The respondents contend that the applicant was promoted as Telephone Operator vide order dated 26.3.74 on adhoc and tentative basis as mentioned in the order. Regular selection was notified vide letter dated 31.12.76/10.1.77 after receipt of the clarification from Railway Board. The panel was approved on 26.3.79 but the applicant was promoted on regular basis from 24.6.77 vide order dated 24.6.77 Annexure-V. The applicant represented for giving seniority from the date of adhoc promotion in 1974 and the same was rejected vide order dated 15.1.80. Representation made to Headquarter was also turned down vide letter dated 30.1.81. The

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order dated 2.5.1983 passed by Chief Personnel Officer was in relation to seniority of the applicant vis-a-vis S/Sh. K.K. Saxena, G.S. Pandey and Kanhaya Lal and ^{the} applicant was assigned seniority below them. In this order, there was no mention with regard to seniority with respect to respondents 4,5 and-6. Respondent No. 4, 5 and 6 were regularly selected in Telephone Operator cadre before transfer to North Eastern Railway and joined on 17.4.75, 16.2.76 and 26.10.76 respectively. Thus they were senior to applicant who was regularly promoted from 24.6.77. When the seniority list was published vide letter dated 9.2.89 not only the respondents No. 4,5 and 6 represented ^{also} but the matter ^{the date} was taken up by the recognised Union. This seniority list was cancelled vide letter dated 17/21.2.89 and entire matter was examined at the General Manager's level. The applicant was wrongly allowed the seniority from when the applicant was promoted on adhoc basis only and General Manager's decision was advised vide letter dated 7/8.6.89. In view of these facts action taken was allocated correct seniority to the applicant and there is no illegality or violation of any rules. The applicant is not entitled for the reliefs prayed for and application deserves to be dismissed.

5. Respondent No. 4, 5 and 6 were impleaded as a party subsequently. Respondent No. 6 Sri Mustafa Hussain has filed the counter reply on behalf of all the three respondents. The averments made are the same as covered in the counter affidavit of the official respondents.

6. The applicant has filed rejoinder reply to the counter reply of the respondents 1,2 and 3 as well as the counter reply of the respondent No. 4, 5 and 6. While

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countering the averments made in the counter replies, the grounds taken in the original application have been reiterated.

7. Leaving aside the other grounds to which we will advert subsequently, we will first take up the core issue with regard to claim of the applicant for seniority from 1974. The applicant was promoted in 1974 as Telephone Operator as per the order dated 26.3.74 at A-IV. From the wording of the promotion order, it is quite clear that the promotion was temporary and tentative till the regularly selected candidates are available. The respondents have also brought ^{on record} a copy of the note dated 26.3.74(A-I of the counter) of Senior Personnel Officer to Dy. Chief Signal and Telecommunication Engineer wherein proposal ^{had been made} for filling up of posts in view of extreme urgency on adhoc basis from Group D staff for a period of three months. We also note that the applicant alongwith one more Sh. Jabbar Ahmed were promoted on adhoc basis vide order dated 26.3.74 only for a period of three months. It appears that the applicant was reverted to Group D and repromoted vide order dated 5.10.74 which is brought on the record by the respondent No. 5 in the counter reply. The applicant has simply stated in the rejoinder reply that this is not admitted. This fact has been suppressed by the applicant. If the applicant was regularly promoted as claimed, then the question of reversion would have not arisen particularly so when the vacancy was still existing. As brought out by the respondents, the regular selection was notified vide letter dated 31.12.76/10.1.77 (RA-5) and vide order dated 24.6.77(A-V) the applicant alongwith one Sri Jabbar Ahmed were regularly promoted based on the selection referred to above. In the face

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of these orders clearly bring out the adhoc promotion in 1974 and regular promotion in 1977, we fail to understand the basis on which the applicant claims seniority from 26.3.74. The applicant submits that he was promoted in 1974 after undergoing selection and therefore entitled to be treated as regularly promoted from that date. It is the promotion order which determines the status of the promotion. The promotion order dated 26.3.74 was very clear with regard to adhoc promotion. If the applicant claims that he had undergone selection and was to be regularly promoted, then we are not able to appreciate as to why he did not represent against the same and kept quiet. In fact in his averment in para 4(f) in the application, ^{himself} he has stated that his services as Telephone Operator were regularised vide order dated 24.6.77. Keeping in view these facts on record, we cannot help but to conclude ^{only} that the applicant was regularly promoted ^{only} from 24.6.77, and thus entitled to seniority from that date only and not from 26.3.74.

8. The main thrust of the arguments of the applicant in support of his claim is the decision of Chief Personnel Officer conveyed vide letter dated 2.5.83 as per which the applicant was given seniority below Sh. K. Lal at S.No. 5 in the seniority list issued on 1.4.79. On going through the letter dated 2.5.83, we find that this is non speaking order and does not disclose the reasons leading to the revision of the seniority treating the applicant as regularly promoted from 26.3.74. The respondents have also not thrown any light on this aspect. Allocating seniority to the applicant as per the order dated 2.5.83 below S/Sh. K.K. Saksena, G.S. Pandey and

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K. Lal is not plausible. The seniority on revision can be allocated above or below somebody. The reference to the seniority of three persons is not understood. With allowing seniority below Shri K. Lal, the applicant became senior to the respondents 4,5 and 6 also and thereby the seniority of respondent 4,5 and 6 in the list dated 1.4.79 gota modified. The main issue was the seniority of the applicant with respect to respondents 4,5 and 6 as challenged in this application. The decision as per letter dated 2.5.83 is silent on this aspect but has directed with reference to seniority of Sh. K. Lal. On the other hand, the applicant in the rejoinder has ^{only} ~~tried~~ explained the basis of the decision of Chief Personnel Officer stating that 25 per cent vacancies were to be filled by promotion from Group D staff. Chief Personnel Officer (CPO) held that two vacancies were available against 25 per cent quota and S/Sh. K. Lal and the applicant were eligible to be regularised from 1974. Taking the explanation offered by the applicant as the basis for decision by C.P.O. as per letter dated 2.5.83, we are unable to accept the decision taken by C.P.O. as valid. As brought out earlier the applicant was promoted on regular basis on 24.6.77. Even accepting the availability of two vacancies against 25 per cent quota in 1974, the applicant could not acquire right against the same for regular promotion in 1974 when he passed the selection for regular promotion only in 1977. The decision taken by C.P.O. was patently wrong in the face of clear orders of adhoc and regular promotion and opened up an issue which had been already settled even by Headquarter office in 1981. In view of this position, applicant cannot claim the benefit which was wrongly allowed by the order dated 2.5.83.

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9. Having held above that applicant is not entitled for the seniority as claimed, we will examine any merit in the contention of the applicant that the seniority has been changed without giving reasonable opportunity to represent. We have already detailed the background leading to the revision of the seniority of the applicant as per the impugned letter. The issue of seniority as allowed vide letter dated 2.5.83 seems to have not been finally settled and one of the recognised Union had taken up the ^{in 1982} case as is clear from the letters at A-VIII and IX. Applicant has brought these letters on record and was therefore aware of these developments. The seniority of the respondents 4,5 and 6 had been also changed in 1983 without giving any opportunity. Further even if the show cause notice had been issued, the applicant would have no defence to offer to justify the seniority to be allotted from 26.3.74 i.e. date of adhoc promotion. This would have been only a formality. The decision of C.P.O. conveyed through letter dated 2.5.83 was patently wrong. In view of these facts, we find no merit in this contention.

10. In the consideration of the above background, we are unable to find any merit in the application and the same is dismissed. No order as to costs.

Arvind
Member - A

Subashree
Member - J

Arvind.