

3 (9) III

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 143 OF 1987

Date of decision: 5.4.91

S.K.Misra and others

: Applicants

Versus

Union of India and others

: Respondents

For the applicants

: Mr. G.A.R.Dora, Advocate

For the Respondent Nos.
1 and 2

: Mr. Ashok Mohanty, Sr. Standing
Counsel (Railway Admn.)

For the Respondent No.8

: M/s. Brahmanand Panda,
Devasis Panda and S.C.Mohapatra, Advocates.

C O R A M:

THE HON'BLE MR. B.R.PATEL, VICE - CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

B.R.PATEL, VICE-CHAIRMAN: The applicants (four in number) and the Respondents No. 3 to 8 are all Guard 'C' under the South Eastern Railway. The issue involved in this case is the *inter se seniority* between the applicants on one hand and Respondent Nos. 3 to 8 on the other. In the provisional seniority list of Guard Gr.'C', Respondents No. 3 to 8 have been placed between Sl No. 72 to 78 i.e. above the applicants who have been placed at Sl. No. 79 to 82 (Annexure-A/10). On a representation made by the applicants (Annexure-A/12), the Competent Authority gave seniority to the applicants over Respondents No. 3 to 8 and accordingly placed the applicants above the aforesaid Respondents, in the seniority list published under the Office No. P2/196/Seniority/Guard G'C' dated 7.7./15.10.1981 i.e. Annexure-A/10 vide order dated 9.4.1984 (Annexure-A/13) to the application. One of the Respondent Mr.R.N. Das Adhikari i.e. Respondent No. 8, appealed against the aforesaid order which was reversed by order of

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the office of the Divisional Railway Manager (DRM)
(Personnel), Khurda Road dated 6.12.1985 (Annexure-A/14).

The applicants have challenged this order and prayed for orders quashing (Annexure-A/14. Respondent Nos. 3 to 8 have not filed any written reply. The Respondent Nos. 1 and 2 have however, maintained in their counter affidavit that the applicants were selected as Direct recruits and were appointed provisionally to posts which come under the departmental quota and that the Respondent Nos. 3 to 8 were appointed to posts under Departmental quota. As the applicants were holding the posts of departmental quota provisionally they were holding were reverted to their substantive posts before their selection under direct recruitment quota and the Respondents Nos. 3 to 8 have been appointed in the posts vacated by the applicants. As the applicants were holding these posts provisionally pending selection of departmental candidates their service against those posts are fortuitous and should not count towards their seniority.

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2. We have heard Mr. G.A.R.Dora the learned Counsel for the applicants and Mr. Ashok Mohanty the learned Senior Standing Counsel (Railway) Administration for the Respondents No. 1 and 2 and perused the relevant records including the Annexures to the application and to the reply in counter. Mr. Dora has averred that the Respondents were empaneled after going through the prescribed procedure of selection in December, 1970 (Annexure-A/1), were nominated to undergo the theoretical training for a period of six weeks commencing from 15.3.1972 (at the zonal training school Sini (Annexure-A/4). They were also appointed in August 1973 as Guards Gr' C' (copy of the appointment order of the applicants No.1 is at Annexure-A/5). On the other hand the Respondent Nos. 3 to 8 were administered the prescribed suitability test only on 16.9.1973 (Annexure-A/8) and selected thereafter. As they were selected and appointed much before Respondents 3 to 8 the applicants should have seniority over the Respondents. Mr. Mohanty the learned Counsel for the Respondents on the other hand has contended that the selection of Departmental

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some candidates took time, as a provisional measure, the applicants were appointed in the vacancies which appertain to the promotion quota and as such they cannot be given the benefit of provisional appointment for seniority. Mr. Dora has drawn our attention to Annexure-A/13 which is a copy of the order passed by the D.R.M. according seniority to the applicants ~~over~~ the Respondents No. 3 to 8 and has contended that this order which has been passed after due deliberation, should prevail and not the order dated 6.12.1985 copy of which is at Annexure-A/14. According to him the Divisional Railway Manager who passed the order at Annexure-A/13 was transferred and the officer who succeeded him as D.R.M. passed the order dated 6.12.1985 which reversed the order dated 9.4.1984. According to him the officer who passed the order (Annexure-A/14) does not have the power to review the order passed by his predecessor. Mr. Mohanty on the other hand contended that the plea of review would not avail since this is not a matter of imposing penalty in disciplinary proceedings. According to him this is an administrative matter and the administrative authority have inherent

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right to revise their own order. Relying on paragraph-9 of the reply in counter he has contended that the Respondent No.8 i.e. R.N.Das Adhikari was not served the letter dated 11.5.1983 issued by the office of the D.R.M., as it was sent to a wrong address. He has therefore, asserted, that 'the Administration has a right to rectify its own mistake when adequate materials are available'.

3. We have however, found from the counter affidavit of Respondent Nos.1 and 2 that in the course of examination of the representation of the applicants a copy of which is at Annexure-12, the office of the Divisional Railway Manager wrote to the Respondent Nos. 3 to 8 in their letter bearing No. P2/196/Seniority/Guard G'C' dated 11.5.1983 (Annexure-6) advising them 'to submit your representation, if any against the proposed revision of the seniority position of the above four staff to this office on or before 31.5.1983 which will be taken into consideration before final decision is taken'. No such opportunity has been given to the applicants when the D.R.M. intended to revise the order dated 9.4.1984 (Annexure-A/13). Mr. Mohanty has very strenuously

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urged that ' the cause of action in this regard having culminated out of the petitioners' representation vide Annexure-12, it was not necessary to give them any notice'. We do not agree with Mr. Mohanty. Whatever may be the reason giving rise to the representation of the Respondents i.e. Respondent No.8, since the advantage of seniority had already been accorded to the applicants vide Annexure-13, it is incumbent on the part of the competent authority to give an opportunity to the applicants to make representation against the proposed reversal before issuing final order as in Annexure-A/14. We would therefore quash the order dated 6.12.1985 a copy of which is at Annexure-A/14 and the order dated 16.2.1986 copy of which is at Annexure-G of the counter affidavit rejecting the representation of the applicants and direct that the applicants should be given an opportunity to make their representation and after considering their representation, if any, appropriate orders should be passed by the D.R.M. We have refrained from giving any decision on the rival claims made at the bar as well as in the application and the reply in counter. We have not gone into the

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judgments referred to at the bar (AIR 1970 SC 1273 and 1971 (1) SLR 63) lest they should prejudice the interest of the parties before the D.R.M. The applicants are free to make their averments before the D.R.M., Khurda Road who is the competent authority to decide the inter se seniority between the applicants and the Respondent Nos. 3 to 8.

4. This application is accordingly disposed of leaving the parties to bear their own costs.

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MEMBER (JUDICIAL)

B.Mohanty *5.4.71*
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VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty.

