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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 218 of 1987.

Date of decision: February 14, 1989

1. L. Kondal Rao. Applicant

V e r s u s

1. Union of India represented through the General Manager, S.E. Railway, At-Garden Reach Calcutta-43
2. The Divisional Manager, S.E. Railway, At-Khurda Road, Dist. Puri
3. The Divisional Personal Officer, S.E. Railway At-Khurda Road, Dist. Puri.
4. Uday Pradhan, S/o Narayan Pradhan, C/o Inspector of Works (S.E. Railway) Khurda Division, At/P.O. Palasa, Dist. Srikakulam Andhra Pradesh
5. M. Ramulu, C/o Inspector of Works, (S.E. Railway) Khurda Division, At/P.O. Palasa, Dist. Srikakulam Andhra Pradesh.

.... Respondents

For the applicants M/s. A.K. Bose
P.K. Giri

For the Respondents ... Mr. R.C. Rath, Standing Counsel
Nos. 2 and 3. Railway Administration)

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN
A N D
THE HON'BLE MR. K.P. ACHARYA, 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 ? *No*

3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (JUDICIAL)

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner has challenged the order passed by the Competent Authority in giving promotion to Respondent Nos. 4 and 5 in preference to the present petitioner.

2. Shortly stated, the case of the Petitioner is that vide Annexure-A/1 dated 4th April, 1972, the Petitioner was approved by the selection Board for absorption in the regular cadre of Carpenter in Grade III and order of posting was issued by the Competent Authority vide Annexure-A/2 dated 31st May, 1972 and on 7th June, 1972 the Petitioner joined at Palasa. According to the Petitioner, Respondent No. 4 Udaya Pradhan though selected by the Board on 4th April, 1972 vide Annexure-A/1 yet no posting order was given to him till 16th November, 1973. Grievance of the Petitioner is that though Respondent No. 4 was given posting and joined the post after 16th November, 1973, yet Respondent no. 4 was given promotion to the Grade-II Carpenter on 11th January, 1984 over the head of the Petitioner. Hence, the Petitioner prays in this application to quash the order passed by the Competent authority giving promotion to Respondent Nos. 4 and 5 over the head of the Petitioner. We have refrained ourselves from stating the particulars of Respondent no. 5 because he has admittedly retired on superannuation and therefore the learned Counsel for the Petitioner categorically submitted before us that his grievance regarding the

promotion given to respondent no.5 has become infructuous. Therefore, we have confined ourselves to the grievance of the Petitioner relating to the promotion Respondent No.4.

3. In their Counter Opposite Party No.1, 2 and 3 maintain that the order contained in Annexure-1 was superseded by the order contained in Annexure R/4 and therefore **rightly Respondent No.4** has been treated as senior to the Petitioner and consequently, the competent Authority rightly passed the order of promotion in favour of respondent no.4. To add to all this, further case of the Respondent/Opposite Party is that the case being grossly barred by limitation, it should be out right dismissed.

4. We have heard Mr. A.K.Bose, learned Counsel for the Petitioner and Mr. R.C.Rath, learned Standing Counsel for the Railway Administration at some length.

5. Admittedly Annexure-1 dated 4th April, 1972 had been issued in which the Petitioner and Respondent No.4 had been selected. Further admitted position is that the Petitioner was given order of posting vide Annexure-2 whereas no posting order was given to Respondent no.4 under Annexure-2, Respondent no.4, for the first time, was given an order of posting on 19.11.73 vide Annexure-R/4 and thereafter Respondent no.4 joined his place of posting. At this stage it should be stated that law is well settled in the absence of any specific rule to the contrary, question of seniority between 2 incumbents has to be adjudicated on the basis of the length of service.

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This settled position was not rightly and fairly disputed at the Bar. Mf. Rath, learned Standing Counsel vehemently argued that the order contained in Annexure-1 having been subsequently superseded, benefit cannot accrue to the present petitioner in regard to his appointment to the service with effect from either 31st May, 1972 or 7th June, 1972. We have carefully perused all the relevant documents filed on behalf of the Petitioner and on behalf of the Respondents. We do not find any paper to substantiate the contention on behalf of the respondent no.4, that the order of appointment and posting issued in favour of the present petitioner had been even withdrawn or cancelled. Mr. Rath emphatically relied upon Annexure-R/4 and R/5 to substantiate his contention that the appointment of the Petitioner had been recalled and/or cancelled. We have given our careful consideration to the contents of Annexure R/4 and R/5. No where it can be found that the appointment of the present petitioner L.Kondala Rao has been cancelled. Mr. Rath strenuously submitted that in the memo under which copy has been forwarded to different officers in Annexure-5, it is mentioned that arrangement should be made for the posting of L.Kundala Rao against the post of IOWS and P.S.A. etc. Mr. Rath in addition to the above also invited our attention to the matters mentioned against serial no.2 of Annexure-5 and submitted that his contention regarding cancellation of the appointment of L.Kundala Rao should be accepted. From the matters stated either in the memo under which copy has been forwarded or the matters mentioned against Sl.No.2 does not substantiate the contention of Mr. Rath. On the contrary it goes against the case put up

by the Respondents. From this it is apparent that the Petitioner was continuing in service till 19th February, 1973 and therefore the case put up by the Respondent that the appointment of the petitioner in 1972 has been cancelled or ~~withdrawn~~ cannot be accepted. Such being the situation there is no escape from the conclusion that the petitioner served the Railway Administration in the post of Grade-III Carpenter with effect from 7th June, 1972 (date of joining) and respondent no. 4, Udaya Pradhan joined the Railway Administration some time after 19th February, 1973 and therefore length of service of the petitioner being more than the length of service of respondent no. 4, the Petitioner is bound to become senior to respondent no. 4 Shri Udaya Pradhan. In such circumstances we hereby declare that the Petitioner is senior to Respondent no. 4 Udaya Pradhan. We are also of the opinion that there is substantial force in the contention of Mr. A. K. Bose, learned Counsel for the Petitioner that the case of the Petitioner should have been considered for promotion to the post of Grade II Carpenter.

6. In the aforesaid facts and circumstances we direct that the Petitioner should be treated as Senior to R-4 Shri Udaya Pradhan in grade III post of Carpenter and his case should be considered for promotion to the post of Grade-II Carpenter with effect from the date on which Udaya Pradhan was given promotion and the petitioner would be given such promotion if found suitable according to rules.

7. Before we part with this case we would fail in our duty if another submission of Mr. Rath is not dealt.

Mr. Rath learned Standing Counsel strenuously urged before us that the case is grossly barred by limitation. According to Mr. Rath promotion was given to Respondent no.4 with effect from 1st January, 1984. The case has been filed in 1987. It should be dismissed on the ground of limitation. From the case record we find that promotion was actually given in **1986** vide office order no.110 dated 2nd/4th June, 1986 to take effect from 1st January, 1984. Representation of the petitioner was disposed of on 8th August, 1986 vide Annexure-6. Period of limitation has to be computed from 8.8.1986. Hence we find no merit in the aforesaid contention of Mr. Rath. In the result we do hereby quash Annexure-6 and direct that the Judgement be implemented within 3 months from the date of receipt of the copy of the judgement according to declaration given above.

8. In case the Petitioner is found to be suitable and if given promotion from the date stated above, the petitioner would be entitled to consequential service benefits including the financial benefits.

9. Thus, the application stands allowed leaving the parties to bear their own costs.

B.R.PATEL, VICE CHAIRMAN

I agree.

Legge 14.2.89
MEMBER (JUDICIAL)

Patel 14.2.89
VICE-CHAIRMAN

Central Administrative Tribunal *
Cuttack Bench
Dated 14th, February, 1989/ Mohapatra

