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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

Original Application No.371/87.

Date of decision:- 17th.May,1991.

Sri K.S.Srinivash ... Applicant.

Versus,

Union of India & Ors. ... Respondents.

For the applicant: Mr.A.C.Mohanty,
Mr.S.K.Pradhan, Advocates.

For the Respondents: Mr.Ashok Mohanty,
Standing Counsel(Railway).

C O R A M :

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

&

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

1. Whether reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the reporters or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgment ?

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JUDGMENT.

Mr. N. Sen Gupta, Member, (J).

The relief sought for by the applicant concerned his seniority in the personal branch of S.E. Railway and the consequent promotion to the different ranks in that branch.

2. Briefly stated, the facts are, that the applicant was initially appointed in the Mechanical Section at Khadagpur during the period the Second World War was going on. At that time a grain division was opened for controlling the distribution and movements of grains. The grain shop department continued even after the Second World War was over. While serving in the grain shop department as a sales-man he was promoted as a clerk in January, 1947. In December, 1956 the grain shop department was closed and he (applicant) was posted as a clerk in the office of the District Engineer (Construction) Raipur. On the completion of the construction work and consequent abolition of construction division, the applicant was transferred and posted a Senior clerk under ^{nnel} the Divisional of Perso^l Officer, Khurda Division in November, 1970. The applicant's case is that a case relating to the employees working ten in grains shop department went upto the Supreme Court. In that case it was held that the employees initially appointed to some other permanent department

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but transferred to the grain shop department were to be sent back to their parent departments and their seniority was to be determined in accordance with the stage that they ~~reached~~ during the period they were deputed to the grain shop department. It was also held by the Supreme Court in that case that those employees who were deputed to the grain shop department would have the seniority in their parent department and would avail the promotion chances in accordance with that seniority in their parent department. After the decision of the Hon'ble Supreme Court and the instructions of the Railway Board conveyed in their letter dtd.1.2.75(Annexure-2), he made a representation. Subsequent thereto a clarificatory letter dtd.2.7.76, vide Annexure-6 was issued which provided that for the promotion of the grain shop staff no selection or suitability test will be conducted. As he was not repatriated in time and was not given his due seniority, he made representation which did not bring him the desired result. He has further averred that he would have been promoted to the ^{rank of} Office Superintendent Grade-II. Ultimately on 2.6.86 he was informed that it was not possible to promote him to the post of OS Grade-II. The applicant has prayed for quashing of Annexure-12 and 15 which are

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intimation that he is not entitled to be promoted as O.S. Grade-II.

3. In the counter filed by Railway Administration, ~~they~~ does not seriously dispute many of the averments made by the applicant in his application but what they have maintained is that the applicant could not under the rules get the seniority claimed by him and he was given promotion to the rank of Senior Clerk and Head Clerk according to his place in ~~rank~~ seniority list. They have also averred that the applicant could not be promoted as O.S. Grade-II as he had retired from service by the time he made representation for promotion to that rank. After the filing of Counter Affidavit by the Railway Administration, the applicant has filed rejoinder wherein he has pleaded that the reason assigned by the Railway Administration for refusing him proforma promotion is untenable.

4. We have heard Mr. A.C. Mohanty learned counsel for the applicant and Mr. Ashok Mohanty for the Railway Administration and perused the relevant papers. The applicant was given proforma promotion to the rank of Senior clerk on 1.10.62 and to the rank of Head Clerk on 2.2.80. After the filing of the counter by the Railway

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Administration, the applicant has filed a rejoinder annexing thereto an affidavit to the effect that one Mr.C.V.Rao junior to him was promoted to the rank of Head Clerk on 18.2.76. Mr.Ashok Mohanty has contended that even if Mr.M.C.V.Rao might have been promoted to the rank of Head Clerk in February, 1976, not much avails to the applicant. We are not satisfied with this contention of Mr.Ashok Mohanty. Admittedly the post of Head Clerk is not a selection post though that of Office Superintendent Grade-II is one. Nothing has been alleged in the counter affidavit filed by the Railway Administration to supersede the applicant in the matter of promotion to the rank of Head Clerk. Mr.Ashok Mohanty has contended that as the post of O.S.Grade-II is a selection post the applicant can not claim as a matter of course to be promoted to that rank. From the reply of the Chief Personnel Officer vide Annexure-15 it would be found that no reason was assigned for refusing promotion to the applicant to the post of office Superintendent Grade-II. It is needless to reiterate that an order which determines the rights of a party should be a speaking one. For this reason we have absolutely no hesitation in quashing Annexure-15. Now that the applicant has

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retired, we would direct that he should be given proforma promotion to the rank of Head Clerk and Office Superintendent Grade-II from the dates his immediate juniors were promoted to those ranks. His pay in the two grades be fixed accordingly and he would be entitled only to the difference in the pensionary benefit to be worked out on the basis of such fixation of pay. The case is accordingly disposed of.

Ramulu
.....
Vice-Chairman.

M. S. Surya
.....
Member (Judicial).

Central Administrative Tribunal,
Cuttack Bench, Cuttack/I. Hossain/
Dt. 17.5.91.

