

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

ORIGINAL APPLICATION No. 90 OF 1987

Date of decision ... April 21, 1988.

Sri Prasanna Kumar Rath, son of Sri Jaladhar Rath,
A.T.C. ARC Charbatia, Qrs. No. 2-RA-140, At/P.O- Charbatia,
District- Cuttack.

... Applicant.

Versus

1. Union of India, represented through its Secretary, Department of Cabinet Affairs, Cabinet Secretariat, New Delhi.
2. Director, ARC (Cabinet Secretariat) R.K. Puram, New Delhi
3. Deputy Director (Admn) ARC. Charbatia, P.O. Charbatia, Cuttack- 754028.
4. Tapan Chandra Borkotoky, Asst. Aerodrome Officer, ARC, Doom Dooma, P.O. Doom Dooma, Dist-Dibrugarh, Assam.
5. Warrant Officer, S.P. Misra, Asst. Aerodrome Officer, Aviation Research Centre, Charbatia, Dist- Cuttack.
6. Junior Warrant Officer, M.R. Samant, Asst. Aerodrome Officer, Aviation Research Centre, Charbatia, Dist- Cuttack.

... Respondents.

M/s B.S. Misra, N.K. Behera
and K.C. Rath, Advocates ..

For Applicant.

Mr. Tahali Dalai, Addl. Standing
Counsel (Central) ...

For Respondents.

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 have been permitted 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

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner challenges the supersession caused in his case by promoting Opposite Party No.4 to the post of Assistant Aerodrome Officer denying such promotion to the present petitioner. Hence the question of seniority of the petitioner vis-a-vis Opposite Party No.4 and promotion of Opposite Party No.4 superseding the claim of the petitioner are under challenge .

2. Succinctly stated , the case of the petitioner is that he and Opposite Party No.4 were both directly recruited to the posts of Aerodrome Operator Grade I and both of them were serving in the Aviation Research Centre. According to the petitioner, he has appeared at an interview for the said post on 26.3.1970 and he was selected vide order dated 6.4.1970 (Annexure-1). Further case of the petitioner is that so far as Opposite Party No.4 is concerned, interview was conducted on 1.6.1971 and he was later selected. But petitioner's order of appointment was issued much later i.e, on 26.8.1971 and he joined on 8.9.1971, whereas the order of appointment of Opposite Party No.4 was prior to 5.8.1971, when he joined . Grievance of the petitioner is three fold and they are as follows :-

- (i) The petitioner's selection having taken place much earlier than the interview conducted in the previous year, there was no justification on the part of the competent authorities to delay the issue of order of appointment of the petitioner and by giving precedence to Opp. Party No.4 in regard to issuance of order of

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appointment in his favour.

(ii) The basis for determination of the seniority by the competent authority is not according to rules/ instructions prevalent at the relevant time i.e., 1971 and therefore, fixation of seniority between the petitioner and Opposite Party No.4 is illegal, unjust and improper.

(iii) Fixation of seniority of the petitioner vis-a-vis Opposite Party No.4 being illegal, improper and unjust, non-consideration of the case of the petitioner for promotion to the post of Assistant Aerodrome Officer, by the Departmental Promotion Committee is violative of Articles 14 and 16 of the Constitution and therefore it is liable to be struck down.

Hence the petitioner has come up before this Bench with the aforesaid prayers claiming relief.

3. In their counter, the Opposite Parties Nos. 1,2 and 3 maintained that no illegality has been committed in regard to the fixation of seniority of the petitioner vis-a-vis Opposite Party No.4 because the seniority has been fixed according to rules framed by the order of the President under Article 309 of the Constitution, vide Annexure-4 and R-2. It is further maintained by the respondents- Opp. Parties that according to such rules, Opposite Party No.4 having been placed senior to the petitioner, he was necessarily selected by the Departmental Promotion Committee who had also considered the cases of the petitioner and three others including *W.*

Opposite Party No. 4 . In such circumstances, no illegality having been committed by the competent authority in regard to fixation of seniority and promotion given to Opposite Party No. 4 , the case being devoid of merit is liable to be dismissed .

4. Opposite Party No. 4 has also filed his counter though he has not appeared either in person or through any lawyer and on a perusal of the counter filed by Opposite Party No. 4 , we find that he has practically adopted the stand taken by Opposite Party Nos. 1 to 3.

Other Opposite Parties in this case are Opposite Party Nos. 5 and 6, namely one Mr. S.P. Misra and the other is ^{Hr.} M.R. Samant. Grievance of the petitioner against these two officers is that they should not have brought on ^{hun} deputation to fill up two other posts of ^{Asst.} Aerodrome Officers and their deputation to such posts should also be quashed. Neither Mr. Misra nor ^{Mr.} Samant have filed any counter. However, we shall deal with the cases of Opposite Party Nos. 5 and 6 at the appropriate stage but we would first like to dispose of the contentions raised by Mr. Bhabani Shankar Misra, learned counsel for the petitioner.

5. Before we deal with the contentions of Mr. Misra, it would be worth while to state that from Annexure- A/1 we find that interview for selection to the post of Aerodrome Operator Grade-I, so far as the petitioner is concerned, was conducted on 26.3.1970 and from the same annexure we also find that the order communicating the selection of the petitioner to the said post is dated 6.4.1970. So far as the interview conducted

in respect of Opposite Party No.4 is concerned for the post of Aerodrome Operator Grade- I, it is stated that it was held on 1.6.1971. At this stage it needs to be mentioned that there is no document filed by either side in support of the fact that the interview was conducted on 1.6.1971 except that there is an averment in the application filed by the petitioner that such interview in respect of Opposite Party No.4 was conducted on 1.6.1971. Curiously enough, one would find that neither Opposite Party Nos. 1 to 3 nor Opposite Party No.4 have controverted this fact in their respective counters except that Opp. Party Nos. 1 to 3 and Opp. Party No.4 have made a general denial in their counter that the facts stated by the petitioner are not correct. While saying that the aforesaid facts stated by the petitioner are not correct, we feel that it was the bounden duty of Opp. Party Nos.1 to 3 to file documents to show that the interview conducted in respect of Opp. Party No.4 and his selection was much prior to 26.3.1970 and 6.4.1970 respectively so that Opp. Party No.4 could be fixed as senior to the petitioner. In addition to the above, we would find that in the counter filed on behalf of Opposite Party Nos. 1 to 3 it is stated as follows :

" Para 2 :-

That the petitioner joined as Aerodrome Operator Grade-I on 8.9.1971. The petitioner was appointed as directly recruited staff, Shri Borkotoky, Opp. Party No.4 being an ex-service man joined as Aerodrome Operator Grade-I on 5.8.1971 also as a direct recruit

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At Doom Dooma and was appointed on 5.8.1971 . The Office Memo No. 9/11/85/ Per dated 22.12.1959 (Annexure-R/1) of the Ministry of Home Affairs in para-4 indicates the principles for determining the seniority of various categories of persons. Based on date of joining, O.P. No.4 is senior to the petitioner. Rule 7 of Recruitment Rules i.e, ARC (Airwing Staff Recruitment Rules, 1977) runs as follow s:-

" Seniority in each grade shall be reckoned with reference to the date of continuous appointment to the post in that grade by direct recruitment or by promotion ".

So Opposite Party No.4 is senior to the petitioner. Recruitment Rule is filed as Annexure-R/2. The D.P.C. held on 28.5.1985 considered the Opposite Party No.4 as the only candidate fit for promotion. The name of petitioner, Opposite Party Nos.4 and 3 others were sent to the said D.P.C. So the application may be dismissed."

6. During course of argument Mr. Tahali Dalai, learned Addl. Standing Counsel strongly relied upon this portion of the averment made in the counter and submitted that the Recruitment Rules, 1977 would apply to the cases of the petitioner and Opposite Party No.4 and the interse seniority has to be fixed according to the provisions contained in the rules. Before we dispose of this contention of the learned Addl. Standing Counsel, we had called upon the learned Addl. Standing Counsel to convince us as to why

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there was such an enormous delay in the issuance of the order of appointment in respect of the petitioner though his interview was conducted and he was selected much earlier to the interview conducted in respect of Opp. Party No. 4. Mr. Dalai could not give us any satisfactory answer. We find no fault with him because nothing in this regard has been stated in the counter and this fact being the determining one, it should have been sufficiently explained in the counter. The important determining factor not having been explained in the counter, we cannot but take an adverse view so far as this aspect is concerned. Now coming to the contention of Mr. Dalai that the Recruitment Rules of 1977 would be applicable to the present case, we are of the firm view that it shall not be applicable because under Rule 1 (2) of the said Rules, it is stated :

" These rules shall come into force at once " namely, on 15.3.1977. We have given our anxious consideration to the provision contained in the said Rules and we have also perused them very carefully and we find that the President has not ordered retrospective effect to be given to these rules. Hence it cannot but be said that the rules would be effective from 15.3.1977 and not a single day prior to the said day. In such circumstances, we find no merit in the aforesaid contention of Mr. Dalai, learned Addl. Standing Counsel. Having found that the Rules of 1977 is not applicable to the present case, one has now to find out what is the rule/ instruction which would be applicable to the facts of the present case. We would now revert back to the facts stated in the counter which

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have been quoted above and Opposite Party Nos.1 to 3 have also stated about the Office Memo No. 9/11/55/Per dated 22.12.1959 issued by the Ministry of Home Affairs laying down the basis for fixing the seniority of different incumbents in different grades. This instruction of the Ministry of Home Affairs is contained in Annexure-3 and also forms subject-matter of Annexure-R/1. Para 4 envisages fixation of seniority of direct recruits and it runs thus :-

" Notwithstanding the provisions of para 3 above , the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment on the recommendations of the U.P.S.C. or other selecting authority. persons appointed as a result of an earlier selection being senior to those appointed as result of subsequent selection " (emphasis is ours).

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit ".

we have perused the seniority list contained in Annexure-R/6 . It is found therefrom that both the petitioner and Opposite Party No.4 have been confirmed

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on 15.3.1977. Hence the proviso has no application to the peculiar facts and circumstances of this case. Having held that the instruction of the Ministry of Home Affairs contained in Annexure- R/1 being applicable to the present case, especially para-4, the only factor to determine the seniority date of of both the petitioner and Opposite Party No.4 is the order of selection. We have already accepted the case of the petitioner that interview of the petitioner was conducted on 26.3.1970 and the order of selection was passed on 6.4.70 whereas the interview of the Opposite Party No.4 was conducted much later than the date of interview and selection of the petitioner. In such circumstances applying the instructions contained in para- 4 issued by the Ministry of Home Affairs (referred to above) to the facts of the present case , the petitioner is bound to be senior to Opposite Party No.4. So far as the other eligibility is concerned, there was no dispute presented before us in regard to such eligibility having been acquired by the petitioner and Opposite Party No.4. Eligibility criteria having been satisfied by both the petitioner and Opposite Party No.4 and having held that the petitioner is senior to Opposite Party No.4, the case of the petitioner should have been first considered by the Departmental Promotion Committee. At the time of admission of this case, we had called upon the learned Sr. Standing Counsel to file the minutes of the D.P.C. which he has done and after perusal we find that there is nothing indicative from the said document that the case of the petitioner was considered by the Departmental Promotion Committee. Law is well settled that a particular

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incumbent cannot claim promotion as a matter of right but he has a right to be considered. This settled position of law was not rightly and fairly disputed at the Bar. Having found that the case of the petitioner was not considered by the Departmental Promotion Committee and having found that the petitioner is senior to Opposite Party No.4, the order passed by the competent authority promoting Opposite Party No.4 in supersession to the petitioner cannot be sustained. Hence the order passed by the competent authority promoting Opposite Party No.4 to the post of Assistant Aerodrome Officer is hereby quashed and it is directed that a review Departmental Promotion Committee be convened and the cases of all the incumbents coming within the considerat zone including the petitioner be considered and who ever is found to be suitable, promotion be given to him to the post of Assistant Aerodrome Officer. We would further direct that the Departmental Promotion Committee should meet within two months from the date of receipt of a copy of this judgment and final orders should be passed by the competent authority within one month therefrom. We are well conscious by quashing the promotion of Opposite Party No.4 Government work may suffer and therefore we would direct that Opposite Party No.4 may continue in the post of Assistant Aerodrome Officer till final orders are passed by the competent authority on the recommendations of the review Departmental and this Promotion Committee/ is an interim arrangement and we would further make it clear that this interim arrangement should no weigh either with the Members of the D.P.C. or the appointing authority while adjudicating the suitability of the

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incumbents coming within the consideration zone.

As regards the contention of Mr. Misra, learned counsel for the petitioner relating to the illegality committed by appointing Opposite Party Nos. 5 and 6 on deputation, it was not agitated because of the relief got by the petitioner in regard to non-consideration of his case by the Departmental Promotion Committee.

7. Thus, the application is accordingly allowed leaving the parties to bear their own costs.

by agreement
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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, 9 agree.

Ram Mohan
21.4.88
.....
Vice Chairman.



Central Administrative Tribunal,
Cuttack Bench.
April 21, 1988/Roy, SPA.