

17 VII

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 230 OF 1989

Date of decision: 5. 4. 1991

Ganesh Chandra Sahu and others : Applicants

Versus

Union of India and others : Respondents

For the applicants : M/s Devanand Misra,
Deepak Misra,
A. Deo, R. N. Nayak,
B. S. Tripathy,
Advocates

For the Respondents : Mr. L. Mohapatra, Standing
Counsel (Railway Admn.)

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 x
permitted to see the judgment? Yes.
2. To be referred to the reporters or not? *no ps.*
3. Whether Their Lordships wish to see the fair
copy of the judgment? Yes.

....

J U D G M E N T

B.R.PATEL, VICE CHAIRMAN: The applicants were working as Group 'D' employees in various divisions of the South Eastern Railway before they came over to the Carriage Repair Workshop, Mancheswar (Mancheswar Workshop) on transfer between 1985 to 1986 in response to the Circular dated 3.7.1987 vide Annexure-1. While at Mancheswar Workshop, they were promoted to the rank of Khalasi Helper taking into account their service in the other divisions of the South Eastern Railway. They were put to a trade test and having qualified in the test were promoted on adhoc basis to the rank of Artisan Grade-III on different dates between 1985 to 1987. They have moved the Tribunal for orders directing the Respondents to fillup fifty per cent of the posts to skilled artisans on regular basis and to regularise the adhoc appointment of the applicants from the date of promotion on adhoc basis and accordingly fix their seniority in the post in Grade-III and not to give promotion to any other staff to this grade till their services are regularised.

2. The Respondents have maintained in their counter affidavit that the applicants cannot be regularised in Skilled Grade-III from the date of their adhoc promotion prior to 1.1.1988 which is the

hansu

19
D

'Cut off date' fixed in the policy circular dated 9.11.1987 (Annexure-R/2) and nor they can be declared senior to all Departmental employees out of turn and promotion of senior eligible staff cannot be withheld till their service is regularised. According to them even if their adhoc services are regularised they cannot be ranked senior to those who were holding these posts on substantive basis on or before 1.1.1988. They have also contended that since the affected staff have not been made parties no benefit of seniority or promotion can be given to the applicants over them.

3. We have heard Mr. Deepak Misra the learned Counsel for the applicants and Mr. L. Mohapatra the learned Standing Counsel (Railway Administration) for the Respondents and perused the relevant records ~~also~~
~~submitted in support of their case. It is submitted by Mr. Misra~~
~~that the Respondents have violated the Circular dated~~
~~3.7.1984, the Joint Procedure Order dated 22.12.1980~~
~~vide Annexure-2 and Annexure-3 dated 30.6.1986 and has~~
~~further contended that the policy decision dated~~
~~9.11.1987 fixing the 'Cut off date' as 1.1.1988 is~~
~~contrary to the above decisions of the Railway~~
~~Administration. Mr. Mohapatra on the other hand has~~
~~denied any violation of understanding given to the~~
~~applicants before they joined the Mancheswar Workshop~~
~~and relying on paragraph-6 of Annexure-1 and paragraph-~~
~~4.2. of the Joint Procedure Order at Annexure-3 has~~

hmm

maintained that the Policy circular dated 9.11.1987 was in conformity with these decisions. He has also referred to the need for fixing a Cut off date for regularisation of the staff coming over to Mancheswar Workshop from other divisions. He has further averred that the applicants will not have the benefit of their adhoc service for seniority unless it is proved that their adhoc service is non-fortuitous.

4. We have carefully gone through the various Annexures to the application as well as to the counter affidavit. We have noticed that paragraph-6 of Annexure-1 mentions that the 'inter se seniority of the staff transferred/recruited in the Mancheswar Workshop will be based on the length of non-fortuitous service for the grade as on a particular 'Cut off date' to be advised in due course'. There is therefore, no question of the policy circular dated 9.11.1987 vide Annexure-R/2 violating or being contrary to this Circular. The Joint Procedure Order particularly para-4.1.1 to 4.1.4. lays down the priority of preference to be given to the various types of staff namely staff working in a particular trade in Khargpur/Raipur/Nagpur workshop and Mechanical Departments, Establishments including work charged establishments. Moreover para-4.2 of this order reads as follows:

"4.2. All such absorptions in the Mancheswar Carriage Repair Workshop

21 21

cadre upto the date when the Workshop becomes operative (to be decided and announced by the Administration at a later date) will be treated as in administrative interest and seniority will be regulated in terms of paras 311 and 321 of the Establishment Manual".

This makes it abundantly clear that a date will be fixed later on to regulate for regularisation of services of various staff and as such the circular dated 9.11.1987 (Annexure-R/2) can not be treated to be contrary to the Joint Procedure Order. There is no quarrell about 50% of the posts of Skilled Artisans being filled up by optees from the Mechanical Engineering Department as required in paragraph-5.3.1. of the Joint Procedure Order. But this paragraph has made it absolutely clear that "the procedure as outlined in paras 4.1.1. to 4.1.4. and 4.2. above will be followed for filling up these posts. No cases has been made out that the applicants satisfy the conditions laid down in paragraph-4.1.1. to 4.1.4. On the otherhand we have found from the application as well as from the counter affidavit that the applicants were Khalasies i.e. Group 'D' employees in various other divisions of the South Eastern Railway before they cameover to the Mancheswar Workshop and as such willnot get the preference laid down in the above paragraphs as staff of various categories have come from various other divisions and Manchanical Workcharged Establishments to Mancheswar Workshop. We agree with

B. N. S.

Mr. Mohaptra that it is necessary to fix up a cut off date with reference to which the seniority and regularisation of service of the Staff recruited will be decided. The applicants have been promoted on adhoc basis between 1.5.1985 to 1.8.1987. No case has been made out as to why this period should be treated as ~~prop~~ fortuitous. There is no clear averment from the side of the Respondents as to why this period should be treated as fortuitous except that the promotion was on adhoc basis and it has been specifically mentioned that it will not confer any benefit of seniority of the applicants. In view of this we are of the view that it will be hardship to deny the entire adhoc service to the applicants for the purpose of their seniority. Elsewhere in OA 347 of 1989 we have held that atleast two years of adhoc service on or before 1.1.1988 should have been there for the service to be counted towards their seniority in skilled artisan Grade-III. The Respondents have maintained in their counter that the seniority of the applicant have been fixed in the Grade of Khalasy Helpers. The provisional seniority list was as per Annexure-R/3 circulated amongst all concerned so as to enable them to file their representations within 30 days. Since the applicants have not made any representations within the stipulated period no further representation can be entertained to revise this list in their favour. We agree with the Respondents so far as

Pran

the seniority list as Khalasi Helper is concerned particularly when any revision of the seniority of the applicant made may adversely affect the seniority of others who have not been made parties in this case. We have found in paragraph-9 of the Memorandum dated 9.11.1987(Annexure-R/2) that there would be one seniority group of all unskilled, semiskilled and skilled and supervisory staff for the entire workshop taken together, however, for skilled artisan staff the trade wise seniority will be maintained. While drawing up a trade wise seniority we direct that our above observation in regard to the adhoc service of the applicants should be kept in view. We do not accept the plea of the applicants that no promotional posts should be filled up until their services are regularised and their seniority fixed in Grade-III as such an order would adversely affect the interest of railway administration which is an essential service.

5. This application is accordingly disposed of.
No costs.

[Signature] 5.4.91
.....
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench: K. Mohanty



[Signature] 5.4.91
.....
VICE CHAIRMAN