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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 233 OF 1989

Date of decision: April, 5, 1991

B.B. Swain and others

: Applicants

Versus

Union of India and others

: Respondents

For the applicant

: M/s Deepak Misra, R.N. Naik,  
A. Deo, 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)

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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 judgment? Yes.

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J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN:

Briefly mentioned the facts are that the applicants (12 in number) joined the Railway Service in Grade-IV on different dates spanning from 1966 to 1974 in different divisions of South Eastern Railway. In response to a Circular issued by the Chief Personnel Officer dt. 3.7.1984 they applied for coming over on transfer to Mancheswar Carriage Workshop which they joined on different dates in 1983 and 1985. They were subsequently administered a trade test and after qualifying in the said test they were promoted to Artisan Grade-III Posts on different dates in the year 1985. In this application they have requested the Tribunal to pass appropriate orders directing Respondents to fill up half of the skilled artisan posts (Grade-III) from the optees on regular basis; to pass orders directing the Respondents to regularise their adhoc appointment and fixation their seniority in the posts of Grade-III and to pass orders directing Respondents not to fillup posts in Grade-II until their services in Grade-III and their seniority in the said grade was completed.

2. The Respondents in their counter affidavit have maintained that while the Mancheswar Carriage Repair Workshop <sup>was</sup> under construction, there was need to fill up

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some of the vacancies by transfer from the optees from other units and that a policy decision was taken vide order dated 9.11.1987 fixing 1.1.1988 as the cut off date (Annexure-R/1). They have further said that the seniority of the applicants have been prepared provisionally and circulated among the concerned persons who were asked to make their representation, if any, within one month and as the applicant did not make any representation within the time given, they have no right to reopen the question of seniority now. The seniority has been given to the applicants on the basis of their substantive status and they need have no further grievance on this account. They have further said that the adhoc service of the applicant is fortuitous and as such it cannot be counted for their seniority in Skilled Grade-III.

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. ~~Mr. Misra has not filed any written note of argument though he undertook to do so.~~ Mr. Misra has urged that as the applicants have come in administrative interest as required in the circular dated 3.7.1987 (Annexure-1) they should be guided by the

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Joint Procedure Order issued by the C.M.E./C.P.O. in respect of the procedure to be adopted for filling up of the post at the MCS Workshop. He has drawn your attention in this connection to paragraph 5.3.1. which states as follows:

"Half the number of skilled artisan posts will be filled up by optees from the Technical Engineering Department of the South Eastern Railway. The procedure as outlined in paras 4.4.4 and 4.1.4. and 4.2 above will be followed for filling up these posts".

He has also maintained that the circular dated 30.4.1986 from CPO's/GRC's should apply to the applicants. In short, he has urged that the adhoc services of the applicants should be regularised in Skilled Grade-III and their seniority accordingly fixed. Mr. Mohapatra on the other hand has contended that the claim of the applicants cannot be entertained on the grounds that the cases of the employees senior to the applicants cannot be ignored in regularising the services of the applicants and in giving them the seniority. He has maintained that the promotion given to them was adhoc and it has been given in fortuitous circumstances. It has also been cleared in the orders of the promotion that the adhoc service will conform on them no other benefit. The applicants came on transfer in response to the letter dated 3.7.83 (Annexure-1) in paragraph-4 it has been mentioned as follows:

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follows:

"It has been decided to consider transfer of senior and experienced Artisan staff on promotion subject to their being found suitable on screening."

In paragraph-5 it has been made clear that the absorption in the Mancheswar Workshop of the optees will be in accordance with the preference given in para 4.1.1. to 4.1.4. of the Joint Procedure Order issued by the CME/CPO circulated under this office letter dated 22.12.1980 (Annexure-r). The paragraph 6 states as follows :

The inter se seniority of the staff Transferred/recruited in the Mancheswar Workshop will be based on the length of non-fortuitous service in the grade as on a particular 'Cut off date' to be advised in due course".

(Underlining is for emphasis)

The cut off date has been fixed at 1.1.1988 vide Memorandum dated 9.11.1987 (Annexure-R/1). The Joint Procedure Order referred to above has fixed the preferences for filling of the posts. There are four preferences which has been noted in paragraph-4.1.1. to 4.1.4. Ist preference will be given to serving employees in the appropriate trade in Kharagpur/Raipur

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Nagpur Workshops of the South Eastern Railway who were will to join the Carriage Repair Workshop, Mancheswar in the same grade on transfer, the next preference will be given to serving employees of the appropriate trade from the Mechanical Department, Establishments including Workcharged establishments. The Third and fourth preferences will go respectively to serving employees in Khargpur/Raipur/Nagpur Workshop who are eligible for promotion to the respective grades of the appropriate trade. This together with paragraph 4 and 5 of Annexure-1 make it clear that the concessions given in the matter of absorption in the Mancheswar Workshop are not available to the applicants. Paragraph-5.3.1. referred to by Mr. Deepak Misra applies only to optees from the Mechanical Engineering Department of the South Eastern Railway and it is not the case of the applicants that they belongs to any Mechanical engineering Department. This paragraph further says that the procedure as outlined in para 4.1.1., 4.1.4. and 4.2 above would be followed for filling of these posts. In regard to the letter dt. 30.4.86 it may be mentioned that this refers to restructuring of various cadres and reclassification of Artisan Staff. This letter mentions that all the staff transferred to MCS having their lien in their Parent Department/Unit are entitled for the benefits arising out of restructuring/re-classifications. Paragraph-2.1. says that Staff working at

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CRW/MCS but holding lien in your Division/Unit should be considered for promotion in the restructuring/ reclassification schemes issued from time to time according to their seniority and suitability/selection." This in our opinion does not apply to the case of the applicants. We agree with Mr. Mohapatra that as the applicants have not made any representation within the prescribed time against the draft seniority list they cannot now agitate the question of seniority since the matter has been finalised. But we have noticed from Annexure-R/2 that this was a seniority list of Khalasi-Helper and we agree with him that this list cannot now be altered. This is also not the relief sought by the applicants. The only point that remains now to be decided is whether the period of adhoc service the applicants have rendered in Skilled Grade-II will count towards their seniority in that grade i.e. Grade-III. It has also been mentioned in the policy decision dated 9.11.1987 (Annexure-R/1) that 'non-fortuitous service of the staff who have come on transfer on option from other unit and express their unwillingness to revert back to their Parent cadres on 1.1.1988 will be the criteria for deciding their seniority in the relevant grade in terms of para 311 of IREM' The only question therefore to be decided is whether the adhoc service of the applicants in Grade-III is fortuitous or not. Elsewhere in Original Application No.347 of 1989 we have observed that the adhoc service rendered continuously

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without break for more than two years cannot be treated to be fortuitous and should be given credit in the matter of inter se seniority. In this case admittedly, the applicants were promoted to the Artisan Grade-III posts on different dates in the year 1985 and they have completed two years by the end of 1987. In Paragraph-2 of the application we have however, found that one applicant i.e. applicant No.1 was promoted on 1.3.1987 if this is so, he cannot have his adhoc service count towards his seniority in Grade-III. This should however, be verified by the Department. In regard to the remaining eleven applicants, there is no such doubt and their adhoc service should count towards their seniority. However we do not agree that any posts in Grade-III will remain vacant until the services of the applicants are regularised in Grade-III and their seniority fixed in Grade-III because any such directive would affect adversely the interest of Railway administration which is an essential service.

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

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MEMBER (JUDICIAL)



*[Signature]*  
5.4.91  
VICE CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench: K. moahnty.