

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 378 of 1989

Date of Decision: 18.6.93.

Versus

Union of India & Others **Respondents**

For the applicant

M/s.J.Das
S.Mallick
K.P.Mishra,
Advocates

For the respondents

Mr. D. N. Mishra,
Standing Counsel

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMINISTRATIVE)

1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

• • •

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to direct the opposite party Nos. 1 to 4 to produce the resolution/notification pursuant to which the personnel or non-personnel groups were created, and to hold that the applicant belongs to personnel group and to quash the impugned orders contained in Annexures-4 and 5 and to direct the opposite parties that the petitioner is entitled to promotion to the post of Office Superintendent with effect from the date Opposite Party No.5 was promoted; with all consequential service and monetary benefits.

2. Shortly stated the case of the petitioner is that he was initially appointed as Junior Clerk in the Office of the Deputy Chief Engineer (Constructions) South Eastern Railways posted at Khurda on 2.4.1965. In course of time the petitioner was promoted to the post of Sr.Clerk on two occasions with effect from 1.5.1980 and 1.1.1984 respectively. The Chief Personnel Officer, Garden Reach, Calcutta (OP No.2) issued an order vide Memo No.233 dated 16.11.1979, pursuant to which the three groups of ministerial staff were integrated into one group. It was decided that inter-se seniority of the junior clerks integrated division wise would be prepared on the basis of the date of appointment after regularisation by Railway Service Commission or Departmental Selection Committee. After the preparation of the seniority list from the base point of junior clerks, the seniority list of senior clerks will be prepared on the basis of the integrated seniority list of the Senior

clerks promoted from junior clerks and after preparation of the seniority list of senior clerks in the above manner seniority list of head clerks promoted from senior clerks will be prepared on the same basis. When the promotional order was issued in favour of the petitioner promoting him to the post of Head Clerk, in the promotional order it was mentioned that the petitioner is promoted to the post of Head Clerk (N.P.). By 'N.P.', the Railway authorities meant Non Personnel Group being distinguished from the personnel group. Two separate gradation lists were prepared taking personnel group and ministerial staff of the stores and accounts group into non personnel group. The applicant's lien was fixed in the non personnel group though he has been working in the general department, whereas all other similarly circumstanced working the general/establishment department were put under the personnel department. The petitioner made representation on 3.12.1986 that his lien should not be fixed within non personnel group which has been erroneously done; and the petitioner urged that his lien should be fixed in the personnel group. The petitioner made series of representations and they were on 19.9.1988, 2.12.1988 and 1.3.1989. The representations of the petitioner were rejected vide order dated 3.4.1989 contained in Annexure-4 and is sought to be quashed. According to the petitioner Opposite Party No.5 is junior to him at all material points of time in the rank of Junior clerk, Senior Clerk and Head Clerk. The petitioner having been illegally given the promotional post, and Opposite Party No. 5 having

~~marched~~ ahead of the petitioner, this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that it is absolutely wrong on the part of the petitioner to state that the petitioner ~~xxx~~ ~~xxx~~ knew that he has been included in the non personnel group after receipt of the order dated 28.8.1986. According to the opposite parties, the petitioner's name was interpolated in the non personnel group as he was working in the Store Section.

A revised seniority list for the personnel and non personnel showing the applicant's name in the non personnel group was published and circulated to all concerned vide Memo dated 11.10.1989 contained in Annexure-6; and this policy decision was intimated to staff of all district offices vide Annexure-D dated 16.4.1983. And it is further maintained that the petitioner's seniority was maintained in the personnel group of the of the Bridge Project Unit as he holds alien in the personnel branch of D.P.O., Khurda and the petitioner was continuously working in the Establishment Section in the Bridge Project. It is further maintained by the opposite parties that the seniority list published on 11.10.1982 was never challenged by the petitioner; and hence at this point of time it is not open to him to challenge such seniority list. Finally it is maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.K.P.Mishra, learned counsel for the petitioner and Mr.D.N.Mishra, learned Standing Counsel. From the averments finding place in the petition, we find

that the petitioner was appointed as a Junior Clerk on 2.4.1965 and Opposite Party No.5 was appointed as Junior Clerk on 21.1.1966. The petitioner was promoted to the rank of Senior Clerk in the year 1980 while O.P. No. 5 was promoted on regular basis in the year 1982. These facts have not been denied in the counter. We have also perused the contents of Annexure-1. In paragraph 4 (2), of Annexure-1 it has been stated as follows :

" After preparation of seniority list from the base point of junior clerks, the seniority list of Senior Clerks will be prepared on the basis of integrated seniority list of Senior clerks promoted from Junior Clerks (exception being those who failed to pass suitability test on 1st attempt and who came on mutual transfer on their own request from one division to another)".

In para 4 (3) of Annexure-1 it is stated as follows :

" After preparation of seniority list of senior clerks in the above manner, the seniority list of head clerks promoted from senior clerks will be prepared in the same basis. There may be cases of a junior person among senior clerks officiating as Head Clerks. The date of promotion of the senior clerks, who may now to be promoted as the 1st available chance will be notionally levelled upto the date of promotion of his junior as Head Clerk."

From the above quoted guidelines finding place in Annexure-1 and keeping in view the date of appointment and date of promotion of the petitioner vis-a-vis OP No.5, we are of *prima facie* opinion that such guidelines have ~~not~~ been violated. Posting of a particular person in a particular branch is not at the instance of the ~~officer~~ concerned, but it is at the instance of the concerned ~~not~~ authority. We would like to express any further opinion on the merits of the contentions advanced by the counsel

(391)

for both sides because of the order we propose to pass.

5. Without fettering the discretion of the Chief Personnel Officer, we would direct that within one month from the date of receipt of a copy of the judgment, the Chief Personnel Officer (O.P.No.2) will give a personal hearing to the petitioner regarding his grievances and OP No.2 would pass a reasoned order as to why OP No.5 was given promotion over the head of the petitioner keeping in view the dates of appointment of the petitioner vis-a-vis OP No.5 (N.K. Mukherjee) to the post of Junior Clerk and to other promotional posts mentioned above. In case the Chief Personnel Officer accepts the contentions of the petitioner, then, necessary orders be passed by OP No.2 allowing the request of the petitioner, otherwise a reasoned order should be passed; and we give liberty to the petitioner to approach this Bench if he feels aggrieved by any order to be passed by Opposite Party No.2. We hope and trust, this matter will be finalised by the Chief Personnel Officer who would pass a reasoned order within one month from the date of giving him personal hearing to the petitioner.

6. Thus the application is accordingly disposed of leaving the parties to bear their own cost.

G. Choudhury
MEMBER (ADMINISTRATIVE)

18/6/93
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 18th June 1993 / B. N. Sahoo

