

8

Date of decision: 4. 11. 1992

-Versus-

For the Applicant ... M/s. S.Misra-1,
S.N.Misra,
S.K.Nayak-2,
R.C.Praharaj,
Advocates

For the Respondents ... Mr. R.C.Rath, Addl.St.Counsel

• • • • •

THE HONOURABLE MR. K. P. ACHARYA, VICE CHAIRMAN.
AND
THE HONOURABLE MR. M. Y. PRIOLKAR, MEMBER (ADMN.)

• • • • •

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.

J U D G M E N T

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays that his seniority be fixed according to the rules above Respondent Nos. 3, 4 and 5 and it is further prayed that the Petitioner be given promotion to the Post of Motor Trolley Driver, Grade 1 with effect from 23rd September, 1988 i.e. the date on which Opposite Party No. 3 was promoted to the said post with consequential benefits.

2. Shortly stated the case of the petitioner is that he was appointed as Gangman under Opposite Party Nos. 1 and 2 on 5.12.1964 and on 1st October, 1965 he was confirmed in respect of the said post with effect from 5th December, 1965. After serving in different capacities including Jeep Driver, on 22nd December, 1977, Opposite Party No. 2 published a provisional seniority list showing the petitioner against Sl No. 4 and Opposite Party No. 3 was shown against Sl. No. 1 and Opposite Party No. 5 was shown against Sl. No. 3. All of them were juniors to the Petitioner. According to the Petitioner an illegality has been committed by the competent authority despite the fact that the petitioner was confirmed with effect from 5.12.1964 though the said Opposite Parties were confirmed with effect from 2nd May, 1966. Representation made by the Petitioner did not yield any fruitful result. On 26th October, 1981 a provisional seniority list was published by the Divisional Personnel Officer, Khurda showing the inter-se-seniority of the Motor Trolley Drivers of Khurda Road Division and in the said seniority list the Petitioner was shown against Sl. No. 5 whereas Opposite Party No. 4 was shown against Sl. No. 3 and Opposite

Party No.5 was shown against Sl.No.4 who are ~~may~~ junior^{are} to the Petitioner, ^{The} ~~namely~~ Opposite Party Nos.3,4 and 5 were given promotion to other promotional posts earlier to the Petitioner which is a clear illegality committed by the Opposite Parties and liable to be set aside. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that Opposite Party No.3 is senior to the Petitioner in his initial recruitment grade i.e. Class IV. Opposite Party No.3 was appointed with effect from 1st March, 1952 whereas applicant was appointed on 5th December, 1964. Both of them passed Motor Trolley Driver grade III trade test on 1st December, 1973. Further Opposite Party No.3 passed the trade test of Motor Trolley Driver Grade II on 16th April, 1984 whereas the Petitioner had passed the same trade test on 11th August, 1986. Thus, Opposite Party No.3 is senior to the Petitioner and the claim of the Petitioner to be promoted as Motor Trolley Driver Grade 1 with effect from 23rd September, 1988 is mis-conception on the part of the petitioner. The Petitioner is junior to Opposite Party Nos.3 to 5 and in the open line organisation the Petitioner was regularised in Class IV post much later. Further according to the Opposite Parties, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. S.N.Misra learned counsel for the petitioner and Mr. R.C.Rath learned Addl.Standing Counsel(railway) for the OPS at a considerable length.

5. The fact that the petitioner had passed different

(11)

trade test later than Opposite Party Nos.3 and 5 was not disputed before us. To gain the promotional posts, success in the test is mandatory. The petitioner having been successful in the trade test much later than Opposite Party Nos.3,4 and 5 rightly the petitioner was placed as junior to Opposite Party Nos.3,4 and 5. Having been placed as junior to the said Opposite Parties, the petitioner cannot take precedence over the said Opposite Parties for promotion and rightly the case of the petitioner on this account was ruled out for consideration by the competent authority.

6. Apart from the above, on a perusal of the pleadings of the parties, it would be found that the grievance of the petitioner is mainly based on the seniority list dated 22nd December, 1977 in which the petitioner was placed above the petitioner. That particular seniority list not having been struck down and it having remained in force, the competent authority proceeded to give promotional benefits to the Opposite Parties on the basis of the said seniority list. Now the prayer of the petitioner is to strike down the seniority list. Law is well settled that the Tribunal cannot take cognizance of any cause of action said to have been accrued prior to 1.11.1985. The cause of action of the petitioner actually arose in the year 1977 which is much prior to 1.11.1985. We find there is substantial force in the contention of the learned Standing Counsel Mr. R.C. Rath that the case is grossly barred by limitation.

7. In the circumstances stated above, we find no merit in this petition which stands dismissed leaving the parties to bear their own costs.

[Signature]

MEMBER (ADMINISTRATIVE)

[Signature]
4.11.92

VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench/K. Mohanty,
4.11.1992.

