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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 449 of 1989.

Date of decision: April 23, 1991.

Madan Mohan Mishra ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s.D.S.Misra,
S.Mohanty,
B.Rath, Advocates.

For the respondents...

Mr.D.N.Misra,
Standing Counsel (Railways)

C O R A M:

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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.

JUDGMENT

N. SENGUPTA, MEMBER (J) The applicant's grievance is that he has not been promoted to the grade of Diesel Assistant even though his juniors have been promoted to that rank. The case of the applicant is that he is senior to K. Murty, D. Singh, N. Karmakan and others who have been working as Diesel Assistant. His prayer is to direct the respondents to promote him with effect from the date his juniors were promoted as Diesel Assistants.

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2. The case of the Railway Administration is that

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no doubt K.Murty and others were promoted in the year 1981 to the rank of Fireman but the promotion of the applicant was on ad hoc basis and he by the date of such adhoc promotion had not passed the required test.

3. We have heard Mr.D.S.Misra, learned counsel for the applicant and Mr.D.N.Misra, learned Standing Counsel for the Railway Administration. Mr.D.S.Misra, learned counsel for the applicant, has very vehemently contended that the passing of a test is not required for being promoted as a Fireman Grade II as the applicant was never called to such a test. On the other hand, Mr.D.N.Misra, has urged with equal vehemence that so long as a person does not pass the suitability test, his services cannot be regularised in the grade of Fireman Grade II. Mr.D.N.Misra has drawn our attention to paragraph 5 of the counter of the respondents. None of the parties has produced the recruitment rules for the recruitment to the rank of Fireman Grade II. Mr.D.N.Misra has referred to Annexure-B and has contended that from this annexure it would be apparent that the passing of a suitability test is necessary for regularisation of services as Fireman Grade II. Annexure-B does not mention that the applicant, if at all, passed the suitability test for Fireman Grade II. From the averments in the counteraffidavit of the Railway Administration it can easily be gathered that the allegations of the applicant that he has been functioning as Fireman Grade II since 29.3.1981 has remained uncontroverted. Mr.D.N.Misra contends that even though he might have taken officiating from that date nothing prevailed him in the matter of

Not in my opinion
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seniority so long as his services in that grade were not regularised. Mr.D.S.Misra, learned counsel for the applicant contends that as admittedly the applicant has been working as Fireman Grade II and as admittedly his services as Fireman Grade II have been regularised, the entire period commencing from the date when he first worked as Fireman Grade II has to ^{count} come towards his seniority. This contention of Mr.D.S.Misra cannot be accepted in its entirety. We had had occasion to focus our attention to this question in the past and we have come to the conclusion that if an ad hoc appointment was made purely as a stopgap arrangement or in a fortuitous circumstance, such officiation or working cannot count towards seniority. But if ad hoc appointment was made according to rules then seniority would be counted from the ^{date of} ad hoc service. Since none of the parties has produced the rules before us we are unable to opine whether the initial ad hoc appointment was made according to rules or not. One thing is clear that the services of the applicant as Fireman Grade II has been regularised with effect from 29.3.1983 but his name does not find place in the seniority published in 1983 as on 31.1.1983, possibly for the reason that the order of regularisation of the services of the applicant was passed in January, 1990. In the circumstances we would direct that the seniority list already published should be recast and the name of the applicant should be at a place according to his seniority and the applicant should be given all consequential service benefits like promotion etc. Now, the period of ad hoc service would be treated would depend on the rules.

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if rules prescribe the passing of a test, the seniority should be counted from the date the applicant passed the test, unless there is anything contrary to this under the Rules. This we are saying because of the strenuous arguments of Mr.D.S.Misra. Mr.D.S.Misra further contends that the ad hoc promotion of the applicant was made under the rules and therefore, his service would count towards seniority. This may be examined by the Department and the seniority is determined according to rules within three months from the date of receipt of a copy of this judgment.

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

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bml
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Vice-Chairman

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Mealy
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23.4.91
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 23, 1991./Sarangi.

