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Central Administrative Tribunal,
Cuttack Bench, Cuttack.

Original Application No.461 of 1989

Date of decision: 15.7.1992

Chakradhar Moharana ... Applicant

-Versus-

Union of India and others ... Respondents

For the Applicant ... M/s A.K.Bose, P.K.Giri, Advocates.

For the Respondents ... Mr.D.N.Misra, St.Counsel (Central)

C O R A M:

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

A N D

THE HONOURABLE MISS. USHA SAVARA, 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? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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For the Applicant : M/s A.K.Bose,
P.K.Giri,
Advocates.

For the Respondents : Mr.D.N.Misra, St.counsel(Central)

CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN
AND
THE HONOURABLE MISS.USHA SAVARA, MEMBER(ADMN.)

Judgment

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays that a direction be given to the Opposite Parties to treat the Petitioner as senior to Opposite Party No.4 and service benefits including promotion be given to the Petitioner with effect from 1.1.1984.

2. Shortly stated the case of the Petitioner is that the Petitioner was initially appointed as Carpenter before 1966 and he was given authorised scale of Rs.110-180/- since 24th December, 1969. Further case of the Petitioner is that among the temporary Carpenters 25% were directly recruited to regular Carpenter Grade-II post and the Petitioner was appointed

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as regular Carpenter Grade-III against 25% quota and the name of the Petitioner appears against Sl.No.3 of Annexure-1. The Petitioner was posted at Bhadrak under the Inspector of Works as per Annexure-2 and the Petitioner joined the said post on 2nd June, 1972. As per Annexure-2, the Petitioner was shown against Sl.No.31 in the seniority list and the name of Opposite Party No.4 did not find place in the said list. In the year, 1985, a trade test was held to fillup the vacancies in Carpenter Grade-II. The Petitioner was not called for the said trade test and he was approached the Opposite Party No.3 to allow him to appear in the said trade test but he was not allowed to appear in the interview on the ground that he was much more junior to the Opposite Party. Consequently Opposite Party No.4 was promoted to Grade-II Carpenter who is junior to the Petitioner. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the Petitioner was initially appointed as a Casual Carpenter with effect from April, 1967 and he was given authorised scale of pay of Rs.110-180/- from 24.4.1969 to 23.2.1970. According to the Opposite Parties though the name of Opposite Party No.4 did not appear in the seniority list contained in Annexures-2 and 3 but it was subsequently amended because of some complaints received in this regard and the matter was referred to the Chief Personnel Officer and clarification was received in September, 1972, the test being the aggregate length of casual service. Consequently, Annexure-B was issued superceding Annexure-1. Hence the name of the Petitioner did not appear in Annexure-B as he was found to be junior to No.4.

junior. Therefore, Opposite Party No.4, ^{was} treated as Senior to the Petitioner and since the Petitioner did not come ^{within} ~~to~~ the consideration zone, his case was not considered and Opposite Party No.4 having been treated as senior to the Petitioner which was considered and found to be suitable and hence he was given promotion especially because the Petitioner's seniority in the post of Carpenter Grade-III was counted with effect from 16th April, 1984 the date of regularisation in the said post and the seniority of Opposite Party No.4 as per Annexure-B in the post of Carpenter Grade-3 was counted with effect from 24.11.1973. Hence the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. A.K. Bose learned Counsel appearing for the Petitioner and Mr. D.N. Misra learned Standing Counsel for the Opposite Parties at a considerable length.

5. The only point canvassed by Mr. A.K. Bose learned counsel appearing for the Petitioner is that the Petitioner having been regularised earlier to Opposite Party No.4, he should be treated as senior to Opposite Party No.4 and the clarification issued by the Chief Personnel Officer has no force at all and consequently annexure-B to the counter should be held to be arbitrary, illegal and inoperative. On the other hand, it was urged by Mr. D.N. Misra, learned ^{Standing} Counsel appearing for the Opposite Parties that the case is grossly barred by limitation and the Administrative authority has always right to determine the seniority of ~~the~~ different incumbents in ^{objection} light of the ~~observations~~ raised by the persons aggrieved and therefore, certain complaints were received regarding non-inclusion of the name of Opposite Party No.4 in the seniority list contained in Annexure-4. Consequently, the matter had to

to be investigated and therefore, the seniority including the Petitioner and Opposite Party No.4 was re-determined and orders were issued according to law, which should not be disturbed. It was further submitted by Mr. Misra that according to the Petitioner (as stated in Annexure-6) he had made a representation on 30th December, 1986 and the decision was communicated to the Petitioner on 21st January, 1987 as per Annexure-C and therefore, the petitioner not having come up within one years from such date, the case should be dismissed in limine being barred by limitation.

6. Before we deal with the question of limitation, it may be stated that as per Annexure-4, the Petitioner Chakradhar has been given authorised scale with effect from 24th December, 1969 and in Annexure-4, it is shown that the Petitioner was given promotion with effect from 3.6.1972 and he was recruited against 25% quota and the names of the incumbents in Annexure-4 are arranged in order of merit. One striking feature ^{which} ~~that~~ is to be noticed is that the name of Opposite Party No.4 does not find place in Annexure-4. No explanation has been offered by the Opposite Parties assigning ~~the~~ ^{UN} reasons for noninclusion of the name of ~~of~~ Opposite Party No.4 in the said list which is styled as ~~Recruitment~~ Provisional Seniority List of Carpenter in the scale of Rs.110-180/-.. The plea taken by the Opposite Parties in treating Opposite Party No.4 as senior to the Petitioner is that the Chief Personnel Officer issued an order in the year 1972 that the aggregate length of casual service was the governing factor for determining the seniority. By no stretch of imagination we can accept the stand taken by the Opposite Parties that the aggregate length of casual service would be ^{recruitment} the determining factor and the date of ~~recruit~~ or the date of

appointment/date of promotion would not be taken into consideration. Conceding for the sake of argument that this could be the determining factor nothing has been stated in the counter regarding commencement of the casual service rendered either by the Petitioner or by the Opposite Party No.4. On this account, averment of the Opposite Parties in the counter is vague. That apart, the reasons assigned by the Chief Personnel Officer does not find place in the counter which could be subject matter of judicial review because the Chief Personnel officer does not have the last say in the matter.

7. Mr. Bose relied upon a judgment of this Bench delivered in connection with O.A. 218 of 1987 dated 14th February, 1989. Shri L.Kondal Rao was the Petitioner and the present Opposite Party No.4 was also Opposite Party in the said case and one of us (Acharya J) was a party to the judgment. In the said case vide Annexure-1 dated 4th April, 1972, the Petitioner L.Kondal Rao and Opposite Party 4 had been selected. No posting order was given to Opposite Party No.4 but posting order (vide Annexure-2) was given to the Petitioner L.K.Rao much before the posting order was given to Opposite Party No.4 i.e. on 19th November, 1973. In that case the Bench observed as follows:

"At this stage it should be stated that law is well settled in the absence of any specific rule to the contrary, question of seniority between two incumbents has to be adjudicated on the basis of the length of service. This settled position was not rightly and fairly disputed at the Bar."

In the present case, in Annexure 4 one would find that L.K.Rao has been placed against Sl.No.32 whereas the Petitioner has been placed against Sl.No.31 and therefore, the present Petitioner is deemed to be senior to L.K.Rao and both of

them have been recruited against 25% quota. At the cost of repetition we may say that the name of Present Opposite Party No.4 does not find place in Annexure-4. We find no justifiable reason to make a departure from the view taken in OA 218 of 1987, We are bound by the view taken in the said judgment. In view of the facts and circumstances stated above, we have no hesitation to find that the seniority position as per Annexure-4 of the present petition cannot be altered by virtue of an administrative order - details of which have been suppressed from this court.

8. Apart from the above, there appears to be another serious infirmity. In Annexure 4 name of Petitioner finds place against Sl.No.31 and name of Opposite Party No.4 does not at all find place therein. If the Seniority position has to be altered as per Annexure-B, due notice should have been given to the Petitioner regarding the action proposed to be taken and after hearing the present petitioner order should have been passed. In the case of K.I. Shephard and others Vs. Union of India and others reported in (1987) 4 SCC 431, Hon'ble Mr. Justice R.N.Misra (as my Lord Chief Justice of India then was) speaking for the court was pleased to observe as follows:-

"On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet".

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Applying the principles laid down by Their Lordships in the above mentioned judgment, we are of opinion principles of natural justice have been violated in this case. However, we would hold that the petitioner should be treated as senior to Opposite Party No.4.

9. As regards, the question of limitation, no doubt the petitioner should have come up within one year from 21st January, 1987 but this case has been filed on 23rd November, 1989. We find that there is substantial force in the contention of Mr. D.N. Misra that the case is barred by limitation. Even though Mr. Bose vehemently opposed the contention of Mr. Misra which we would have ordinarily accepted but in the ~~present~~ case gross ~~injustic~~e having been done to the Petitioner without any rhyme or reason, we feel that the technical question of limitation should not operate against the petitioner. We cannot allow a gross injustice to prevail. Therefore, we do hereby condone the delay and direct the Opposite Parties to treat the Petitioner senior to Opposite Party No.4 and consider the case of the Petitioner for promotion in respect of all the promotional posts due to the petitioner on due dates and if found suitable he should be given promotion with effect from the date on which his juniors have been promoted. Promotion of Opposite Party No.4 should not be disturbed.

10. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

b. Kawane
MEMBER (ADMINISTRATIVE)

15/7/92
VICE-CHAIRMAN

Central Admn. Tribunal
Cuttack Bench/K. Mohanty.

