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Date of Decision 15. 7. 1992.

## Versus

M/s. C.V. Murty,  
C.M.K. Murty &  
S. Kr. Rath,  
Advocates

Mr. Ashok Mohanty,  
Sr. Standing Counsel  
(Rly. Administration)

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

THE HONOURABLE MR. M. Y. PRIOLKAR, MEMBER (ADMN)

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JUDGMENT

MR. M. Y. PRIOLKAR, MEMBER (ADMINISTRATIVE)

This application has been filed against the order dated 11.10.1989 (Annexure-7) of the Divisional Railway Manager, Khurda Road, S.E. Railway, rejecting the representation of the applicant for counting his services in the Grainshop Organisation from 10.3.1948 to 31.8.1955 for the purpose of seniority, promotion and other consequential service benefits.

2. The facts, which are not in dispute, may be briefly stated. After serving in the Grainshop Organisation from 10.3.1948, the applicant was declared surplus and was appointed as office clerk in the office of the Divisional Commercial Superintendent, Khurda Road on 11.8.1955. He was confirmed in that post from 11.8.1956. He was selected to the higher post of Commercial Clerk on 7.3.1957 but was instead appointed on 24.10.1957 to the post of Passenger Guide/Supervisor (since redesignated Travelling Ticket Examiner), which was then in the same scale as Commercial Clerk. He continued to serve in the same post till he retired as T.T.E. on superannuation in 1991. As his services in the Grainshop Organisation were not counted for fixation of his seniority in the post of T.T.E. on the ground that his selection and appointment as Passenger Guide/Supervisor on 24.10.1957 was at his own request, he had earlier approached this Tribunal claiming such benefits on the basis of Railway Board's Instructions. This Tribunal held (O.A.No.205 of 1987) decided on 24.4.1989) that the applicant joined the post of Passenger Supervisor on promotion and not on his own request and was entitled to the benefit of seniority. It was also directed that the benefits should be in the post of office clerk

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or as may be decided by the authorities on the basis of any instructions of the Railway Board, subsequent to its letter dated 15.12.1977, if issued in the light of the judgment on the subject passed by the Hon'ble Supreme Court in 1976. The prayer in the present application is the same as in the applicant's earlier O.A. No.205 of 1987 decided on 24.4.1989.

3. The respondents in their reply have stated that the applicant's case was re-examined as directed by the Tribunal to give him the benefit of past service in the category of the post of office clerk but no further benefit, apart from what were already given to him, was found to be admissible. His immediate junior in the post of office clerk was promoted to the post of Senior Clerk on 15.6.1966 whereas the applicant was promoted to an equivalent grade post much earlier, i.e. 24.10.1957. His retirement benefits have also been computed taking the date of his appointment as 10.3.1948, that is, his initial appointment in the Grainshop Organisation. The respondents, therefore, contend that the applicant is not entitled to fixation of seniority in the cadre of Passenger Supervisor on the basis of his service in the Grainshop Organisation. The respondents also contend that since this question was already decided in O.A. No.205 of 1987 by judgment dated 24.4.1989, it cannot be re-opened again on the principle of resjudicata.

4. We find considerable force in these contentions of the respondents. As stated in the D.R.M.'s letter dated 11.10.1989, though the applicant was appointed in Railway Service from 11.8.1985, yet his date of appointment was considered as 10.3.1948, i.e. when he was appointed in the

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Grainshop Organisation and the consequential benefits accordingly given to him. Evidently, the promotion of the applicant about nine years before his juniors in the cadre of office clerks may not have been possible unless his services for seven years in the Grainshop Organisation were considered. This service has also been treated as qualifying for pension. In terms of Railway Board's letters dated 1.2.75 and 15.12.77, the applicant is entitled to be assigned such seniority which he would have got, had he been absorbed in the absorbing department right from the beginning of his grainshop service. The applicant was absorbed in the Railways initially in the post of office clerk and his past service in the Grainshop Organisation is stated to have been taken into account even before these orders of Railway Board, when he was selected to the higher post of commercial clerk on 7.3.1957, that is, in less than two years of his absorption in the railway and almost ~~nine~~ years before his juniors were promoted. To give him the same benefit again after issue of the Railway Board's orders dated 1.2.1975 and 15.12.1977 would, in our view, amount to double benefit which was not intended. In any case, the Railway Board does not appear to have issued any new orders on this subject after issue of their letter dated 15.12.1977. The applicant was, therefore, entitled to the benefit of seniority only in the post of the office clerk as was held in our judgment dated 24.4.1989 in O.A.No.205 of 1987 and the benefit of seniority in the post of T.T.E.claimed by him cannot be justified.

5. The applicant has also relied on this Tribunal's judgment dated 12.1.1987, in the case of G.C.Pattnaik v.s.

Union of India (T.A.No.372 of 1986) in support of his claims for seniority in the post of T.T.E. The applicant in that case was initially appointed as Asstt.Train's Clerk at Magul Sarai and subsequently transferred as Ticket Collector to Khurda Road. His seniority as Ticket Collector was fixed only from the date of his joining at Khurda Road on the ground that the transfer was at his own request, although both the posts of Asstt.Trains Clerk and the Ticket Collector are in the same grade. The present case is not similar to the applicant in T.A.No.372/86 in which it was held that the Railway Administration had failed to prove by producing any record that the transfer of the applicant in T.A.No.372/86 was on his own request.

6. In view of the above facts and circumstances, we do not find any merit in any of the contentions raised on behalf of the applicant both on grounds of equity or of legality. This application is accordingly dismissed with no order as to costs.

  
15/7/92  
VICE-CHAIRMAN

  
15-7-92  
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
B.K.Sahoo

