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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

Original Application No.88 of 1989.

Date of decision : October 31, 1990.

R.K.Rao and another ... Applicants.

Versus

Union of India and others... Respondents.

For the applicants. ... Ms/.V.Prithvi Raj,
J.N.Jethi, Advocates.

For the respondents ... Mr.L.Mohapatra,
1 & 2 Standing Counsel (Railways)

For the respondents ... Mr.Biswajit Mohanty,
3 & 4 ... Advocate.

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 ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J) The two applicants who are at present working as Section Controllers in the Office of the Controller, Khurda Road under South Eastern Railway have prayed to declare them senior to Respondents 3 & 4 and ~~for that~~ to quash Annexure-3 to the application.

2. Briefly stated, the facts alleged by the applicants are that for being appointed as Section Controllers, persons working as Assistant Station Master, Station Master, and Guards of any Grade have to sit at examination. The

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applicants appeared at the relevant examination and came out successful in the written examination held in the month of November-December, 1987 and also passed the Viva-voce tests held in March-April, 1988. The grievance of the applicants is that they entered into service as Asst. Station Master and Station Master long prior to Respondents 3 & 4 who were appointed as Guards. Therefore, they ought to have been shown as senior to Respondents 3 & 4. The second grievance of the applicants is that they were, for some time promoted on ad hoc basis and had been officiating prior to the examination held in the month of November-December, 1987 and that period of service in the promotional grade has not been taken into account in determining the seniority vis-a-vis Respondents 3 & 4.

3. Respondents 3 & 4 have filed one counter and Respondents 1 and 2, another. But the allegations in both the counters are substantially same. The case of the respondents is that Respondent No. 4 had qualified in an examination held earlier i.e. written examination was held in August, 1986 and the viva-voce held in February, 1987 but he was not empanelled because of currency of a penalty in a disciplinary proceeding and his case was kept in a sealed cover. With regard to the promotion of Respondent No. 3, J.B. Das, the case of the respondents is that he had fared better, so he was appointed against unreserved post out of the total vacancy of 4. The two other vacancies were for reserved category and the applicants, as they had succeeded in the examination held in November-December, 1987, ~~they~~ were appointed on adhoc basis against

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those posts of the reserved category. Subsequently, after the order of dereservation was obtained, they were appointed on regular basis against the posts of Section Controllers.

- ✓4. We have heard Mr.V.Prithvi Raj, learned counsel for the applicants, Mr.L.Mohapatra, learned Standing Counsel (Railways), for the respondents 1 and 2 and Mr.B.Mohanty, learned counsel for Respondents 3 & 4 and perused the annexures to the application and the counter filed by the parties. Mr.Prithvi Raj has very vehemently contended that as the promotion was of persons belonging to different cadres, the case could come within the purview of Rule 21 of the Railway Establishment Rules. The rule relied on by Mr.Prithvi Raj reads as follows

" Where passing a departmental examination is essential for promotion to a higher post , the employees passing the examination earlier will be senior to those passing such examination later. A staff passing in the same examination will however, be promoted in accordance with their seniority."

We have underlined the words 'departmental examination' because Mr.Prithvi Raj's contention is that the examination applicants and Respondents 3 & 4 were to pass was departmental. Assuming for the present moment the contentions of Mr.Prithviraj that the examinations are departmental examinations, nothing avails to the applicants so far as ~~the~~ Respondent No.4 is concerned because admittedly he had qualified himself by passing the examination much earlier to the one passed by the applicants which could be easily found from Annexure-B to the counter filed by the Railway Administration.

Mr. Singh
31.10.90.

5. The question that still remains for consideration is about Respondent No.3. In this connection, Mr. Prithvi Raj has drawn our attention to Rule 27 of the Railway Establishment Rules. That rule provides that when a post selection or non-selection is filled by considering staff of different seniority, total length of continuous service in the same or equivalent grade held by the employees shall be determining factor without however, disturbing interse seniority of staff belonging to the same unit and this is to apply to only fortuitous service. What Rule 27 of the Railway Establishment Rules provides for is when a consideration is made of persons belonging to different seniority units, length of service would be the determining factor but in the instant case, there is no dispute that in order to qualify to be promoted one has to pass a test or an examination. In such a case, as the one in hand, Rule 27 of the Railway Establishment Rules, in our opinion has no application. On referring to Annexure-X to the counter filed by Respondents 3 & 4 the matters would be clear. Admittedly, the applicants were promoted on ad hoc basis and allowed to officiate against the two vacancies. From Annexure-X it would be found that two of the vacancies existing then were to be reserved for Scheduled Caste and Scheduled Tribe candidates, and subsequently for non-availability of such candidates, a move for dereservation was made ^{and} ~~the~~ the Government in the relevant Department dereserved the posts. After dereservation the applicants' services in the promotional grade were regularised. [It has now been settled that officiating service in a promotional

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grade could only be taken into account if it was non-fortuitous service but in the instant case, officiation of the applicants prior to dereservation cannot be non-fortuitous because their tenure depended on whether the posts would be dereserved or not and had not the posts been dereserved their services could not have been regularised. [That being so, we are unable to accede to the prayer of the applicants that their previous adhoc services would be taken into account for determining their seniority.] We express no opinion as to other service benefits which may be due to the applicants for they having officiated on ad hoc basis. We leave the matter to be disposed of according to Rules.

6. The application is accordingly disposed of.
No costs.

B. N. Mishra
31.10.90
.....
Vice-Chairman



M. S. Gupta
31.10.90
.....
Member (Judicial)

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
October 31, 1990/Saranghi.