

16
CENTRAL ADMINISTRATIVE
CUTTACK BENCH: CUTTACK.

Original Application No. 375 of 1
Cuttack, this the 2nd day of April, 1997

Mr. P. Rajeswar Rao

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

(FOR INSTRUCTIONS)

- 1) whether it be referred to the Reporters or not?
- 2) whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

for
(K.M. AGARWAL)
CHAIRMAN

S. Som
(S. SOM)
VICE-CHAIRMAN

17

28

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 375 OF 1990
Cuttack, this the 2nd day of April, 1997

CORAM:

HONOURABLE SRI JUSTICE K.M. AGARWAL, CHAIRMAN
AND
HONOURABLE SRI S. SOM, VICE-CHAIRMAN

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Mr. P. Rajeswar Rao,
aged about 41 years,
s/o P. Vasudev Rao of Sana-Bazar,
Berhampur Town, P.S.-Berhampur,
Dist. Ganjam,
at present working as Driver Havildar in
Aviation Research Centre,
Charbatia, P.O.-Charbatia,
P.S.-Chowdwar, Dist. Cuttack

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Applicant

-versus-

1. Union of India, represented by Cabinet Secretary to Government of India, Central Secretariat, New Delhi-110 001
 2. Director, Aviation Research Centre, At-East Block V., R.K. Puram, New Delhi-110 066
 3. Deputy Director (Administration), Aviation Research Centre, Charbatia, P.O.-Charbatia, P.S.-Choudwar, Dist. Cuttack.
 4. P.C. Mallick, Leading Fireman,
 5. G.D. Jena, Fire Operator, A.R.C., At/P.O.-Doom Dooma (Assam)
 6. B.P. Mohanty, Motor Transport Fitter Driver
 7. Jagannath Mallick, Fire Operator
 8. Gateswar Swain, Driver Havildar
 9. S.P. Choudhury, Leading Fireman
 10. B.N. Samal, Driver Havildar
 11. S.N. Tripathy, Leading Fireman, A.R.C., At/P.O.-Doom Dooma (Assam)
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12. D.S.Nanda, Leading Fireman

13. M.C.Behera, Fire Operator

14. F.C.Mallick, Fire Operator

(Sl.Nos.4 to 14 except 5 and 11 are at present working in Aviation Research Centre, Charbatia, PO:Charbatia, P.S-Choudwar, Dist.Cuttack)

..... Respondents.

Advocate for applicant - Mr.R.B.Mohapatra

Advocate for respondents - Mr.Aswini Ku.Misra.

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ORDER

HON'BLE SRI JUSTICE K.M.AGARWAL, CHAIRMAN

By this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner seeks a direction against the respondents 2 and 3 to revise the seniority list (Annexure A-5) of Firemen so as to show his name above the names of the respondents 4 to 14 in that list and then to promote him to the post of Leading Fireman with effect from 18.9.1990.

2. Briefly stated, on 3.10.1970 and 30.10.1970 selections were made from amongst Grade IV employees of Aviation Research Centre for certain posts of Firemen. After selection, they were sent for Fire Service Training and after completion of the training, they were given appointment letters. The applicant was so appointed with effect from 1.4.1971. In the seniority list of Firemen issued in the year 1980 on the basis of merit list prepared at the time of selection, the name of the applicant was shown below the names of respondents 4 to 14.

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As in the office order No.283/ADMN/1971, dated 25.3.1971 (Annexure A-1), the position of the applicant in the merit list of training was shown as 4th out of 18, he claimed seniority over the respondents 4 to 14 by filing successive representations dated 13.6.1980 (Annexure A-2), dated nil (Annexure A-4), dated 14.11.1985 (Annexure A-7), dated 30.1.1990 (Annexure A-17) and various others like Annexures A-6, A-7 and A-9 to A-17. All the representations were rejected by reasoned orders dated 21/27.8.1980 (Annexure A-3), 26.11.1985 (Annexure A-8) and 31.7.1990 (Annexure 18). Not satisfied with the replies to his representations, the applicant has approached this Tribunal with his said application for the said reliefs. The claim was initially based on the merit list of training, but subsequently changed to marks said to have been obtained at the time of selection. The claim was resisted by the respondents 1 to 3 on various grounds, including one based on limitation.

3. After perusing the record produced before us and hearing the learned counsel for the applicant and that of the respondents 1 to 3, we are of the view that the petition deserves to be dismissed both on the ground of limitation and on merits. The first representation of the applicant was rejected by the respondents 1 to 3 on 21/27.8.1980 (Annexure A-3). Reasons for rejection were also given and, therefore, if he was dissatisfied, he ought to have come to the Court of competent jurisdiction or to the Tribunal without any unreasonable delay on his part. Instead of doing so, he went on making futile representations, which would not save either limitation or

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20
laches. In Direct Recruit Class II Engg. Officers' Association v. State of Maharashtra, A.I.R. 1990 S.C. 1607, the Supreme Court has said :

"....It is highly desirable that a decision, which concerns a large number of Government servants in a particular service and which has been given after careful consideration of the rival contentions is respected rather than scrutinised for finding out any possible error. It is not in the interest of the service to unsettle a settled position every now and then."

In the present case, the seniority list of Firemen was finalised in 1980. Representation made was also decided by 27.8.1980 (Annexure A-3). Some of the persons alleged to be wrongly placed above the applicant have been promoted to higher pay scale or posts. Overlooking all these facts, such belated petitions like the present one cannot be entertained and no relief can be claimed or granted on the basis of such petitions. The decision of the Supreme Court in The Madras Port Trust v. Hymanshu International, C.A.No.467 of 1969, decided on 3.1.1979, is of no help to the applicant, because ordinarily (emphasis given) the Government or Public Authority was not expected to take up the plea of limitation. Any special and peculiar circumstances, like those in the present case, could not justify giving up the plea of limitation even by the Government or by any Public Authority. We are, therefore, of the view that the petition is liable to be dismissed on the ground of limitation.

4. So far as the merit is concerned, the applicant is not sure about the basis of his claim. Initially he based his claim for seniority over respondents 4 to 14 on the merit list of training period. After the counter was filed and the

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original records were shown, he shifted his stand and started claiming seniority on the basis of marks obtained during the process of selection. Moreover, he has not been able to show any statutory rule or executive instructions to justify his claim for seniority on the basis of merit list of training. Further, respondents 4 (P.C.Mallik) and 6 (B.P.Mohanty) have been shown to be 3rd and 2nd respectively out of 18 in the said merit list on the basis of training (Annexure A-1) relied on by the applicant. In spite of this, how he claimed his seniority over them is not made clear. After changing his stand and basing the claim on marks secured at the time of selection and shown in the comparative chart submitted by him on 25.5.1995, he could not explain how he claimed seniority over respondents 9 (S.P.Choudhury), 10 (B.N.Samal), 11 (J.N.Tripathy), 12 (D.S.Nanda) and 13 (M.C.Behera), who had all secured more marks than what the applicant had secured. On the contrary, the learned counsel for the applicant had to admit during the course of arguments that the applicant had no case for seniority over respondents 9, 10, 11, 12 and 13.

5. Faced with the situation aforesaid, we perused the original record produced before us by the respondents 1 to 3 and went through the proceedings recorded by the Board constituted for the purpose of making selection for the posts of Firemen recorded on 3.10.1970 and 30.10.1970. They are at pages 151 and 91 of the record. On such perusal, we found substance in the contention of the learned counsel for the respondents 1 to 3 that the selection process was based on 3 tests: Physical fitness,

including smartness and proficiency in games, educational qualifications and general knowledge. On both the dates of selection, the applicant was rejected. Subsequently certain relaxation^{was} given and on the basis of such relaxation, the applicant and 5 others were selected. As against this, the respondents 4 to 14 had cleared all the tests and were selected during the selection process dated 3.10.1970 and 30.10.1970 without any relaxation. In this state of affairs, we find no infirmity in the preparation of the impugned seniority list (Annexure A-5) and, therefore, we see no case for interference with the said list.

6. In the result and for the reasons aforesaid, this application fails and it is hereby dismissed, but without any order as to costs.



(K.M. AGARWAL)
CHAIRMAN



(S. SOM)
VICE-CHAIRMAN