

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 46 of 1990

Date of Decision: September 21, 1993

Munindra Jena

Applicant(s)

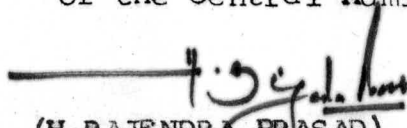
Versus

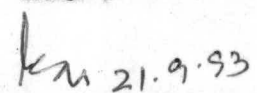
Union of India & Others.

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *ND*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *ND*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
21 SEP 93


(K. P. ACHARYA)
VICE-CHAIRMAN

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 46 of 1990

Date of Decision: September 22, 1993

Munindra Jena

Applicant(s)

Versus

Union of India and others

Respondent(s)

For the applicant:

M/s. P. Palit, B. Mohanty,
A. Kanungo,
S. K. Mohanty,
Advocates.

For the respondents:

Mr. Uma Ballav Mohapatra,
Additional Standing Counsel (Central).

C O R A M:

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

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash Annexures 4 and 6 and to give a direction to the opposite parties to fix the seniority of the petitioner above Opposite Party Nos. 7 to 37.

2. Shortly stated the case of the petitioner is that at present he is working as Upper Division Clerk in the office of the Opposite Party No.5 i.e. the Dy. Director, Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, Bhubaneswar. Petitioner was appointed as a Lower Division Clerk in the year 1971 and vide Annexure 1 dated 27th September, 1982, the petitioner was appointed on adhoc basis to the grade of Upper Division Clerk. Petitioner started officiating in the said grade with effect from 30th October, 1982. Vide Annexure 2 dated 31st May, 1984, the services of the petitioner as Upper Division Clerk was regularised with effect from 27th January, 1984. Further case of the petitioner is that in the year 1985, an All India Seniority List of the Lower Division Clerks was published in which the petitioner ranked senior to Opposite Party Nos. 7 to 37. On 7.1.1984, the opposite party nos. 7 to 29 were appointed to the grade of Upper Division Clerks on adhoc basis and in the year 1985, opposite party Nos. 30 to 37 were promoted to the grade of Upper Division Clerk on adhoc basis. In the All India Seniority list published in the year 1988 in respect of different incumbents in the grade of Upper Division Clerks, the petitioner was ranked below Opposite Party Nos. 7 to 37 and therefore, this application has been filed with the aforesaid prayer.

✓

3. In their counter, the Opposite Parties, maintain that in the year 1984 and in the year 1985, opposite party nos. 7 to 29 and opposite party nos. 30 to 37 were given promotion to the grade of Upper Division Clerks on officiating basis though the test was held in respect of the vacancies occurring in the year 1983-84 and therefore, rightly accordingly to rules, the petitioner was placed below opposite party nos. 7 to 37 which should not be unsettled - rather it should be sustained.

4. We have heard Mr. Biswajit Mohanty learned counsel appearing for the petitioner and Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central).

5. Before we express our opinion on the merits of the case, the admitted case of the parties before us is as follows:

- (1) Petitioner was appointed as Lower Division Clerk in the year 1971;
- (2) vide Annexure 1 dated 27.9.1982, petitioner was appointed on officiating basis in the grade of Upper Division Clerk and he physically worked in the grade with effect from 30th October, 1982;
- (3) vide Annexure 2 dated 31st May, 1984, the petitioner's services were regularised in the grade of Upper Division Clerk with effect from 27th January, 1984;

- (4) In the year 1985 All India seniority list in regard to different incumbents in the rank of Lower Division Clerks was published and opposite party nos.7 to 37 were shown junior to the petitioner;
- (5) In 1984, opposite party nos.7 to 29 were promoted to the grade of Upper Division Clerks in the examination quota/ on officiating basis;
- (6) In the year, 1985, opposite party nos.30 to 37 were promoted to the grade of Upper Division Clerks on officiating basis.

Keeping in view the above mentioned admitted case of the parties before us, it would be apparently clear that the petitioner's services were regularised in the grade of Upper Division Clerk with effect from 27th January, 1984 and the opposite party Nos.7 to 29 were promoted on officiating basis with effect from 7th January, 1984 and so far as opposite party nos.30 to 37 are concerned they were promoted on officiating basis in the year 1985. Undisputedly, a particular officer, whose services have been regularised much before regularisation of other officers, has to rank senior over others. An officer carrying with him a regular service on a particular grade has to be ranked above other officers who have been promoted to a higher grade on officiating basis. This settled position of law was rightly and fairly not disputed

at the Bar. The only argument which was advanced by Mr. Uma Ballav Mohapatra learned Additional St. Counsel (Central) is that the vacancy for which opposite party Nos. 7 to 29 were promoted relates back to 1983-84 and therefore, according to rules opposite party Nos. 7 to 29 have to be senior to the petitioner. At the outset we must say that we can never agree with the contention of Mr. Mohapatra learned Addl. Standing Counsel (Central) that this can be the criteria for determining inter-se-seniority. Date of appointment to the grade or physical working in a particular grade has to be the determining factor for deciding inter se seniority and that apart even if the contention of Mr. Mohapatra is accepted yet one would find that the petitioner started officiating with effect from 30th October, 1982 and this officiating promotion undisputedly was given according to rules and further more the petitioner had continuously ~~uninterruptedly~~ ^{ed} work in the promotional post till 31st May, 1984 when his services were regularised. Relying on the observations of Their Lordships in the case of DIRECT RECRUIT CLASS II ENGINEERING OFFICERS' ASSOCIATION VS. STATE OF MAHARASHTRA AND OTHERS reported in AIR 1990 SC 1607 Mr. Biswajit Mohanty learned counsel appearing for the petitioner contended that due to the continuous and uninterrupted service rendered by the petitioner, in the grade of Upper Division Clerk, to which he was

be.

promoted, according to rules, seniority of the petitioner should be computed in his favour with effect from 30th October, 1982. At paragraph 44 of the Judgment, Their Lordships have summed up their conclusion which runs thus:

" (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date;

(F) Where the rules permit the authorities to relax the provisions relating to the quota ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive

instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The post held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

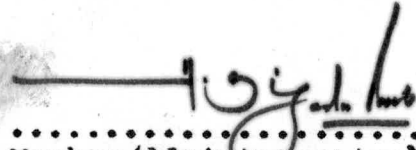
With respect to Writ Petition No.1327 of 1982 we further hold;

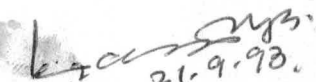
(K) That a dispute raised by an application under Art.32 of the Constitution must be held to be barred by principles of resjudicata including the rule of constructive resjudicata if the same has been earlier decided by a competent Court by a judgment which became final".

The present case comes within the purview of the observations made by Their Lordships in para 44(A)& (B) of the judgment. Therefore, we have absolutely no hesitation in our mind to hold that the seniority of the petitioner has to be computed in his favour with effect from 30th October, 1982. Accordingly we would quash the order passed by the competent authority rejecting the representation of the petitioner contained in Annexure 4 and we would direct that the seniority of the petitioner vis-a-vis Respondent Nos.7 to 37 be determined according to the guidelines referred to above. This judgment will not apply to Opposite Party No.36 on whom service of notice could not be affected due to his dismissal from service as on record.

(24)

6. Thus, the application stands allowed leaving the parties to bear their own costs.


.....
Member (Administrative)
21 SEP 93


..... 21.9.93.
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty,
September 21, 1993.