

6

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 441 OF 1990

Date of decision: January 18, 1994

P. Rajagopal and another ... Applicants
Versus
Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not?

(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

kn 18/1/94
(K. P. ACHARYA)
VICE CHAIRMAN

6

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 441 of 1990

Date of decision: January 18, 1994

P. Rajgopal and another	...	Applicant
	Versus	
Union of India & Others	...	Respondents
For the Applicants	...	M/s. P.V. Ramdas, B.K. Panda, D.N. Mohapatra, Advocates
For the Respondents	...	Mr. L.K. Mohapatra, Standing Counsel Railways.

C O R A M:-

THE HONOURABLE MR. K.P. ACHARYA, VICE - CHAIRMAN
&
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 direct Opposite Party Nos. 1 to 3 to fix the seniority of the Petitioners (two in number) above Opp. Party Nos. 4 and 5 and to declare that the promotion of Opposite Party No. 4 as Head Typist is invalid in law and further direct the Opposite Party Nos. 1 to 3 to consider the case of the Petitioner No. 1 for promotion to the Post of Head Typist.

2. Shortly stated the case of the Petitioner No. 1 (Shri P. Rajagopal) is that he entered into service, under the South Eastern Railway, as a Chowkidar with effect from 1st November, 1974. Later he was promoted to the post of Junior Typist on 7th March, 1977.

✓ Petitioner No. 1 appeared before the Railway Service

Commission and was informed by an order dated 9th March, 1977 that he was approved by the Commission as a Typist. Petitioner No.1 was then promoted as Senior Typist vide order dated 5th March, 1980 and he has been working as such since then.

3. Petitioner No.2 (Shri N. Venkat Rao) entered into Service in the South Eastern Railway as a Junior Typist with effect from 13th August, 1975. He was promoted to the post of a Senior Typist on 1st October, 1980. The effective date of seniority was shown as 5th October, 1988. The concerned authority published a seniority list as on 23rd January, 1982 in which names of Opposite Party Nos. 4 and 5 did not appear. Petitioner Nos. 1 and 2 were placed against Sl. Nos. 18 and 16 respectively. Names of Opposite Party Nos. 4 and 5 did not appear in the gradation list dated 24th January, 1985/1st February, 1985 whereas the Petitioners were shown at Sl. Nos. 13 and 14 of the said list contained in Annexure-A/3. The gradation list of Senior Typist as on 24th January, 1990 (Annexure-A/4) was published. In the said list, names of Opposite Party Nos. 4 and 5 were shown above the petitioners. A protest was lodged by the petitioners on 22nd February, 1990 which did not yield any fruitful result. Hence this application has been filed with the aforesaid prayer.

lv

4. In their counter, the Opposite Parties maintained that Opposite Party Nos. 4 and 5 namely S/Shri B. Jagannath Rao and P. Chandra Rao were initially working as Khalasi in the Engineering and Electrical Departments respectively. They were promoted to the post of Junior Typist on officiating basis with effect from 10th September, 1973 and 1st August, 1974 respectively. and continued to work as such till 1978. The said Opposite Parties were called to appear for a selection test for regularising their services. But the said Opposite parties instead of appearing for the selection test, filed a writ petition before the Hon'ble High Court of Orissa stating that since they had completed more than 18 months service as Junior Typist, they need not appear for any selection. In accordance with the direction of the Hon'ble High Court of Orissa, services of the Opposite Party Nos. 4 and 5 were regularised with effect from 10th September, 1973 and 1st August, 1974 respectively. Hence they were shown as seniors to the Petitioners. In the circumstances stated above, it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

5. We have heard Mr. P. V. Ramdas Learned counsel appearing for the Petitioners and Mr. L. Mohapatra learned Standing Counsel (Railways) appearing for the Opposite Party Nos. 1, 2 & 3.

6. On a perusal of the pleadings of the parties and the relevant documents, it is patently clear that Petitioner No.1 (Shri P.Rajagopal) joined as a Khalasi on 1st November, 1974 and Opposite Party Nos.4 and 5 joined the same nature of Post on 24th August, 1970 and 31st August, 1970 respectively. At the cost of repetition, it may be stated that Petitioner No.2 was directly recruited as Junior Typist and he functioned as such with effect from 13th August, 1975. From the above mentioned dates, it would be found that at the entry point, Opposite Party Nos.4 and 5 have joined as Khalasis earlier to Petitioner No.1 and in regard to discharge of duties as Junior Typist, Opp. Party Nos.4 and 5 have functioned as such earlier to Petitioner No.1 but names of Opposite Party Nos.4 and 5 were not shown in the seniority list mentioned above because they ^{had} ~~were~~ not appeared ⁱⁿ the required test. When being called upon to appear in the test, instead of complying with this order, Opposite Party Nos.4 & 5 invoked the jurisdiction of the Hon'ble High Court of Orissa by filing an application under Article 226 of the Constitution and this formed subject matter of O.J.C. No.1721 of 1978 disposed of on 13th April, 1982. In the said judgment, the Division Bench concluded as follows:

"It is wholly unnecessary to go into this aspect of the matter as in our view the petitioners having already continuously served in the promotional posts for more than 4 years must be deemed to have satisfied the requirements of the promotion posts

and there would be no justification for requiring them to take the examination at this belated stage. Mr. Dora appearing for the Petitioners has brought it to our notice that the petitioners are even till today continuing in the same posts. In these circumstances, we think there was no justification to require the willingness of the Petitioners to take the examination again. Annexure-6 appears to have been misconceived. We would accordingly quash the direction and held that the petitioners were not required to take the Examination again when Annexure-6 was issued."

7. We think there is substantial force in the contention of Mr. L. Mohapatra learned Standing Counsel appearing for the Opposite Parties that once High Court of Orissa had held that there was no justification for requiring willingness of the petitioners in OJC No. 1721 of 1978, who are Opposite Party Nos. 4 and 5 in this petition, to take the examination and in consequence thereof, Annexure 6 i.e. the willingness sought for by the competent authority was quashed, there was no other alternative for the appropriate authority but to dispense with the examination to be taken by the Opposite Party Nos. 4 and 5. We may also state that this Bench has no authority to sit over the judgment of the High Court to consider the same as an appellate authority. We are also bound by the findings given by the High Court in this regard. Therefore, we find that no illegality was committed by the appropriate authority in regularising the services of Opposite Party Nos. 4 and 5 with effect from 10.9.1973 and 1.8.1974. All the above mentioned facts clearly indicates that at the entry point, Opposite Party Nos. 4 and 5 were senior to

petitioner Nos.1 and 2 as Khalasis and Junior Typist. In this connection we feel tempted to rely upon an observation of Their Lordships of the Hon'ble Supreme Court in a case reported in AIR 1987 SC 424 (Ashok Gulati and others V. B.S. Jain and others). Their Lordships were pleased to observe as follows:

"Seniority of a person appointed must be reckoned from the date he becomes a member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularisation of service (d) on the basis of length of service or (e) on any other reasonable basis".

Applying the principles laid down by Their Lordships to the facts of the present case, ~~we~~ would find that entry into service by Opposite Party Nos.4 and 5 is earlier to the entry into service by the Petitioner No.1 as Khalasi and Junior Typist and by Petitioner No.2 as Junior Typist. Regularisation of Opp. Party Nos.4 and 5 is much prior to the point of entry into service by Petitioner Nos.1 and 2. In view of the aforesaid facts and circumstances, there is no escape from the conclusion that Opposite Party Nos.4 and 5 have been correctly assigned the seniority over the Petitioner Nos.1 and 2 and therefore, the case being devoid of merit stands dismissed leaving the parties to bear their own costs.

MEMBER (ADMINISTRATIVE)

Central Admn. Tribunal,
Cuttack Bench/K. Mohanty.
18.1.94.

VICE CHAIRMAN