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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 314 of 1991.

Date of decision : January 24, 1994.

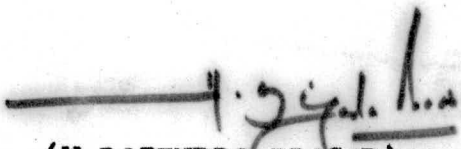
Kashinath Saha ... Applicant.

Versus

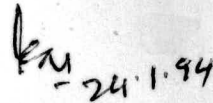
Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

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


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

24 JAN 94


(K. P. ACHARYA)
VICE-CHAIRMAN

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Union of India and others ... Respondents.

For the applicant ... M/s. M. M. Basu,
J. K. Mohapatra,
D. Chakrabarty, Advocates.

For the respondents .. Mr. Akhyaya Kumar Misra,
Addl. Standing Counsel
(Central)

CORAM:

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN
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THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

ORDER

K. P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to direct the respondents to fix the seniority of the applicant in the Junior Engineers grade with effect from 17.2.1967 and to quash the orders contained in Annexures-2, 4, 5 and 6 to the extent indicated above.

2. Shortly stated, the case of the applicant is that on 17.2.1967 the applicant was appointed as Junior Engineer in the Farakka Barage Project, a Government of India concern, with his headquarters at Farakka, Murshidabad (West Bengal). The applicant served as such till 9.3.1971 when the applicant joined as Junior Engineer in the Posts & Telegraphs Department, Calcutta

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Circle-Civil-III. A situation arose by which certain employees of the cadre of the applicant became surplus and the Government of India took a decision that instead of disengaging the surplus staff, they could be adjusted in different posts in any part of India and accordingly the applicant had joined at Calcutta. In course of time the applicant has been appointed as Assistant Director (Building) attached to the Office of the Chief Post Master General, Orissa Circle, Bhubaneswar remaining in the cadre of Assistant Engineers. The grievance of the applicant mainly is that his services rendered in the Farakka Barage Project were not taken to his credit and therefore, some of his juniors have been placed in the gradation list above the applicant.

3. No counter has been filed in this case for the reasons best known to the Departmental authorities. Though Mr. Akhyaya Kumar Mishra, learned Additional Standing Counsel (Central), again prayed for an adjournment we refused to allow his prayer because this case was admitted on 19.9.1991 and notices were issued to the respondents. On 25.11.1991 order was passed to issue reminders for service of notice on Respondents 1 to 3 and a report was called for as to whether they have received the notice or not. On 2.1.1992 Mr. Akhyaya Kumar Mishra entered appearance on behalf of the respondents and took time to file counter. From 27.3.1992 till date no counter has been filed though more than 15 or 20 adjournments

have been given to the respondents to file counter. Since this is a very old matter we did not like to accede to the request of Mr. Akhyaya Kumar Misra.

4. We have heard Mr. N. M. Basu, learned counsel for the applicant and Mr. Akhyaya Kumar Misra, learned Additional Standing Counsel (Central) for the respondents.

5. Though counter has not been filed in this case Mr. Akhyaya Kumar Misra invited our attention to the averments finding place in paragraph 4.6 of the original application stating therein the names of Junior Engineers who have been placed above the applicant and it was contended that since those persons have not been arrayed as Respondents - who are necessary parties, the application should be in limine dismissed on the ground of non-joinder of necessary parties. This is a strong point of law urged by Mr. Akhyaya Kumar Misra to which we would have ordinarily acceded to. But here is a case which stands distinguished on facts. The applicant is said to have filed a representation before the Chief Engineer, (vide Annexure-7) who is not a party in this case. We have our grave doubts whether the Chief Engineer fixes the seniority or not. In case, the Chief Engineer fixes the seniority of the Assistant Engineers then he should dispose of the representation within 120 days keeping in view the observations made below. In case, he is not the competent authority regarding fixation of seniority he should send a

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copy of the representation to the competent authority along with a copy of this judgment who should dispose of the representation within stipulated period mentioned above. In case, the representation is not traceable, the Chief Engineer should give necessary intimation to the applicant and obtain due acknowledgment of the communication and in that case the applicant is given liberty to file a representation before the Chief Post Master General who may deal with the file if he is competent to do so otherwise he would send the same to the competent authority for disposal of the representation within the stipulated period stated above.

6. Mr. Basu, has placed before us a judgment of the Central Administrative Tribunal, Calcutta Bench, forming subject matter of T.A. 316 of 1986 which has been disposed of on 13.11.1986 (Sumitra Kr. Basu and others vrs. Union of India and others). In the said case the applicants were also serving in the Farakka Barage Project. Their services in the said Project were not being taken into consideration and they were surplus employees. After taking into consideration the arguments advanced by counsel for both sides in the said case the Bench observed as follows:

" In this connection, it is also significant to note that the decision of the meeting in November, 1969 was also categorical that their seniority would be protected. In the absence of any other decision taken by the Government of India to the contrary, we are forced to conclude that the decision taken in the meeting held by the Secretary to the Government of India in consultation with the

Ministries of Home Affairs and Labour, Employment & Rehabilitation, ultimately prevails on this issue. Hence, we have no option but to conclude that the petitioners can not be deprived of their seniority with reference to their original dates of appointment to the Farakka Barrage Project.

Accordingly, we are of the opinion that the petition should succeed. The impugned seniority list at Annexure-C to the petition should be suitably modified on the above lines. The order of promotion at Annexure-10 is also set aside. The petitioner should be given their regular promotion and seniority calculated from the dates of their original appointment. "

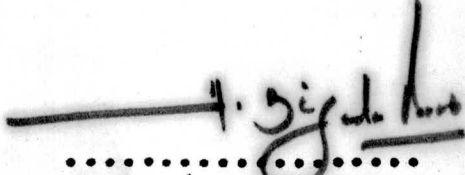
In a plethora of judicial pronouncements made by the Supreme Court, law is well settled that services rendered in previous office have to be computed to the credit of the employees and therefore the Calcutta Bench took the aforesaid view with which we are in respectful agreement especially because the view of the Calcutta Bench has been upheld by the Supreme Court which formed subject matter of Special Leave to Appeal (Civil) No. 3801 of 1987 in which on 5.10.1987 the Supreme Court dismissed the special leave petition. In the circumstances stated above, we have no other option but to say that the services of the applicant in the grade of Junior Engineers rendered in Farakka Barrage Project ^{has} ~~have~~ to be taken to his credit and seniority between himself and other incumbents be fixed. Therefore, we would direct that on the basis of the representation already filed, or to be filed as indicated above, the case of the applicant be considered taking into account the view of the Calcutta Bench with which we are in respectful agreement and we would further direct that the seniors of the applicant

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who may be affected should be noticed and ^{also} the applicant
 and those seniors who may be affected may be heard by the
 competent authority and thereafter a reasoned order be
 passed according to law. In case, the applicant is
 still aggrieved, liberty is given to him to approach
 this Bench. We hope and trust, the representation
 which would be considered by the competent authority
 would be disposed of according to law within 120 days
 from the date of receipt of a copy of this judgment.

7. Thus, this application is accordingly disposed of
 leaving the parties to bear their own costs.



 MEMBER (ADMINISTRATIVE)
 24 JAN 94.



 VICE-CHAIRMAN.
 24-1-94

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 January 24, 1994/Saranghi, Sr.P.A.