

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 323 of 1991

Date of Decision: 24.6.94

Basanta Kumar Sahoo

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

24.6.94
VICE-CHAIRMAN

24.6.94
MEMBER (ADMINISTRATIVE)

24 JUN 94

7

121

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 323 of 1991

Date of Decision: 24.6.94.

Basanta Kumar Sahoo

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. Devanand Misra
Deepak Misra
R.N. Naik, A. Deo,
B.S. Tripathy,
P. Panda, Advocates

For the respondents

Mr. P.N. Mohapatra,
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



MR. H. RAJENDRA PRASAD, MEMBER (ADMN): In this application, Shri Basanta Kumar Sahoo, Telephone Supervisor under the Assistant Engineer (Trunks), Cuttack, prays for a direction that he be declared senior to Shri Harish Chandra Kar, Telephone Supervisor, Cuttack (and fifteen others) on the ground that he had been placed senior to the said Shri Kar in the telephone operator's cadre at the time of their initial recruitment in 1963 on the strength of higher marks secured by him in the matriculation examination and also at the post-recruitment training course.

2. The applicant and Respondent 5 were recruited as Telephone Operator in 1961. Both were appointed by D.E.T. Sambalpur. The applicant was posted to Jajpur Road Exchange

1.2.94

and joined his post on 3.2.1963, and Respondent 5, posted to Titilagarh Exchange, joined the post on 5.2.1963. Jajpur Road Exchange, originally under Cuttack Telegraph Engineering Division at the time of their recruitment, was transferred for about seven months to the newly-created Sambalpur Division, and retransferred to Cuttack Division in July, 1963. The applicant, originally recruited for Cuttack Division, but appointed by D.E.T., Sambalpur, was also shifted to Sambalpur Division during that short period, and then re-transferred to Cuttack Division, in keeping with the changes in the technical and administrative control of Jajpur Road Exchange. Respondent 5, who was posted to Titilagarh Exchange, however, continued uninterrupted in Sambalpur Division, since that Exchange did not undergo a like change of control. The applicant and the Respondent were confirmed in Cuttack and Sambalpur Divisions, respectively, on the same date, viz. 1.3.1965.

When their seniority was determined and first published on the circle basis in 1974, the applicant, although senior to the said Respondent at the entry point in service, found himself placed at No. 166 of the gradation list against No. 151 assigned to the latter. This is the applicant's main grievance, because he had scored more marks, in four subjects (186/46.5%) at the matriculation, and also in the end-of-training (94%) examinations, than the Respondent (175/43.75% and 65%) and should have therefore been legitimately ranked senior of the two.

3.

The Department admits all these basic facts




— 1.2.1976

13

14

pertaining to the recruitment of the applicant and the respondent, as also those relating to the changes in the control of Jajpur Telephone Exchange between Cuttack/Sambalpur/Cuttack Divisions. They, however, point out that, unlike the Respondent, the applicant was retained throughout only under Cuttack Division right from the time of recruitment in 1963. They clarify that Jajpur Road Exchange, to which the applicant was posted initially, had been taken out of the administrative control of the erstwhile composite Cuttack Telegraph Engineering Division for a mere seven-month period solely to create^a technical justification for its bifurcation and simultaneous creation of Sambalpur Division. No physical transfer of staff was envisaged between the two divisions and no options were, therefore, called from officials to ascertain their preference to remain in one or the other Division. They also point out that the applicant had not himself expressed any choice at any time to remain in Sambalpur, did not oppose his retention in Cuttack Division, did not also react when he was confirmed in that Division in 1965 and sent up his first representation only in 1974, i.e., eleven years after his recruitment and nine years after his confirmation. The applicant did not also question the fact when his name was included in the Gradation List of Cuttack Division in July, 1971.

4. As against the applicant's disputed claims, Respondent Harish Chandra Kar, who was recruited along with the applicant in Sambalpur Division, continued to



— 1.2.74 —

14
be borne on the establishment of that Division by virtue of the fact that Titilagarh Exchange, to which he was initially posted, did not undergo the kind of change of control which was the lot of Jajpur Road Exchange resulting in changes of its affiliation twice within a year. The respondent remained in Sambalpur Division thus until in fact much after his confirmation before coming over to Cuttack under the provisions of Rule 38 of P&T Manual, Vol-IV. On transfer to Cuttack Division he was duly placed below the recruits of 1968 in accordance with the rules governing such transfer.

5. It would be necessary as well as fruitful to examine the position and the claims of the contestants at this stage on the basis of developments upto the time Shri Harish Chandra "Kar (Respondent 5) was transferred from Sambalpur to Cuttack. The following facts emerge :

Both officials figured in the selected list of unbifurcated Cuttack Engineering Division in 1961. Both belong to 1963 batch of recruits. The applicant joined his post two days earlier than Respondent 5. Both were deputed together for training and also later confirmed on the same date. The chief complication from the point of view of the applicant arose with the purely administrative decision to bifurcate the erstwhile composite Cuttack Telegraph Engineering Division and to carve out a new Sambalpur Division. Quite fortuitously, the Respondent was posted to an office which came under and continued to remain in the new Sambalpur Division, whereas the applicant was posted to an office which underwent two successive changes of



— 1. Singh —

jurisdiction before it settled to its permanent position under the original Cuttack Division. These changes were dictated purely by an administrative necessity in which neither of the two officials had any role, nor any say. Normally, whenever an existing unit is bifurcated, options are called for from the affected officials and their wishes and preferences ascertained as to which of the two units they choose to be in. This was not done in the instant case because the authorities say that they were intent on projecting merely a statistical justification and to prepare a technically feasible ground for the proposed bifurcation of the then composite Division. This does not sound plausible as a justification even if it is added that no physical transfer of assets or personnel was either contemplated or attempted in the short interval during which Jajpur Road Exchange remained with Sambalpur Division. The applicant denies this and maintains that the transfer of staff did take place during this period between the two Divisions, as exemplified in his own case. The plain fact is that neither the departmental authorities nor the affected personnel were able to anticipate or foresee the long-term impact of this measure on the staff of Jajpur Road Exchange at that point of time.

6. (i) The questions that resolves themselves - and from which the whole set of related facts and claims flow - are :

- a) To which division did the applicant and the respondent originally belong ?
 - b) Who issued their initial posting orders, and whether he was within rights to issue them ?
- [Handwritten signature]*



- c) Was it correct to deny an opportunity to the affected staff, at the point of bifurcation of Cuttack Division, to exercise an option and express their preferences ?
- d) What was the position of the applicant as regards his absorption and confirmation in Cuttack Division ?

Did he 'acquiesce' in his continued retention in the said division ?

(ii) The answers to these questions, based on facts and the record before us, are :

- a) Both the officials were in the select list of unbifurcated Cuttack Division
- b) Sambalpur Division having been created while these officials were under training, the head of the newly-carved out Division, viz., D.E.T., Sambalpur, issued the initial posting orders in respect of both, utilizing the panel of the composite Cuttack Division. In so far as this panel represented a common asset and resource of both the successor Divisions, there was nothing wrong in DET of the newly-created division issuing the appointment order in respect of the staff appointed to the offices placed under him, i.e., Jajpur Road Exchange and Titilagarh Exchanges, at that point of time. However, this resulted in some officials, like the present applicant, being appointed and shifted to a new division while others, like the Respondent, were appointed and retained in the same (original) division. Thus, two sets of officials, who were recruited identically and were equally placed in all respects, came to be treated differently. Even if the long term implications and possibilities of such differential treatment could not have been foreseen clearly at that time by the officials themselves, these should have been duly anticipated by the authorities charged with the responsibility of nurturing and safeguarding the interests of the cadres under their control. Greater responsibility and a need for larger measure of perspicacity is naturally cast on and expected of a large government department in such matters.



[Handwritten signature]

c) It is undoubtedly expected that options are called for from staff on the bifurcation of an existing unit. But the authorities decided to dispense with this simple and essential requirement in view of their averred stand that the change of jurisdiction of one of the two Exchanges was purely a temporary measure unaccompanied by any actual transfer of assets or staff. This could have indeed been accepted as a pragmatic administrative expedient necessitated by official exigencies at that point of time. The fact however remains that this particular decision eventually paved the way for the kind of aberration that marks the instant case under discussion. This possibility too should have been foreseen by the authorities and steps should have even then been initiated to forestall later complications and inequities of the kind that the petitioner in this application complains of.

d) The counter-affidavit maintains that the official did not project any express wish to be retained in Sambalpur Division when the control of Jajpur Road Exchange was retransferred to Cuttack Division and that he did not protest even when he was absorbed and confirmed in that Division. This was so evidently ~~so because he became alive to~~ his anomalous position, vis-a-vis Res.5, only after the Circle Gradation List was issued in 1974.



7. This long delay of eleven years is explicable as indicative of the fact that the applicant did not entertain any apprehension and develop any grievance until the publication of Circle Gradation List when he sent up the first of his representations to C.G.M.T., Bhubaneswar on 27.11.1974. This also clearly shows that he acquiesced ⁱⁿ his position in Cuttack Division without complaint or protest at various preceding stages because he did not expect to be relegated to a lower position than his own junior batchmate at the Circle Level. at some distant date in future.

[Handwritten signature]

His argument that his appointment was issued actually by D.E.T., Sambalpur, and not by DET, Cuttack, and that the former also accepted the fidelity bond executed by him, does have some force and cannot be disregarded merely because certain jurisdictional changes occurred ^{later} purely in the interests of administrative exigencies. He had neither any stake nor any role in such changes.

9. There remain two inter-related and connected aspects of the case which need comment.

- (1) The applicant relies heavily on the number of marks scored by him in matriculation and end-of-the-training examinations. The number of marks scored during post-induction training is by no means the criterion for either determining or revising the original seniority which is fundamentally based on the marks scored at the matriculation examination. The marks scored by two candidates at the matriculation exam are without doubt valid determinants of seniority when they have been recruited in same unit. In the present instance applicant as well as Res.5 were recruited together in the same unit. Certain seniority and placement in the select list came to be assigned to them on the basis of their respective performances at the matriculation examination. However their mutual position in the seniority list came to be disturbed ultimately because the two came to be borne on the strength of two entirely separate units. Viewed from this perspective, it has to be inferred that the applicant's relegation in seniority vis-a-vis Res.5 came about only on account of the fact that one of them, viz., the applicant, got detached from the unit of his recruitment by purely a unilateral administrative decision necessitated by an administrative need, while the other, viz., the Respondent, remained attached to the unit of his recruitment by virtue and as a result of the same administrative necessity. Thus, while neither of the two officials had anything to do with the basic necessities or decisions of the



— 1.2.24.11 —

19
authorities, these very actions resulted in a disability to one and advantage to another. To that extent, an injustice has been done to the applicant resulting, unwittingly perhaps, in a loss of his seniority. This needs to be rectified.

- 1401
- (ii) We turn next to the dates of initial joining in service of the respective contestants. The applicant admittedly reported two days prior to the respondent in the initial appointment and claims a slight edge in terms of seniority over the Respondent on that score. This is not accepted. Entrants belonging to same batch of recruitment are accorded seniority and placement on the basis of their performance at the matriculation examination, and no matter someone joins earlier or later, their original seniority, based on the criterion at the entry point, is not disturbed. Nevertheless, since the applicant had scored more marks in the matric examination, he is in any case senior to the respondent in the same batch of recruits.

10. The elaborate and exhaustive explanation given by the respondents regarding the procedure and principles of fixing inter se seniority among the officials of the same division, and among those belonging to different divisions, for the purposes of compiling a combined, circle-level seniority, has been carefully noted by us. The seniority of Respondent 5 and the applicant, we hold, has been correctly determined and reflected in the Circle Gradation List in accordance with procedures. We have no dispute with this. But we have basic objections about the manner in which the applicant came to be transplanted in a division other than the one he was recruited in. If he had been retained in Sambalpur Division - as for all intents of justice he should have been - he would not have eventually lost seniority in



— 1. Singh —

the manner he has been made to. If he did not express a specific wish to remain in the unit of his recruitment, Sambalpur Division, he did not also opt for going over to Cuttack Division and had nothing to do with the decision to place him in the latter unit.

10. To sum up, even where the applicant had admittedly scored higher percentage of marks in the matriculation examination than Respondent No.5, both came nevertheless to be confirmed and accommodated in two different units though they were recruited for the same unit. In the process, the Respondent came up for consideration for further advancement in his turn in Sambalpur at an earlier date than the applicant, based on the seniority accorded to and earned by him in the said Sambalpur Division. Very unusually the Respondent thus came to rank senior to the applicant even after losing his original seniority at the time of his transfer under Rule 38 of P & T Manual Vol-IV from one to the other Division.

This is the transparent inequity fundamental to the present case, and any amount of rationalisation or explanation cannot eclipse this basic unsavoury development. No rule, practice or procedure, howsoever ingeniously interpreted, can be permitted to operate at variance with logic, simple fairness and straightforward justice. The application of regulations or unilateral administrative measures cannot be allowed to distort equities and thereby to result in aberrations in



— 1.5.2014

individual cases. Such an aberration, we hold, has taken place in the present case, may be unintentionally. For that very reason, we consider it necessary to rectify this distortion.

11. In the light of the detailed reasoning given in the preceding paras, we are compelled to allow the application and direct that the applicant, Shri Basanta Kumar Sahoo, be accorded a place above that of Shri Harish Chandra Kar in the Circle Gradation List. The authorities will now initiate the necessary follow-up action to implement this direction by notifying Respondents 5 to 20 of the contemplated changes and observing such formalities as may be necessary on such occasions, as per rules.

12. Thus the original application is disposed.
No costs.



VICE-CHAIRMAN 24.6.94

MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 24.6.1994/B.K. Sahoo

24 JUN 94