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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK

Original Application No.191 of 1992
Cuttack this the 29th day of July, 1999
Done,

Brajabandhu Naik & others ... Applicants

-VERSUS-

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes -
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? NO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.6.99

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL)
29.6.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 191 of 1992
Cuttack this the 29th day of July, 1999
Dore,

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
&
THE HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)
...

1. Brajabandhu Naik,
S/o. Jadumani Naik,
Machinest Gr. I
2. Pitabas Nayak,
S/o.D. Nayak
Sheetmetal Worker, Gr.I
3. B.K. Bhuyan,
S/o.Dibakar Bhuyan
Painter, Gr.I.

All are working in Office of the
Chief Workshop Manager, Carriage
Repair Workshop, S.E. Railway,
At: Mancheswar, PO: Bhubaneswar-5
Dist: Puri

...

Applicants

By the Advocates:

Mr. G.A.R. Dora

-VERSUS-

1. Union of India through the
General Manager, S.E. Railway,
Garden Reach, Calcutta-43
2. Chief Workshop Manager,
Carriage Repair Workshop,
S.E. Railway, At: Mancheswar
PO: Bhubaneswar-5, Dist: Puri

...

Respondents

By the Advocates:

M/s. B. Pal,
O.N. Ghosh

...

O R D E R

MR. G. NARASIMHAM, MEMBER (J) : Three applicants, ^{not} initially joined in Railway service as Khalasis in Class-IV service under Kharagpur Division. While serving in that Division, they were promoted to Skilled Grade-III in the year 1978. After opening of Carriage Repair Workshop at Mancheswar, on their options, they were transferred to Mancheswar during 1982. On their passing the suitability test they were promoted to Gr. II in the year 1984 vide Annexures-A/1, A/2 and A/3. Thereafter ~~the~~ applicant No. 1, Brajabandhu Naik was promoted to Grade I with effect from 1.2.1985 by order dated 28.2.1985 vide Annexure-A/4. Similarly applicant No. 2, Pitabas Naik was promoted to Grade-I with effect from 1.3.1985 by order dated 1.4.1985 vide Annexure-A/5 and applicant No. 3, B.K. Bhuyan was promoted to Grade-I with effect from 3.4.1986 by order dated 8.4.1986 vide Annexure-A/6. These promotions, though adhoc in nature, were made as against the existing vacancies after the applicants passed the respective trade test. However, in the seniority list dated 2/4.9.1989 vide Annexures-A/7, A/8 and A/9, their promotions to Grade -I have been shown as adhoc. These facts are not in controversy.

2. Applicants are aggrieved that since they have been promoted to Grade-I after successful completion of required trade test, their promotions should have been treated as regular and their seniority in Grade-I should have been counted from the dates of their respective promotions, and that they were not considered for promotion to the next higher post of Chargeman B, even though some juniors were considered and promoted. Accordingly they represented on

13.11.1991 vide Annexure-A/10 challenging the seniority list published under Annexures-A/7 to A/9. This representation was turned down under Annexure-A/11 dated 9.12.1991.

Hence this Original Application filed on 28.4.1992 for direction on the respondents to treat their promotions to Grade-I as regular and count their seniority in the said Grades from the dates of their promotions with consequential benefits.

3. Respondents, viz., Railways in their counter have opposed the Original Application on the ground of limitation inasmuch as though the promotion orders in the year 1985 and 1986 of the applicants revealed that they were adhoc in nature and though in September, 1989 the seniority list was published and circulated, the applicants slept over the matter and more than two years thereafter made a representation which was rightly rejected. On merits also the Department plead that the reasoning given by the applicants in the pleading is not legally tenable.

To manage the newly created Carriage Repair Workshop at Mancheswar, staff from different seniority units of the S.E.Railway were brought to Mancheswar by transfer. Initially a joint procedure order was published by the Chief Personnel Officer in his letter dated 22.12.1989(Annexure-R/1) indicating guidelines and status^{of} these staffs. It has been made clear in those guidelines that a cut off date would be announced by the Administration subsequently. Thereafter in letter dated 9.11.1987 vide Annexure-R/2, cut off date was fixed as 1.1.1998, from which date this Workshop at Mancheswar was taken as an independent Unit of S.E.Railways

having its own seniority.

Prior to 1987 employees brought on transfer from other Units of S.E.Railways, though subjected to Trade test, were given promotions on adhoc basis and that final seniority list would be considered subsequently only after Mancheswar Unit becomes a fulfilled Unit under S.E.Railways. This was indicated in the orders of promotions. In terms of the instructions contained in the Chief Personnel Officer's letter of the year 1987 (Annexure-R/2), all the staff were given options whether they would stay at Mancheswar Workshop and under the guidelines of instructions or they can go back to their parent Units. Though most of the staff gave options and went back to their parent Units, the applicants did not opt to go back and continued at Mancheswar Workshop. Thus they subjected themselves to the formation of new cadre of this Workshop and as such are to be guided by the policy decisions under Annexure-R/1 and Annexure-R/2.

After this Workshop became a fulfilled Unit of the S.E.Railways, seniority list of all categories under different Trades were prepared and published on the basis of the substantive status in their parent Units and their services regularised in the new seniority Unit with effect from 1.1.1988. The status of officiating/adhoc promotion though mentioned in the provisional seniority list, was not recognised for the purpose of granting seniority to any of the employees as there was no regular as there was no regular seniority Unit prior to 1.1.1988. After preparation of provisional seniority list of the staff of Workshop, they were given a right to represent and point out any mistake

or error ~~that~~ had crept in in the provisional seniority list. The applicants, however, ^{did not} represent at that time and made no grievance about it. In the absence of any such representation(s) the seniority of the applicants shown in the provisional seniority list was accepted to be final and published in September, 1989.

On these grounds the Department pray for dismissal of the Original Application.

No rejoinder to the counter has been filed.

4. During hearing Shri G.A.R.Dora, learned counsel for the applicants brought to our notice a common judgment of this Bench delivered in Original Application Nos.271/89, 388/89, 431/89 and also judgement delivered in Original Application No.179/89, all of which relate to the seniority positions of the same employees in Carriage Repair Workshop at Mancheswar. We have, therefore, perused these records, besides taking note of rival contentions advanced by Shri G.A.R.Dora, learned counsel for the applicants and Shri B.Pal, learned senior counsel appearing on behalf of Railways. Shri Dora, the learned counsel for the applicants ^{laid} stress on the fact that the applicants before being promoted to Grade I, passed the required Trade test, and their promotions were given against the existing vacancies and as such those promotions have to be treated on regular basis. Factual aspect in this respect is not in controversy. The Department countered this contention as per the grounds averred in the counter aforesaid. At this stage, the common ^{the} judgment pronounced by ~~the~~ Division Bench of Cuttack on 24.12.1991 in O.A. Nos.271/89, 388/89 and 431/89 will throw

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light on the legal position involved in the contention raised by Shri Dora. In these three cases, the applicants were promoted to Gr.II after passing the Trade test, though on adhoc basis. The provisional seniority list was published in the year 1987 and thereafter the final seniority list in the year 1989 showing their status as adhoc. As in the present application, the Department took the stand basing on their policies as reflected in Annexures-A/1 and R/2 of this application. The Bench, after considering the decisions in Direct Recruit Class-II Engineering Officers' Association reported in AIR 1990 SC 1607, Rajbir Singh, AIR 1991 SC 518, K.N.Mishra's case reported in A.T.R. 1986(2) CAT 270, and S.C.Jain's case reported in the same Journal at Page 346, Full Bench Decision in Jetha Nanda's case reported in Full Bench Judgments of C.A.T. - 1986-89 353 and also taking into account Para-321 of Chapter-III of I.R.E.M.(2nd Edition) held that promotions made in the Workshop in the year 1985 and subsequently thereafter were of regular appointments/promotions and gave necessary directions to the Department to prepare seniority list gradewise as on 1.1.1988 with necessary instructions.

The case of the applicants before us is also, in our view, based on the same legal principle though their promotions to Gr.I and consequent seniority are in controversy. As per the aforesaid principle, as decided by the then Division Bench, we are of the view that since the applicants have passed the required Trade test before their promotions to Grade I 'termed as Adhoc', their promotions ought to be treated as regular and consequently seniority has to be

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determined as per the guidelines mentioned in the aforesaid common judgment.

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We are aware that the respondents have taken the ground of ^{limitation} ~~the test~~. Technically viewed, they are not unjustified in taking this ground in opposing this Original Application in the light of the uncontroverted facts mentioned above. However, it has been settled by the Hon'ble Apex Court in K.C.Sharma vs. Union of India, reported in 1998(1) SLJ 54, that application filed by similarly placed persons should not be rejected on the ground of limitation. Applicants are similarly placed persons as that of the applicants in three Original Applications mentioned above in regard to legal position as to the terminology on adhoc promotions against the existing vacancies even after passing the required Trade tests. In this view of the matter, we are not inclined to accept the contention with regard to limitation raised by the Department.

5. In the result the application is allowed with directions to respondents to treat the promotions of the applicants to Grade I under Annexures-A/4, A/5 and A/6 as regular and count their seniority in that Grade accordingly. In the circumstances, there shall be no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 29.6.99

G. Narasimham
(G.NARASIMHAM)
MEMBER (JUDICIAL) 29.6.99

B.K.SAHOO//