

8
19
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 203 OF 1992
Cuttack this the 19th day of August, 1999

Purna Chandra Singh & 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
19-8-99

19-8-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

9
20
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 203 OF 1992
Cuttack this the 19th day of August, 1999

CORAM:

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

...

1. Purna Chandra Singh,
aged about 32 years,
Son of Late Bidyanath Singh
2. Gada alias Gadadhar Parida,
aged about 48 years,
Son of banu @ Benu Parida
3. Manguli alias Manguli Samantaray,
aged about 49 years,
son of Ustab alias Ustab Samantaray

All are working as Machinists, Gr.III
(Mechanical) South Eastern Railway
Carriage Repair Workshop, At/PO: Mancheswar
Dist: Puri

...

Applicants

By the Advocates : M/s.R.N.Naik
A.Deo
B.S.Tripathy

-Versus-

1. Union of India represented through
the General Manager, South Eastern Railway
Garden Reach, Calcutta
2. Chief Personnel Officer
South Eastern Railway, Garden Reach
Calcutta
3. Chief Workshop Manager
Carriage Repair Workshop
South Eastern Railway,
At/Po: Mancheswar, Dist: Puri

...

Respondents

By the Advocates : M/s.B.Pal
O.N.Ghosh

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): Three applicants, serving as Machinists Gr.III in Carriage Repair Workshop, Mancheswar under S.E.Railway, filed this application on 1.5.1992 praying for the following reliefs:-

- a) To pass appropriate orders directing respondents(Railways) to prepare the seniority list so far as applicants are concerned in the Trade - Machinists;
- b) To pass appropriate orders directing respondents to count the service period of the applicants with effect from 1.5.1985 and accordingly fix their inter se seniority and consequential promotion;
- c) To pass appropriate orders granting such other reliefs to which the applicants are entitled.

2. There is no dispute that for functioning of newly created Carriage Repair Workshop at Mancheswar in the later part of 1980, Railway employees from other Units were brought on transfer. The applicants, who were Khalasis-cum-Helpers in other Units came on transfer to Carriage Repair Workshop, Mancheswar. On their passing trade test and training as Skilled Workers, they were promoted and posted as Skilled Machinists with effect from 1.5.1985 (Annexure-1). It is the case of the applicants that though on 9.5.1985 posts were lying vacant for promotion, the respondents, without giving promotion to the applicants gave promotion in all the Branches to I.T.I. staff in spite of the fact that they were Semi Skilled staff of Mechanical Department of S.E.Railway prior to their transfer to Carriage Repair Workshop, Mancheswar. However, they were given promotion to Grade. II Machinists with effect from 1.8.1987 as per Annexure-4, which reveals that they have passed the

required trade test for promotion to that cadre. Some of the employees of that Workshop standing in similar footing as that of the applicants approached this Tribunal in Original Application No.347/89 and obtained a direction that the employees, who had completed two years service before the cut off date, i.e. 1.8.1988 shall be taken into account and their service period shall be counted from such date and accordingly directed to prepare the seniority list in the respective Grades. This judgment was pronounced on 5.4.1991. Pursuant to this judgment, respondents prepared the seniority list (Annexure-5). However, in the Trade of Machinists, to which the applicants belong, no seniority list has been prepared and their service has been counted from the cut off date, i.e. 1.8.1988 ignoring their service rendered prior to the cut off date. Hence this application.

3. In the counter the respondents take the stand that for opening and functioning of the Carriage Repair Workshop at Mancheswar, policy guidelines under Annexure-R/1 were indicated. As per this policy guidelines staff from other Units of the S.E.Railway were brought on transfer to this Workshop and they were given to understand that at a later date a cut off date would be announced by the Railway Administration from which date the Workshop would function as an independent Unit and seniority of the staff, who would opt to remain in the Workshop would be accordingly determined. In letter dated 9.11.1987(Annexure-R/2), cut off date was announced as 1.1.1988 (wrongly mentioned as 1.8.1988 in the Application). Prior to the cut off date the staff who were brought on transfer were trade tested and given

promotions on adhoc basis with clear indication that such promotion would not confer any right or claim for seniority. After the circular dated 9.11.1987 (Annexure-R/2) was issued, all the staff were given option either to go back to their parent Units or to continue in the Workshop. The applicants, however, chose to continue in the Workshop and opted to be guided by the policy decision relating to formation of independent cadre for this Workshop. Hence they cannot again come and say that their service prior to 1.1.1988 shall be taken into account for determining their seniority. They had also not represented as to their grievances in their respective seniority list within 30 days time granted by the Railway Administration. However, in obedience to the judgment delivered in O.A.347/89, the applicants of that case have been given their seniority and revised seniority has been published vide Annexure-5. Thus the respondents pray for dismissal of this application.

4. We have heard Shri R.N.Naik, learned counsel for the applicants and Shri B.Pal, learned Senior counsel appearing for the Railway Administration. Also perused the records.

5. After conclusion of the arguments, learned senior counsel for the Department filed xerox copies of judgment of this Tribunal in O.A.304/89 and legible copy of Annexure-R/2, which have also been perused.

6. There is no dispute that the applicants were given promotion as Machinists Gr.III on 1.5.1985 on successful completion of a trade test. It is also not in dispute that while continuing so, they were given further

promotion to Machinists Gr.II with effect from 1.8.1987 after successful completion of required trade test though on adhoc basis. Question arises as to why service prior to 1.1.1988 would not be counted for the purpose of their seniority. In this connection, during hearing, our attention was invited to a common judgment of this Tribunal delivered in O.A. Nos.271/89, 388/89 and 431/89 dealing with the very same point. The then Division Bench, while deciding those cases, clearly held that promotions made in the Workshop though on adhoc basis, after necessary trade test were regular promotions and accordingly gave necessary direction to the Department to prepare seniority list gradewise as on 1.1.1988. The Department unsuccessfully challenged this judgment before the Hon'ble Supreme Court in S.L.P. No.11695-97/92. Even recently this Bench disposed of O.A.191/92 on 29.6.1999 agreeing with this view of the earlier Bench. This is also the view of the Tribunal in O.A.347/89 as mentioned in the Application and the record of which has been perused. It is true that after conclusion of the hearing learned senior counsel for the Department filed xerox copy of judgment of this Tribunal in O.A.304/89 pronounced on 23.2.1993. This judgment deals with the staff of Mancheswar Workshop. But the question decided in that judgment was in regard to regularisation and not in regard to seniority and as such this judgment is of no relevance to the point at issue in this application.

7. In view of ^{the} consistent view taken, we have no hesitation to hold that as the applicants successfully completed the trade test before their adhoc promotions as

Machinists Gr.III and Gr.II, prior to cut off date 1.1.1988, their service in those Grades cannot be treated as adhoc and has to be taken into account for determining their seniority, i.e., the respondents are to count their service period with effect from 1.5.1985.

8. In view of our discussion above, we accordingly direct the respondents to count the service period of the applicants with effect from 1.5.1985 and accordingly fix their inter se seniority and publish the seniority list in the trade of Machinist, to which the applicants are attached. The Application is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO

19-8-85
(G.NARASIMHAM)
MEMBER(JUDICIAL)