

11

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

19

ORIGINAL APPLICATION NO. 95 OF 1992

Cuttack, this the 9th day of August, 2000
Brushaketu Baraj and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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

(G.NARASIMHAM)
MEMBER (JUDICIAL)



Somnath Som
(SOMNATH SOM)
9.8.2000
VICE-CHAIRMAN

20

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 95 OF 1992

Cuttack, this the 9th day of August, 2002

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

.....

1. Brushaketu Baraj, son of Indramani Baraj
 2. Rajeswar Panda, son of S.Panda
 3. Krushna Chandra Barik, son of Judhistir Barik
 4. Udayanath Sahu, son of Lokanath Sahu
 5. BhramarbarSwain, son of Kali Swain
 6. Nemani Raghava Rao, son of N.P.Sastry
 7. Kasinatha Narayan Rao son of K.Appala Narasimham
 8. Mahamad Fajal Ali son of Md.Umai Ali
 9. Gopinath Mishra, son of Ramachandra Mishra
 10. Simha Chalam Panda, son of Raghunath Panda
 11. Sanapala Krishna Murty, son of Rama Rao
 12. Somanath Mishra, son of Basudev Mishra
 13. T.Prasad Rao, son of T.Kanta Rao
 14. Mohin Khan, son of Latgan Khan
 15. Rabindra Kumar Ojha son of Dhruba Charan Ojha
 16. Ravindra Prasad Rao, son of R.S.N.Murty
 17. Bansidhar Jena, son of Natabar Jena
- All are working as Skilled Grade in the Carriage Repair Workshop at Mancheswar, South Eastern Railway, At/PO-Mancheswar, District-Puri Applicants

Advocates for applicants - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda

Vrs.

1. Union of India, represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta.

- 13
3. Chief Workshop Manager, Carriage Repair Workshop, South Eastern Railway, At/PO-Mancheswar, District-Puri
..... Respondents

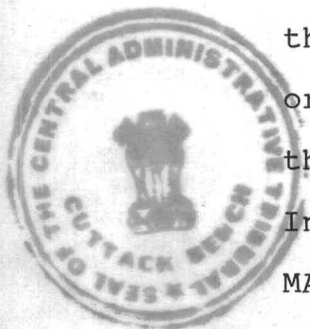
Advocate for respondents - Mr.D.N.Mishra
SC(Railways)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

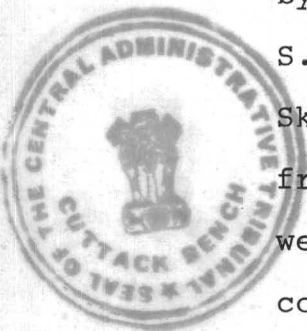
In this Application under Section 19 of Administrative Tribunals Act, 1985, the seventeen petitioners have prayed for quashing the seniority list at Annexure-7 in respect of the applicants in which the seniority is counted from 1.1.1988 and for a direction to Chief Workshop Manager, Carriage Repair Workshop, Mancheswar (respondent no.3) to count the service period/seniority of the applicant from the date of their joining at Mancheswar or in the alternative, retrospectively from the date when the Skilled posts are filled up by ITI candidates in 1985. In the OA no interim relief was prayed for. Subsequently, in MA No. 364 of 1992 filed by the applicants a prayer was made to restrain the respondents not to fill up the promotional posts. MA No. 364 of 1992 was disposed of in order dated 15.9.1992 with the direction that the result of the application will govern future service benefits of the petitioners and if in the meantime any promotion is given such promotee should be specifically informed that his promotion is subject to the result of the OA.

2. The case of the applicants is that they were appointed as Khalasis between 1970 and 1981 in the Mechanical Department of S.E.Railway in various Divisions. They came on transfer to Carriage Repair Workshop at Mancheswar. They were also promoted to Semi Skilled level of Khalasi Helper in between 1980 and 1984 before coming to Mancheswar. A chart showing their date of appointment, date of promotion as Semi Skilled workers and date of joining at Mancheswar in respect of these seventeen applicants is at



S Som

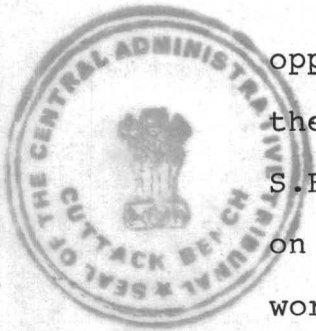
Annexure-1. Some of the applicants were also transferred on promotion to Skilled grade, to Mancheswar with immediate effect in the order dated 28.1.1985 (Annexure-2) issued by Chief Personnel Officer, S.E.Railway, Garden Reach (respondent no.2). The respondents in their letter dated 3.7.1984 (Annexure-3) declared the policy for filling up of vacancies in Carriage Repair Workshop at Mancheswar and options for transfer. In this letter they categorically stated that there was ample scope for promotion in all grades and the joint procedure order dated 22.12.1980 will govern their absorption. The joint procedure order dated 22.12.1980 (Annexure-4) stipulated in paragraph 5.3.1 that half the number of skilled artisan posts will be filled up by optees from the Mechanical Engineering Department of S.E.Railway and the remaining half of the posts in the Skilled category will be filled up by direct recruitment from ITI candidates. The applicants have stated that they were semi skilled artisans of Mechanical Department before coming to Mancheswar on transfer and in pursuance of the orders at Annexures 3 and 4 they were entitled to be promoted to 50% of the skilled artisan posts. The respondents sanctioned 902 posts, 597 in the first phase and 305 in the second phase out of which 50% posts i.e., 451 posts were to be filled up by the semi-skilled artisan staff including the applicants. The orders dated 2.2.1984 and 8.3.1984 according sanctions to the above mentioned posts are at Annexures 5 and 6 respectively. The applicants' grievance is that respondent no.3 ignoring the joint procedure order filled up 902 posts and another 73 posts, in total 975 posts by ITI candidates through direct recruitment on or about 1984, 1985 and 1986 during which period the applicants could have got their promotion to the skilled grade along with ITI candidates in 1984-85. Respondent no.3



J. Som.

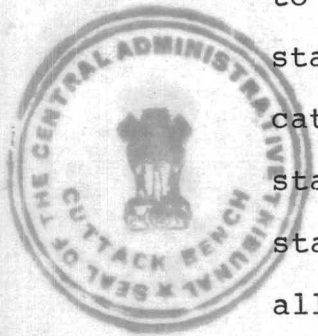
15 promoted the applicants to the skilled grade on ad hoc basis in 1987. The specific dates of promotion of the applicants on ad hoc basis to the skilled grade are given at Annexure-1. Respondent no.3 brought out a seniority list of Fitters Skilled Grade III on 26.9.1991 (Annexure-7) in which it has been shown that seniority is being counted from 1.1.1988 in respect of the applicants ignoring their service period from the date of their joining at Mancheswar. The applicants have filed objections in respect of such seniority list before respondent no.3 in October 1991 and the same are pending. The applicants' case is that counting their seniority from 1.1.1988 is illegal and that is why they have come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayer of the applicants. They have stated that the applicants have been transferred from different units of S.E.Railway to Carriage Repair Workshop, Mancheswar, either on promotion or in their existing grades in which they were working in their parent organisations. For all those who reported for duty at Mancheswar on promotion, their assignment was subject to their being found suitable in the trade test. After joining at Mancheswar they were trade-tested for the trade they opted and were promoted in that trade over a considerable period subject to availability of vacancies. These orders of promotion were conditional and ad hoc because Mancheswar Workshop was not declared as an independent unit at the relevant time so as to decide seniority or promotion, etc. The service particulars of the seventeen applicants have been given by the respondents at Annexure-R/1. The respondents have further stated that when the new Carriage Repair Workshop was set up at Mancheswar, in order to manage the workshop staff from different units were transferred pursuant to a joint procedure order issued in Chief Personnel Officer's



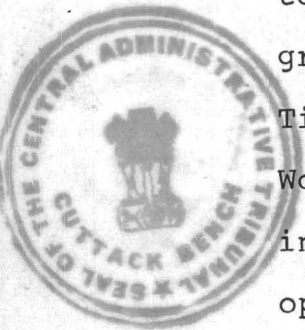
Som.

letter dated 22.12.1980 (Annexure-R/2). In this letter itself it has been specifically mentioned that at a later date a cut-off date will be announced by the Railway Administration for the smooth management of the cadre. The respondents have stated that the staff who joined Mancheswar on transfer or the staff recruited at Mancheswar were all promoted on ad hoc basis prior to the cut-off date of 1.1.1988 with the condition that the promotion is on ad hoc basis and such promotion will not confer on the incumbents any right to claim seniority over their seniors. In terms of instructions contained in Annexure-R/3 all the staff were given option as to whether they would stay at Mancheswar and would be governed by these instructions or they would like to go back to their parent units. Most of the staff opted to stay at Mancheswar. As such seniority lists of all categories of staff were prepared taking the substantive status in their parent unit as on 1.1.1988. It is further stated that while circulating the seniority lists all the staff were given opportunity to represent regarding their assigned seniority position within a period of thirty days. The respondents have further stated that there is no rule in the Railway administration to count officiating ad hoc service at any stage for the purpose of seniority. As such the relief sought for counting the officiating ad hoc service period for the purpose of seniority is not available to be granted. As regards the alternate relief for counting the service of the applicants from the date of filling up of the skilled artisan posts, the respondents have stated that these posts have been distributed tradewise as per actual requirement of the unit and promotion against these posts has already been considered in favour of seniormost employees in the trade. Therefore, the question of counting service of the applicants retrospectively from the date of



Jm

filling up of skilled artisan posts would not arise. The respondents have also stated that direct recruitments were made prior to 1.1.1988 and the lien of the departmental staff was maintained in the parent cadre. It is submitted that an incumbent cannot have lien over two posts simultaneously. The respondents have further stated that in Chief Personnel Officer's letter dated 28.1.1985 (Annexure-2) it has been clearly mentioned that the trade in which these staff are promoted will be allotted as per suitability and accordingly, these applicants have been trade-tested and absorbed as per their turn in due course on ad hoc basis. It is further stated that interse seniority of the staff transferred/recruited in Mancheswar Workshop has to be based on the length of non-fortuitous service in the grade as on a particular date to be advised in due course. Till this cut-off date the staff transferred to Mancheswar Workshop will retain their lien in their substantive posts in the parent Departments. It is further stated that when options were called for from the staff working in other Department, their absorption was governed by the joint procedure order dated 22.12.1980 at Annexure-R/2 and was subject to declaration of the cut-off date. Moreover, in paragraph 7 of the order dated 3.7.1984 (Annexure-3) it was specifically provided that the optees found suitable after screening would be transferred to Mancheswar on promotion to the extent of availability of posts and seniority-cum-suitability basing on requisite trade test. In view of this, the respondents have stated that as already explained options were called for from willing staff of different units to come over on transfer in terms of Annexure-R/2 and the letter dated 3.7.1984. But only a few staff opted to come to Mancheswar which is mentioned in paragraph 2 of the letter dated 3.7.1984 at Annexure-R/3. As such direct recruitment has to be resorted to. The



JSom

SSM

19

the applicants. The applicants have further stated that no doubt Chief Personnel Officer in his letter dated 28.1.1985 indicated that the trade to which these staff will be promoted will be allotted as per suitability. Most of such staff including the applicants joined at Mancheswar in September/October 1985, but they were promoted in 1987 after 17 months. It is stated that respondent no.3 has taken long period of 17 months to conduct suitability test. But actually there were no vacancies to accommodate them in the skilled grade and only when skilled ITI trained direct recruits were promoted to skilled artisans Grade II, in the resultant vacancies these applicants were absorbed. It is stated that had 50% vacancies been kept for the promotees, these applicants would have been promoted much earlier. The respondents have also stated that the applicants having their lien in the parent Department cannot be a bar for getting promotion to the next higher grade at Mancheswar. This has been mentioned in the joint procedure order as also in the letter dated 3.7.1984. It is further stated that the optees were promoted to the next higher grade after passing suitability test/trade test/selection and therefore, these promotions cannot be termed as ad hoc. The applicants have further contested the submission of the respondents in their counter that optees could be transferred to Mancheswar to the extent of availability of posts. They have stated that had 50% of the posts been kept vacant, then against such available posts they could have been promoted. It is also stated that direct recruitment of 975 persons in the skilled artisan grade was done by respondent no.3 without any authority. The respondents have also pointed out that the Tribunal in OA No. 347 of 1989 have assigned fresh seniority to the applicants in that case. In view of the above the applicants have stated that 50% of the posts in the grade of skilled artisans should be kept for optees and their

27



J.S.M.

promotion to the grade of skilled artisans should be regularised accordingly. They have also stated that they should be treated as promoted against 50% reserved vacancies retrospectively from the date their counterpart ITI candidates were recruited, i.e., from 1984-85 and they should be assigned seniority accordingly. On the above grounds, the applicants in their rejoinder have reiterated the prayers in the OA.

5. The respondents have filed an additional counter in which they have pointed out that in the joint procedure order itself it is laid down that if sufficient number of optees are not available, the remaining vacancies will be filled up through direct local recruitment. It has been further stated that to fill up the vacancies in the new organisation at Mancheswar, the Chief Personnel Officer in letters dated 23.7.1981 and 3.7.1984 have circulated the notice to all concerned inviting options in unskilled and semiskilled grade from other units. It was subsequently noticed that the response of optees in skilled artisan grade was only 183. In order to fill up the remaining optees in skilled artisan grade, the Railway Administration had to take steps to fill up the required number of vacancies with the approval of Chief Mechanical Engineer in terms of paragraph 5.4.3. Accordingly, under orders of the Chief Mechanical Engineer, the vacant posts were filled up by direct recruitment to the extent of short-fall. The respondents have enclosed the copy of the notesheet and the order dated 17.2.1983 of the Chief Mechanical Engineer at Annexure-R/4. The respondents have further stated that in terms of paragraph 8 of the Chief Personnel Officer's letter dated 9.11.1987 at Annexure-R/6 for the direct recruit staff the date of regular absorption in the appropriate grade at Mancheswar shall be reckoned for assignment of the

J Som

seniority in the respective grade. In respect of staff who came on transfer from other Units their seniority will be governed under para-7 of the said letter. For the purpose of fixing seniority the question of recruitment of 50% of skilled artisan staff from the optees does not arise. The respondents have further stated that under paragraph 6 of the C.P.O's letter dated 3.7.1984 it has been clearly indicated that till the cut-off date the staff transferred to Mancheswar Workshop will retain their lien in their parent department. As such staff were entitled to get their promotional benefits in their parent organisations till the cut-off date, the question of getting the benefit of fortuitous service at Mancheswar does not arise. This letter dated 3.7.1984 of the Chief Personnel Officer is at Annexure-R/7. On the above grounds, the respondents in their additional counter have opposed the prayer of the applicants.

6. We have heard the learned counsels for both sides and have also perused the records. The learned counsel for the petitioner has filed a written note of submissions which has also been taken note of.

7. The first point of grievance of the applicants is that in paragraphs 5.3.1 and 5.3.2 of the joint procedure order it was laid down that half the number of skilled artisan posts will be filled up by the optees from the Mechanical Engineering Department of the S.E. Railway and the remaining 50% will be filled up by direct recruitment of persons with ITI pass and those who have acquired apprenticeship training. It is also mentioned that the selected candidates will be given training for 1½ years before being posted to the Workshop. The applicants'

case is that had the 50% posts in the skilled artisan category been kept vacant, then on their coming over to Mancheswar Workshop on transfer, they would have immediately got promoted to the skilled artisan grade after they qualified in the trade test. But as a matter of fact by that time through direct recruitment more than 50% of the posts (975) were filled up in this category and there were no vacancies against which the optees, i.e., the present applicants before us could be given promotion. That is how the trade test was delayed over a period of seventeen months and when vacancies were created in the skilled category by promoting some of the direct recruits to the highly skilled category, the optees were given promotion to the skilled category. Had the 50% of the skilled artisan grade been kept vacant, then immediately after their reporting at Mancheswar they could have been trade-tested and on being found suitable they could have been promoted against those vacancies and they would have gained their seniority from the date of promotion. We have considered the above submissions of the learned counsel for the petitioners very carefully. The joint procedure order was issued on 22.12.1980. Thereafter Chief Personnel Officer in his letters dated 27.3.1981 and 3.7.1984 had called for options from existing employees of other units to come over to Mancheswar Workshop on the terms mentioned in the joint procedure order. But only a few staff initially opted for transfer to Mancheswar Workshop. In Chief Personnel Officer's letter dated 3.7.1984 in paragraph 2 it has been specifically mentioned that in response to the notices dated 27.3.1981 and 26.3.1983 only a few staff had opted for transfer to Mancheswar Workshop and this gave the impression that the contents of the aforesaid circulars had not been widely published to enable all the staff to consider exercising their option. It is also seen that even



J. S. S.

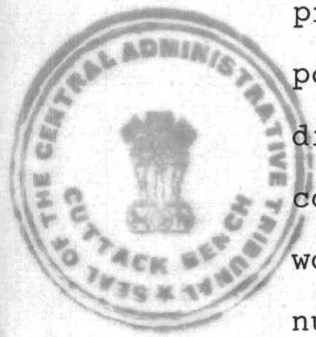
23

though paragraphs 5.3.1 and 5.3.2 lay down that 50% of the posts in the skilled artisan category will be filled up by optees from the Mechanical Engineering Department of SE Railway and 50% by direct recruitment, in paragraph 5.4.3 it is mentioned that in case of short-fall the remaining vacancies will be filled up by direct recruitment. The respondents have stated that in spite of calling for options more than once initially a very few staff opted for coming over to Mancheswar. In the counter they have mentioned that in the skilled category only 183 staff opted to come over to Mancheswar. From the note which is at Annexure-R/4 in which orders were obtained for going in for direct recruitment details of these 183 optees have been given. It is seen that by February 1983 when this note was put up, from other workshops 117 persons opted for Mancheswar Workshop in the same grade and 15 persons opted to come over on promotion. From the Divisions 31 wanted to come over in the same grade and 20 wanted to come over on promotion. Thus, of the total of 183 persons, 148 wanted to come over in the same grade and 35 wanted to come over on promotion. Taking into account these 183 persons the estimated requirement in skilled category was worked out as 822. The applicants have stated in their OA that they had joined the Railways in different Divisions in between 1970 and 1981. Obviously, therefore, initially when options were called for the applicants did not opt to come over to Mancheswar. From Annexure-1 to the OA it is seen that according to the applicants themselves they reported at Mancheswar Workshop earliest on 1.3.1985 (applicant nos. 11 and 13) and latest on 26.7.1986 (applicant no.15). In other words, these applicants did have the chance to opt to come over to Mancheswar when notices were issued earlier but they chose to come over much later. The respondents have pointed out that under paragraph 5.4.3



J. Nam.

it is clearly provided that in case the required number is still not available following the instructions in the earlier paragraphs, then the vacancies will be filled up through direct local recruitment. From the note at Annexure-R/4 enclosed to the Additional Counter it is seen that by February 1983 in the highly skilled category only 183 persons opted whereas the estimated requirement was 822. It is not reasonable for the applicants to expect that in Mancheswar Workshop 50% of the posts will be kept vacant to be filled up by promotion as and when optees decide to turn up by giving option. The Workshop has a specific function to do and that is why the joint procedure order specifically provided that if following the normal procedure all the posts are not filled up, then for the remaining vacancies direct recruitment will have to be resorted to. If the contention of the applicants is accepted, then 451 posts would remain vacant till such time as optees of required numebr decide to come over to Mancheswar and they qualify in the trade test for being promoted to the skilled category. This is not the provision in the joint procedure order. It is also seen from the note dated 5.2.1983 approved by Chief Mechanical Engineer on 17.2.1983 that direct recruitment was ordered to be made of more number of candidates than 50% in the skilled category for the purpose of making good the short-fall. The 183 persons who had opted by that time to come over to Mancheswar Workshop had faced no difficulties because direct recruitment has not been done to the extent of options received by that time. In view of this, this contention of the applicants that direct recruitment should have been confined only to 50% of the posts and other 50% should have been kept vacant till such time the optees decide to come over and then get promotion is held to be without any merit and is rejected.



J. Jom.

25

33

8. The second aspect of the applicants' contention is that they should be given seniority from the date of their joining at Mancheswar Workshop and not from 1.1.1988. The alternative prayer is that their seniority should be counted retrospectively from the dates when the skilled artisan posts were filled up by the ITI candidates in 1985. In paragraph 4.2 of the joint procedure order it has been laid down that all such absorptions ^{of the optees} in the Mancheswar Carriage Workshop cadre up to the date when the Workshop becomes operative (to be decided and announced by the Administration at a later date) will be treated as in administrative interest and seniority will be regulated in terms of paragraphs 311 and 321 of the Establishment Manual. From this it is clear that in the joint procedure order itself it was mentioned that the date from which the cadre of the workshop will become operative will be decided and announced at a later date. Again in the circular dated 3.7.1984 at Annexure-3 it has been mentioned that interse seniority of the staff transferred/recruited in the Mancheswar Workshop will be based on the length of nonfortuitous service in the grade as on a particular cut-off ^{date} to be advised in due course. It is further provided that till this cut-off date the staff transferred to Mancheswar Workshop will retain their lien in the parent Department. From the above it is clear that when the applicants opted to come over to Mancheswar Workshop on transfer they were aware that at a subsequent date a cut-off date would be announced and the Mancheswar Workshop cadre will come into existence with effect from that date. In view of this, the applicants cannot make a grievance that their seniority has been counted from the cut-off date of 1.1.1988. When they opted to come over to Mancheswar they were aware that they would continue to retain their lien in their parent organisations and only with effect


25

26

31

from the cut-off date which later on was announced as 1.1.1988 their lien will cease and they will be permanently absorbed in the Mancheswar Workshop Cadre. This cut-off date was laid down in the circular dated 9.11.1987 which is at Annexure-R/3. In this circular detailed instructions were issued about filling up of the newly created Mancheswar Workshop Cadre from 1.1.1988 and the fixation of seniority for direct recruits as also for the optees. It is mentioned in paragraph 4 that hitherto the posts in Mancheswar Workshop are being operated by staff who have opted to come on transfer from other Divisions/Workshops and other Railways and are still maintaining their lien in their parent cadre and the staff recruited locally under various provisions. In respect of the first category, i.e., the optees, in paragraph 5 of this letter it was provided that their lien in the parent unit will be terminated with effect from 1.1.1988 unless they express their willingness in writing to revert back to their parent unit and therefore from 1.1.1988 the cadre of Mancheswar Workshop will be operated by the staff who are recruited locally from open market and the staff who have come on transfer on option and are unwilling to revert back to their parent cadre. From the above it is clear that from November 1987 when the cut-off date 1.1.1988 was announced the optees including these applicants have been given an option to revert back to their parent cadre. But apparently the applicants decided to stay on at Mancheswar Workshop. In view of this, they cannot make a grievance that they have been absorbed in Mancheswar cadre from 1.1.1988. The joint procedure order dated 22.12.1980 and the circular dated 3.7.1984 clearly indicated that a cut-off date would be announced later and when the cut-off date was announced in the circular dated 9.11.1987 the optees were again given option to go back to their parent cadre. But as these applicants have not opted to go back to their parent cadre

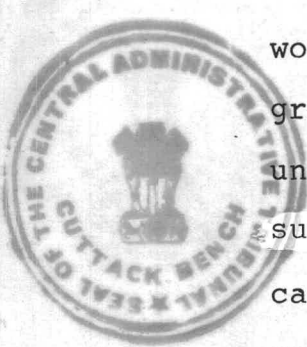
J. J. J.



27

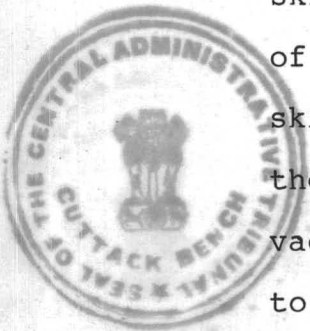
they cannot object to formation of the cadre from 1.1.1988. The manner of fixing seniority of the staff working in the Mancheswar Workshop cadre ,i.e., the direct recruits and the optees was laid down in paragraph 7 of the circular dated 9.11.1987. It is relevant to note that prior to 1.1.1988 the optees continued to have their lien in their parent organisations and accordingly they were entitled to get notional promotion to the next higher grade in their parent cadre according to their seniority. In view of this, in paragraph 7 of this circular, it was clearly laid down that for the purpose of seniority the date of appointment to the nonfortuitous service in the relevant grade as on 1.1.1988 in the respective parent units will be obtained for merging the seniority. In other words, if an optee working in the Mancheswar Workshop in the semi skilled grade had already got his notional promotion in his parent unit to the skilled category on regular basis, then his such promotion on regular basis to the skilled category in the parent unit would be the determining factor and the date of such notional promotion in the parent cadre would be the date for reckoning seniority. Neither the applicants nor the respondents have indicated in their pleading if any of the applicants after their coming over to Mancheswar Workshop got notional promotion to the next higher grade in their parent units. In view of this, besides noting this provision in the circular dated 9.11.1987, the matter cannot be pursued further. When the applicants came on transfer to Mancheswar Workshop they were aware that they would continue to retain their lien in the parent unit till the cut-off date which would be announced later and obviously therefore they would have been entitled to the benefit of their having lien in the parent cadre and they could not have had any lien to any posts in Mancheswar Workshop where the cadre came into force only with effect from 1.1.1988. In view of the above

35



JSm.

it cannot be said that the applicants have any right to be notionally promoted with retrospective effect from 1985 when the direct recruits were inducted. We have already noted that the decision to induct the direct recruits against the direct recruitment quota as also against the quota for the optees to the extent of short-fall was taken in February 1983. Apparently the direct recruits were inducted over a period of time. But it appears from the averments of the applicants in their rejoinder that by the time the applicants came to Mancheswar Workshop the direct recruits were already in position. This is clear from the averments of the applicants that their promotion to the skilled category was delayed by 17 months because of lack of vacancies in the skilled category and only when some skilled artisans who are direct recruits were promoted to the next highly skilled category, in the resultant vacancies they were promoted. At this stage it is necessary to note the submission of the applicants that even though the joint procedure order provided that the direct recruits after their appointment should be given eighteen months training before being posted to the Workshop, they were actually given six months training. The respondents in their additional counter have pointed out that in terms of the IREM 159 (Annexure-R/5) the skilled artisans having ITI qualification will undergo a training for a period of six months. It is also to be noted that even though in paragraph 5.3.2 of the joint procedure order it has been provided that selected candidates amongst direct recruits will be given training for one and half years before being posted to the Workshop, in paragraph 6 it has been provided that the staffing and recruitment to the Mechanical Department non-gazetted cadre in Carriage Repair Workshop, Mancheswar, will generally be made according to the policy outlined above. It is also provided that the Administration

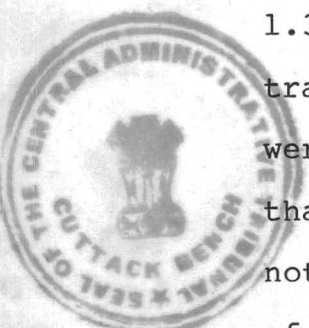


Jim

may make such changes in the procedure from time to time as may be conducive to expeditious and timely commissioning of the workshop. Thus, it was open to the Workshop authorities to reduce the period of training in the interest of early induction of direct recruits in view of the short-fall and in any case period of six months training for ITI pass candidates has been provided in the relevant recruitment rules. This contention of the applicants is also held to be without any merit.

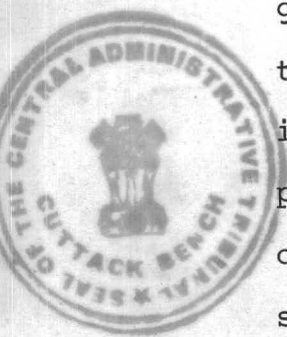
9. The last contention of the applicants is that they had opted to come over to Mancheswar Workshop on promotion to the next higher grade. They reported at Mancheswar Workshop on dates earlier noted ranging between 1.3.1985 and 26.7.1986. But the process of holding the trade-test for them took seventeen months of time and they were promoted only sometimes in 1987. They have pointed out that this is because vacancies in the skilled category were not there and only when vacancies were caused by promotion of some of the skilled category staff to the next higher grade, in the resultant vacancies they were promoted. The applicants have further stated that for this promotion they appeared and qualified in the trade test, but even then their promotion was treated as ad hoc. The applicants have submitted that under the circumstances their promotion cannot be treated as ad hoc and they should be entitled to count their seniority at least from the date of their ad hoc promotion. To appreciate this point one has to go back again to the joint procedure order and the circular dated 3.7.1984. In the joint procedure order in paragraphs 4.1.1 to 4.1.4 preferences were indicated for filling up of the posts in the Mancheswar Workshop. The first preference was given to serving employees of the appropriate trade in the

29
37



Jm.

same grade in other Workshops at Kharagpur, Raipur and Nagpur. The second preference was given to serving employees of appropriate grade in the respective trade who were willing to join Mancheswar Workshop in the same grade. The third and fourth preferences were given to serving employees in the three Workshops mentioned earlier and the next to the serving employees of remaining establishments of the Mechanical Department who were eligible for promotion to the respective posts in the appropriate trade and who were willing to join Mancheswar Workshop cadre. Initially it was felt that those who were already eligible for promotion would immediately after joining at Mancheswar get promotion. As has been noted earlier the response from the serving staff to go to Mancheswar Workshop was initially very lukewarm and this has been noted in paragraph 2 of the circular dated 3.7.1984. In paragraph 3 of this circular it has been mentioned that there is ample scope for accelerated promotion in all grades and trades particularly in the artisan cadre. In paragraph 4 of the circular dated 3.7.1984 at Annexure-3 of the OA and Annexure-R/7 of the additional counter it has been mentioned that in view of poor response from serving employees it has been decided to consider transfer of senior and experienced artisan staff on promotion subject to their being found suitable on screening. From this it appears that because initially the serving employees did not opt in required number to come to Mancheswar Workshop in pursuance of the joint procedure order dated 22.12.1980, in the circular dated 3.7.1984 it was provided that senior and experienced artisan staff can be transferred on promotion subject to their being found suitable on screening. The applicants have stated that they opted to come on transfer on promotion. This has not been denied by



Wm.

the respondents. But actually when they came between March 1985 and July 1986 the respondents took a long time to hold the trade test in which the applicants qualified. As they were qualified to hold the promotional posts by having qualified in the trade test and as they opted to come on transfer on promotion, their promotion to the skilled grade cannot be taken as ad hoc. The vacancies were there as has been mentioned in the counter of the respondents and against these vacancies the applicants were promoted after they had qualified in the trade test. Their ad hoc appointment was in accordance with the recruitment rules and this period therefore should count towards seniority. The respondents have pointed out in their counter that in accordance with the direction of the Tribunal in OA No. 347 of 1989, decided on 5.4.1991 (Dhani Behera and others v. Union of India and others) the seniority of the applicants in that case was interpolated in the seniority list. We have seen the records of OA No. 347/89. In that case the applicants who had come over to Mancheswar Workshop as Khalasi Helpers and got ad hoc promotion after qualifying in the trade test to the post of Mason Grade III and again to the post of Skilled Grade II, prayed for a direction to the respondents to regularise their services in the cadre in which they were holding the posts. The Tribunal noted that the applicants became Mason Grade III after qualifying in the trade test and they continued for more than two years in that post before they were given further ad hoc promotion to Skilled Grade II. Considering the fact that the applicants had been promoted to Mason Grade II after clearing the trade test and had continued in that rank for more than two years, it was held that their work in Mason Grade III cannot be treated to be fortuitous. As regards their further ad hoc promotion to Skilled Grade II, the



J. J. M.

32

40

-21-

Tribunal held that the period of work in Skilled Grade II is too short to claim that it is non-fortuitous. In view of this, the direction was issued to treat the service of the applicants in that case in the rank of Manson Grade III as non-fortuitous and accordingly regularise their services. In the instant case, the applicants got promotion to Skilled Grade between 4.8.1986 and 1.8.1987 but they were regularised in the Skilled Grade from 1.1.1988. In line with the approach adopted in the above case we find that the applicants in this case also were given promotion to Skilled Grade after they qualified in the trade test and continued in that grade from the dates indicated by us above. In view of this, their promotion cannot be called fortuitous and therefore this period of ad hoc service should be counted for the purpose of their regularisation and seniority, and the seniority list should be correct accordingly. It is so ordered.

10. In the result, the Original Appl:
is partly allowed in terms of the observation and direc
above, under the circumstances, without any order as to
cost

SIN
ER(JUDICIAL



Somnath Som
(SOMNATH SOM)
9.8.2000
VICE-CHAIRMAN