

7

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 237 OF 1995
Cuttack, this the 23rd day of August, 2001

R.Appa Rao

....

Applicant

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)
VICE-CHAIRMAN
23.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 237 OF 1995
Cuttack, this the 23rd day of August, 2001

CORAM:

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

.....

R.APPA Rao, son of late Baganna, Wireman Grade-I Working in the office of the Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/PO-Khurda Road, District-Khurda

.....

Applicant

Advocates for applicant - M/s H.M.Dhal
A.A.Das
B.Mohanty

Vrs.

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/PO-Khurda Road, District-Khurda.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, At/PO-Khurda Road, District-Khurda.
4. A.B.Paikray, Diesel Engine Driver, Grade-I, Brahmani Nadi Pump House, South Eastern Railway, At/PO-Talcher, District-Dhenkanal.
5. A.Adinarayana, L.C.W.M. Grade-I, South Eastern Railway, Khurda Road, At/PO-Khurda Road, District-Khurda.

.....

Respondents

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

Som In this O.A. the petitioner has prayed for quashing the order dated 1.3.1994 at Annexure-1 rejecting his claim of seniority. He has also prayed that respondent nos. 1 to 3 (departmental authorities) be directed to give promotion to the applicant to the cadre of Grade-I when private respondent nos. 4 and 5 were so promoted and has also asked for consequential relief. The departmental respondents have filed counter opposing the prayers of the

9

applicant. No rejoinder has been filed. Private respondent nos.4 and 5 were issued with notices, but they did not appear or file counter. For the purpose of considering the petition, it is not necessary to go into too many facts of the case.

2. Admittedly, the petitioner had earlier approached the Tribunal in OA No.334 of 1987 with the prayer for a direction to the departmental authorities to promote him to the post of Fitter Grade-I from the date his juniors respondent nos. 4,5 and 6, G and H in the OA got promotion. The Tribunal disposed of the earlier O.A. in order dated 24.4.1992 with a direction to the Divisional Personnel Officer to give personal hearing to the applicant as also private respondents before them in the earlier O.A. regarding their seniority and pass a reasoned order. Accordingly, after giving hearing to R.Appa Rao, the applicant and N.Appa Rao (respondent no.4 in the earlier O.A.) the prayer of the applicant was rejected in the impugned order dated 1.3.1994 at Annexure-1. It is necessary to note that private respondent nos. 6 and 5 in the earlier O.A., who have been arraigned in the present O.A. as respondent nos. 4 and 5, did not appear before the Divisional Personnel Officer in spite of notice. From the above it is clear that the sole question for determination in this case is the legality and correctness of the impugned order at Annexure-1.

J. Som

3. We have heard Shri H.M.Dhal, the learned counsel for the petitioner and Shri B.Pai, the learned Senior Panel Counsel (Railways) for the respondents and have perused the records.

10

4. In the impugned order the Divisional Personnel Officer has held that the applicant has no claim of seniority over N.Appa Rao (respondent no.4 in the earlier O.A.), A.B.Paikray and A.Adinarayan (respondent nos. 4 and 5 in the present O.A.). In the present O.A. the applicant has given up his claim of seniority over N.Appa Rao and we are, therefore, required to consider his claim of seniority over present respondent nos. 4 and 5. The applicant has stated that he was initially appointed as Pump Driver on 21.4.1964 and was promoted to the post of Stationary Pump Attendant (hereinafter referred to as "SPA") on 9.8.1965 and was confirmed in the post with effect from 1.9.1970. The departmental respondents have pointed out that the applicant was initially recruited as Temporary Khalasi in Group-D on 10.4.1964 and was used as Stationary Pump Attendant on ad hoc basis from that date but his status continued to be Khalasi. Later on, his appointment as Khalasi was regularised with effect from 12.4.1966 and he was confirmed as SPA (semi-skilled grade) on 1.9.1970 in the intermediate grade. The departmental respondents have pointed out that SPA was an intermediate grade and there is no scope for initial appointment in the grade and on that ground they have opposed the averment of the applicant that he was initially appointed as SPA. In view of the fact that this averment of the departmental respondents has not been denied by the applicant by filing rejoinder, we accept the position that the applicant was initially appointed as Temporary Khalasi and was regularised as such. He was later on promoted to SPA (semi-skilled grade) and was confirmed as SPA on 1.9.1970. The departmental respondents have pointed out that

Sam.

the staff of Electrical Department were divided into five categories as mentioned at Annexure-R/4. These categories were in different seniority units. The applicant was holding the post of SPA in Group D - Power House, Substation Diesel Engine and Pumps, for the purpose of seniority and promotion. Private respondent no.5 A.Adinarayan was appointed in Group-A, i.e., General Electrical Maintenance and Construction and his seniority was maintained in Group-A for promotional purpose. As the applicant and respondent no.5 belongs to different seniority groups, the applicant cannot claim that he is senior to respondent no.5 on the basis of his date of appointment. As regards A.B.Paikray (respondent no.4) the departmental authorities have pointed out that respondent no.4 was also appointed as Khalasi in Group-D - Power House, Substation Diesel Engine & Pumps, i.e., the same Group as the applicant, and he was promoted to semi skilled and skilled Grade-III on 31.3.1971 and 1.8.1979 respectively, i.e., much after the applicant's promotion to these two grades on 1.9.1970 and 1.8.1978. In the impugned order at Annexure-1 it has also been mentioned in page 3 that respondent no.4 A.B.Paikray is junior to the applicant. Respondents have stated that channel of promotion of staff of Electrical Department has been communicated by the Chief Personnel Officer in his order dated 2.9.1976 at Annexure-R/4. According to this, all the staff have been put in three Groups, Group A - Power supply, Water supply and Transmission and Distribution, Group B - Train lighting and Engine Head light, and Group C - Aircondition and Refrigeration. After merger of five Groups into three Groups, for the purpose of promotion,

the applicant and respondent no.4, who originally belonged to Group D, have now been merged in Group-A for their seniority and promotion and due to general upgradation from 1.8.1978 the applicant as well as respondent no.4 were promoted to skilled grade-III from 1.8.1978. For filling up of vacancies of Diesel Engine Fitter and Mason in highly skilled Grade-II, options were called for from all skilled Grade-III staff of Group-A in January 1985 in the notification at Annexure-R/5. In accordance with the notification, respondent no.4 opted and passed the trade test and was promoted on 14.9.1985 as Skilled Grade-II in another category of the same Group-A. The applicant had on the date of notification already got Skilled Grade-II promotion with effect from 1.1.1984 whereas by tendering option and by changing category, respondent no.4 got promotion to skilled Grade-II on 14.9.1985. Accordingly, by virtue of avenue of promotion in the newly opted category, respondent no.4 got promotion in Highly Skilled Grade-I from 30.12.1986 even though he was junior to the applicant. The departmental respondents have pointed out that criteria of avenue of promotion depend upon availability of vacancies. Even though the applicant is senior to respondent no.4, the avenue of promotion in his category was less and therefore, he was promoted to Highly Skilled Grade-I on 28.12.1992 much later than respondent no.4. From the above it is clear that even though respondent no.4 was junior to the applicant in the original category he opted to go to another category for the purpose of promotion to Skilled Grade-II when the applicant in his own category was in Skilled Grade-II. In the new category to which respondent no.4 went as Skilled Grade-II, chances of promotion were more and that is why

13


he became Skilled Grade-I from 30.12.1986 whereas the applicant in his category got promotion as Skilled Grade-I only on 28.12.1992 because of lack of vacancies. In view of the above, the applicant cannot claim that he is senior to respondent no.4.

5. In view of our discussion above, we hold that the applicant cannot be demed to be senior to respondent nos. 4 and 5 and cannot claim promotion to Skilled Grade-I from the date respondent no.4 got such promotion because it was in another category with different chanel of promotion. We, therefore, find no illegality in the order at Annexure-1.

6. In the result, the O.A. is held to be without any merit and is rejected. No costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
23.8.2001
VICE-CHAIRMAN

CAT/Cutt.Bench/23rd August, 2001/AN/PS