

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 320/1995.
Cuttack, this the 19th March, 2002.

KASINATH SAHA.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

....

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?

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

M.P. Singh
(M.P. SINGH)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 320 OF 1995
Cuttack, this the 19th day of March, 2002

C O R A M:

THE HONOURABLE MR. M. P. SINGH, MEMBER (ADMINISTRATIVE)
A N D
THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.)

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KASINATH SAHA, Aged about 55 years,
S/o. Late Pasupati Saha,
At-Kabirajpur, Po: Albandha,
Ps: Sainthi, Dist. Birabhum (WB),
now working as Assistant Director (Building),
Office of Chief Postmaster General, Orissa,
Circle, Bhubaneswar.

.... Applicant.

By legal practitioner: M/s. B. Nayak, A. K. Dora, B. B. Mohapatra,
Advocates.

- versus -

1. Union of India represented through Secretary to the Government of India Ministry of Communication, New Delhi Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. Director General Department of Telecommunication, Govt. of India, Sanchar Bhawan, 20, Ashok Road, New Delhi.
3. Director General, Department of Posts, Dak Bhawan, New Delhi.
4. Director (B. W.), Office of Director General, Department of Telecommunications, Government of India, Sanchar Bhawan-20, Ashok Road, New Delhi.

.... Respondents.

By legal practitioner: Mr. U. B. Mohapatra, Additional Standing Counsel (Central).
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O R D E RMR. M. P. SINGH, MEMBER (ADMINISTRATIVE) :

Applicant in this Original Application has sought for directions to the Respondents for refixation of his seniority in the grade of Assistant Engineer treating the deemed date of regular promotion as 17-02-1975 with consequential benefits.

2. The brief facts of this case are that the Applicant was appointed as Junior Engineer in the Farakha Barage Project on 17th February, 1967. Due to the closure of the said project, the Applicant was declared surplus, and was redeployed in the Posts and Telegraph Deptt., Calcutta Circle, Civil-III, Calcutta from 9-3-1971. He was sent on deputation to All India Radio as Assistant Engineer from 17.12.1977 to 26-11-1980. Since the seniority of the Applicant was counted in the grade of Junior Engineer from 9-3-1971, he submitted a representation claiming his seniority w.e.f. 17-2-1967. Thereafter, he filed Original Application No. 314/91. The Tribunal by its order dated 24th January, 1994 directed the Respondents, therein, to dispose of the representation of the Applicant in terms of the order dated 18.11.1986 of the Calcutta Bench of the Tribunal rendered in T.A. No. 316 of 1986. Thereafter, for alleged non-compliance of the order, the Applicant had filed a Contempt Petition No. 40/94. During the pendency of the said C.P., the Respondents disposed of the representation of the

Applicant dated 14-9-1990 on 21-4-1995. This Tribunal disposed of the said Contempt Petition No. 40/94 with an observation that if the Applicant was still aggrieved, he could file a fresh application. According to the Applicant, the Respondents have not complied with the direction of this Tribunal made in OA No. 314/91 and as such, he has filed the present Original Application claiming the aforesaid reliefs.

3. Respondents have filed their counter stating therein that the Applicant was absorbed as a Jr. Engineer (Civil) in Calcutta Circle of P&T, Civil wing on 9-3-1971 after accepting the conditions imposed by the Respondents that the past service rendered by the Applicant as Jr. Engineer (Civil) in Farakha Barrage Project would ~~not~~ not be counted towards his seniority as per the Government of India Instruction/letter /Office Memorandum No. 22011/7/86-Estt. (D), dated 3rd July, 1986 contained in Annexure-R/¹, issued by the Department of Personnel and Training New Delhi. ² Para 4-3.1 of the said Office Memorandum clearly provides that the surplus employees are not entitled for the benefit of the past service rendered in the previous organisation for the purpose of their seniority in the new organisation. The Applicant filed Original Application No. 314/91 before this Tribunal wherein this Tribunal by its order dated 24-1-1994 passed the following orders/directions:

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xx xx. Therefore, we would direct that on the basis of the representation already filed, or to be filed as indicated above, the case of the Applicant be considered taking into account the view of the Calcutta Bench with which we are in respectfully agreement and we would further direct that the seniors of the applicant who may be affected should be noticed and also the applicant and those seniors who may be affected may be heard by the competent authority and thereafter a reasoned order be passed according to law. xx xx.
We hope and trust, the representation which would be considered by the competent authority would be disposed of according to law within 120 days from the date of receipt of a copy of this judgment".

4. Based on the above directions of the Tribunal, the Respondents Department was required to dispose of the representation made earlier by the Applicant i.e. on 14-9-1990. On the representation dated 14.9.1990, the Applicant had not at all claimed protection of his service rendered by him in the Farakka Barrage Project. What he claimed by the aforesaid representation, was to give him proforma officiating promotion in AE(C) grade as per the "Next Below Rules" based on the adhoc promotion to AE(C) grade of his juniors when he was on deputation to All India Radio. He had also claimed protection of pay he was last drawing while on deputation to All India Radio.

5. However, none of the above-mentioned claims were maintainable under the Govt. Rules & Instructions since the benefits of Next Below Rule is applicable only in case of regular promotion of juniors when senior was away on deputation /training etc.



Therefore, so far as the representation of the Applicant dated 14-9-1990 was concerned, since the Applicant had not claimed benefit of the Service rendered by him in the Farakka Barrage Project and since the benefits claimed by the Applicant were not related to the directions of this Tribunal in OA No.314/91, the same was not at all tenable under the law. However, the Applicant made another representation after the judgment passed by this Tribunal in the aforesaid Original Application wherein he claimed the benefits of seniority of the services rendered by him in Farakka Barrage Project i.e. w.e.f. 17-2-1967. It is further stated by the Respondents that on consideration of his second representation, in the final seniority of AES(C) issued on 20.6.1994, the name of the Applicant was placed at Sl.No.411 above the names of all those who made their first entry into the Govt. service after 17.2.1967 in the Farakka Barrage Project and later joined the Respondent Department. It is also stated by the Respondents that other two similarly situated officers from the Farakka Barrage Project who were senior to the Applicant there and were absorbed in the Calcutta Circle Office of P&T(Civil) wing of the Respondent Department were placed at Sl.Nos.409 and 410 of the aforesaid seniority list.

5A. However, since this Tribunal in OA No.314/91 had directed the Respondents to grant the benefits of past service to the Applicant, the Respondent Department issued notices to about 80 AES(C) who were senior to the Applicant and that too, whose seniority

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was going to be adversely affected, in case of revising the seniority of the Applicant in JE(C) and AE(C) grades of the P&T Civil wing. ~~Thus~~, According to the Respondents, these Assistant Engineers raised objections with regard to the revision of the seniority position of the Applicant. However, inspite of the aforesaid objections received from the seniors to the Applicant, the seniority of the Applicant was revised by the Respondents after taking into account his past service w.e.f. 17.2.1967 and the name of the Applicant in the Circle Seniority List of JE(C) of Calcutta Circle was ~~figured~~ ^{placed} immediately above Shri Salil Sur who joined as Jr. Engineer(C) in Calcutta Circle of the P&T Civil wing on 20.2.1967. ~~Thereafter~~ ^{Accordingly}, taking into consideration Shri Salil Sur's seniority position at Sl.No.332 of the Final Seniority List of AEs(C), published on 20.6.1994, the seniority position of the Applicant was revised and refixed from Sl.No.411 to Sl.No.331-A, vide order dated 21st April, 1995. Since Shri Salil Sur was given the deemed date of regularisation in AE's grade w.e.f. 4.12.1978, therefore, based on the judgment of the Bangalore Bench of the Tribunal in OA Nos.1108-1110/89 (Shri R. Ganapathy and others vrs. Union of India and others), the applicant was also given the deemed date of regularisation in AE's grade w.e.f. the date of his immediate junior Shri Sur i.e. w.e.f. 4-12-1978. Therefore, the Applicant's claim for deemed date of promotion in the grade of AE(C) w.e.f. 17-2-1975 and ~~the~~ refixation of seniority in AE(C) grade between Sl.Nos.206 and 207 of the aforesaid seniority list of

AEs(C) are totally baseless and after thought and as such these cannot be allowed to him. Since the Bangalore Bench of the Tribunal in the aforesaid order has specifically directed not to grant any consequential monetary benefits to the officials who are granted deemed date of regularisation w.e.f. the date of their juniors, therefore, the Applicant was not entitled to any consequential monetary benefits in this regard and no exception could be made in favour of the Applicant. It has been further prayed by the Respondents in the counter that since as per the judgment passed in OA No. 314/91, the Applicant has already been allowed the maximum benefits, as per law, the present OA is not maintainable being devoid of merit and the same is liable to be dismissed.

6. Heard, Mr. U. B. Mohapatra, learned ASC(Central) appearing for the Respondents and also perused the records. None is present on behalf of the Applicant today, the 15th March, 2002 and none was present even on 14th March, 2002. No request was made on his behalf for adjournment. This is a 1995 matter where pleadings were completed long ago. We therefore, proceed to dispose of this Original Application in terms of Sec. 15 of CAT(Procedure) Rules, 1987.

7. The question for consideration before us is whether the Applicant can be granted seniority in the grade of Asst. Engineer treating the deemed date of promotion as 17-2-1985. As per Office Memorandum dated 03-07-1986

WJ (Consolidated orders on seniority) issued by the Department

of Personnel and Training, New Delhi (para 4.3.1.), the Applicant is not entitled to get the benefits of past service rendered in the previous organisation for the purpose of the seniority in the new organisation. It has been provided therein that such employees are to be treated as fresh entrants in the matter of their seniority, promotion etc. However, the Applicant has been granted the benefits of his service rendered by him in the project in the grade of JE(C) from 17-2-1967 as per the directions of this Tribunal in OA No. 314/91. We find that the name of the Applicant in the seniority list of AE(C) has been placed above the name of others who were senior to the Applicant in the Project as Junior Engineer and subsequently absorbed in the same Deptt. where the Applicant is working i.e. P&T Department. The Applicant has also been granted the benefits of deemed date of regularisation with effect from the date of his immediate junior as per the judgment of the Bangalore Bench of the Tribunal (supra). Accordingly, his placement in the seniority list of AE(C) was changed and he was placed at an appropriate place in the above final seniority list. Therefore, the prayer made by the Applicant to promote him to the grade of AE(C) w.e.f. 17-2-1975 is not tenable and can not be considered by any stretch of imagination. On the other hand, we find that the Applicant has been given the benefit of past service rendered by him before his redeployment which is contrary to the rules and instructions and also the legal position settled by the Hon'ble Supreme

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Court in this regard. However, since the Applicant has been granted these benefits in pursuance of the directions of this Tribunal, as aforesaid, and the position has been settled long back, we do not want to re-open the issue and unsettle a settled thing, thereby disturbing the position of the Applicant.

8. In the light of the aforesaid discussions, we are of the considered view that the Applicant is not entitled to any of the reliefs claimed by him in this Original Application and the Original Application is accordingly dismissed. There shall be no order as to costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL) 19/03/2002

M. P. Singh
(M. P. SINGH)
MEMBER(ADMINISTRATIVE)

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