

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 343 OF 1995
CUTTACK THIS THE 29th DAY OF August 2001

Rabinarayan Mohanty

.....

Applicant(s)

- V e r s u s -

Union of India and Others

.....

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? 4-
2. Whether it be circulated to all the Benches of No Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN
29.8.2001

G. Narasimham
(G. NARASIMHAM)
MEMBER (J)
29.8.01

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.343 OF 1995
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CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

.....

Sri Rabinarayan Mohanty, aged about 43 years,
Son of Sri Sadhu Charan Mohanty,
At present working as Office Superintendent
Gr.II on deputation under C.A.O.(Con)
At-Chandrasekharapur,
P.O.Bhubaneswar.
Dist-Khurda.

By the Advocates

Applicant

M/s A.K.Mohapatra
Ashok Das

V e r u s u

1. Union of India, represented
through the General Manager,
South Eastern Railway,
Garden Reach, Calcutta-43
(West Bengal)
2. Chief Workshop Manager,
Mancheswar Carriage Repair Workshop,
South Eastern Railway,
At/PO: Mancheswar, Bhubaneswar,
Dist. Khurda.
3. Workshop Personnel Officer,
Carriage Repair Workshop,
At/Po. Mancheswar, Bhubaneswar,
Dist-Khurda.
4. Sri P.C.Swain,
Father's name not know,
At present working as Office
Superintendent Gr.II,
Mancheswar Carriage Repair Workshop,
South Eastern Railway,
At/Po: Mancheswar, Dist.Khurda.

By the Advocates

... Respondents

Mr.D.N.Mishra

A.S.C.

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL) : In this Original Application, gradation list (Annexure-8) of the Sr.Clerks as on 13.12.87 issued by Respondents 2 and 3 in memo dated 16.5.92 is under challenge. The applicant wants declaration that on that day he is senior to private Respondent No.4 P.C.Swain as Sr.Clerk and consequential service benefits accruing from such a declaration.

2. Mancheswar Workshop of S.E.Railway started functioning sometime in the early part of the eighties. The Chief Personnel Officer, S.E.Railway in letter dated 23.8.83 issued instructions that the cadre of the Workshop would be a floating cadre till the cut off date is decided and the inter se seniority of the staff transferred to the Workshop would be governed as per the provisions of establishment serial no.3/63 (Annexure-1). Again in the letter dated 3.7.84 the Chief Personnel Officer invited options from senior and experienced staff for absorption in the Workshop (Annexure-2). In para 6 of that letter it has been mentioned that inter se seniority of the staff transferred to/recruited in the Workshop will be based on the length of non-fortuitous service in the grade as on a particular cut off date to be decided in due course. Till the cut off date the staff transferred to Mancheswar will retain their lien in their parent Departments.

Some staffs from the different units or divisions of the S.E.Railway were transferred to the Workshop and some of them were further promoted in the Workshop on their successful completion of trade tests conducted by the Workshop. Ultimately a decision was taken that the Workshop would function as a separate unit with effect from 1.1.88.

3. Applicant Rabinarayan Mohanty and Respondent No.4 P.C.Swain both of whom are graduates entered Railway Service as regular Jr.Clerks in Kharagpur Division. While applicant joined on 6.5.80 Respondent No.4 on 2.4.81. In the LDCE conducted by the Railway Recruitment Board by order dated 14.5.84 both the applicant and Respondent No.4 were selected and empanelled for promotion to the grade of Sr.Clerk and in that list applicant was placed above the Respondent No.4. Applicant was promoted as Sr.Clerk with effect from 14.5.84. But before actually getting the promotion order as Sr.Clerk Respondent No.4 opted and joined in the Mancheswar Workshop much prior to the joining of applicant. By the time the applicant joined in the Workshop as Sr.Clerk Respondent No.4 already got promotion as Sr.Clerk in the Workshop and was even officiating as Head Clerk.

4. Mancheswar Workshop started functioning as a separate unit from 1.1.88 onwards. Neither the applicant nor Respondent No.4 did opt to go back to their parent Department and as such formed part and parcel of the newly created unit of the Workshop.

Facts mentioned in the para above are not in controversy.

5. The applicant's case is that in view of the stipulations contained under Annexure 1 and 2 the seniority in the new unit will be decided on the basis of the length of non-fortuitous service in the grade and till the cut off date on 1.1.88, he and Respondent No.4 retained their lien in their parent Department which would mean by 1.1.88, he was senior to Respondent No.4 in the Parent Department and that seniority has to be fixed in the new unit of the Workshop.

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6. Respondent No.4 neither entered appearance nor filed any counter. The sum and substance of the counter filed by the Department is that the seniority of the applicant and Respondent No.4 has been fixed under Annexure-8, the gradation list as per the decision of this Tribunal in O.A.179/88. In fact, this explanation also finds mentioned in the gradation list proper.

7. The point for determination is whether on 1.1.88 the applicant was senior to the Respondent No.4 in the cadre of Sr.Clerks. We have heard Shri A.K.Mohapatra the learned counsel for the applicant and Shri D.N.Mishra the learned Standing Counsel for the Department. Also perused the records of O.A.179 of 88, 178 of 88 and 180 of 88. *which have been referred during hearing.*

8. In O.A.179 of 88 Respondent No.4 P.C.Swain was not a party. It was filed by P.K.Swain (not Respondent No.4) and five others against the Railways for quashing the provisional seniority list of Jr.Clerks of the Workshop as on 2.5.88, and also for quashing the notification dated 19.4.88 cancelling the trade tests/suitability tests conducted up to 31.12.87 for the purpose of drawing up seniority position of the staffs. During pendency of that O.A. the present applicant R.N.Mohanty and the eight others (not the present Respondent No.4) intervened to safeguard their seniority in terms of the stipulations contained in the letters of the Department already mentioned above.

9. This Tribunal by final order dated 8.9.89 passed in the O.A. while quashing the cancellation notice of trade tests held that the persons who came over to the Mancheswar took the risk and as such would be entitled to the corresponding benefit that accrued to them by leaving their parent place of posting. At the

same time the Tribunal observed that it may be that some persons who opted to come over to Mancheswar had to promoted to higher ranks and there may be some persons who were senior to them in their parent cadres and did not get promotion to the cadres to which those who came over to Mancheswar were promoted. It was also observed that the inter se seniority among the persons who were working at Mancheswar was to be determined as on 1.1.88. Subsequently, in M.A.88 of 90 filed by the Department seeking some clarification, the then Division Bench in order dated 29.3.90 (Annexure-7) made the following observations in para 4.

"For proper appreciation, in a brief manner, the facts given in the original application may be stated. The carriage repair workshop was established at Mancheswar and persons from different stations of South Eastern Railway were brought to man the posts in that repair workshop and there were some ad hoc promotions after those transferred persons joined. The applicants in the Original Application made a grievance that in the seniority list no reference was made to their promotions, may be ad hoc or regular, nor to the passing of the tests held by the Department. This Tribunal by its judgement dated 8.9.89 ordered that a seniority list, taking into account the continuous officiation of the applicants were to be drawn up after considering the cases of others who may be affected. This part of the order 'considering the case of the others who may be affected' was passed keeping in view such of the persons who might have been officiating in a particular grade earlier to the applicants. So there is nothing to be clarified".

In the last para of the M.A.i.e. para 5 there has been some mention about the Annexure R/1 to the M.A. containing the list of clerks

where names of neither the present applicant nor Respondent No.4 find place. Hence it is not necessary to quote observation made in that para for disposal of the present case.

10. In the relevant para quoted above the then Bench quoted the expression "considering the case of the others who may be affected" apparently under an impression it was used in their final order passed in O.A.179 of 88, though in fact that expression was nowhere used in the final order. But the fact remains that this O.A.179 of 88 was filed in June 88 and in that month itself O.A.178 of 88 and O.A.180 of 88 were also filed with similar types of prayers by some employees of the Workshop. Judgments in O.A. 178 of 88 and O.A.179 of 88 were pronounced on 8.9.89. In O.A.178 of 88 in concluding para 9 direction was given to the Department to draw up a seniority list taking into account the continuous official^{sh} of the applicants and after considering the case of others who may be affected (emphasis supplied). Hence even if this particular expression has not been used in the judgment in O.A.179 of 88 it is apparent the then Bench while pronouncing the judgment meant that the seniority list to be drawn up must take into account the cases of others who may be affected. In O.A. 180 of 88 the same Bench at the concluding part of the judgement on 6.4.90 observed as follows:-

"In this view of the matter, we would say that the cancellation of the decision already held cannot be supported and the applicants must be given the benefits of their promotions according to the availability of the position in the grades to which they have been promoted. However, this would be subject to the seniority of any other person who may join subsequently and was officiating previously in the higher grades".

This observation has been apparently made keeping in mind the clarification wanted by the department in the M.A. filed in an O.A. 178 of 88 and 179 of 88 both of which were disposed of on 29.3.90 through separate but identical orders.

11. As already stated there is no dispute that in the parent Department i.e. Kharagpur Division, the applicant was senior to Respondent No.4 as Jr.Clerk as well as senior clerk. The guidelines issued by the Chief Personnal Officer in his letter dated 3.7.84(Annexure-2) it has been made clear that the inter se seniority of the staff transferred to/recruited in the Mancheswar Workshop will be based on the length of non-fortuitous service in the grade as on a particular cut off date and till the cut off date the staff transferred to the workshop will retain their lien in their parent Department. Hence as per this guideline by 1.1.88 the applicant was senior to Respondent No.4 in the cadre of Sr.Clerk. In fact, this is also the view expressed by the then Division Bench of this Tribunal while pronouncing the final orders in O.A.178 of 88, O.A.179 of 88 and O.A.180 of 88 as already indicated above.

12. This apart provisions under Rule 311 and 320 of the IREM Volume 1(Revised edition 1989) are also clear on this point. Even in O.A.178 of 88 the Department took this stand. These two rules occur under, ^{Chapter III} of the Manual relating to seniority of non-gazetted Railway Service. Under Rule 311, seniority of Railway Servant on transfer from one cadre to another in the interest of adminstration is regulated by the date of promotion/date of appointment to the grade as the case may be. Since the Mancheswar Workshop started functioning as a separate unit from 1.1.88 the seniority between the applicant and Respondent No.4 would be guided on the basis of

their seniority in the parent cadre. Further Rule 320 which is relevant at this stage as follows:-

"When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employees shall be the determining factor for assigning inter se seniority irrespective of the date of confirmation of an employee with lesser length of continuous service as compared to another unconfirmed employee with longer length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose.

Non-fortuitous service means the service rendered after the date of regular promotion after due process".

There is no dispute both applicant and Respondent No.4 were recruited by R.R.B in the Limited Departmental Competitive Examination and were empanelled to be appointed as Sr.Clerks and in that recruitment the applicant was placed above Respondent No.4. It is also not in dispute that after functioning as Sr.Clerk and getting promotion applicant came over to Mancheswar Workshop on transfer. Hence his length of service as Sr.Clerk in the parent Department has to be taken into account in the Mancheswar Workshop in fixing his seniority, even though, Respondent No.4 was already appointed as Sr.Clerk in the Workshop prior to the joining of the applicant.

13. Similar point in regard to the seniority in the cadre of Jr.Planners under the Railways arose for determination in B.Rammohan Vrs. Union of India reported in JT 2001 (5) SC, 575. In

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this reported case the two appellants were appointed as Welders on 4.3.76 and the private Respondent was appointed as Springsmith 18.7.80. The two posts carry the same scale of pay. However, the private Respondent was earlier appointed as Jr.Planner on 4.2.81 and the appellants were appointed to that post subsequently. In regard to the inter se seniority in the cadre of Jr.Planner the Apex Court while taking into the aforesaid provision of Rule 320 in exten so in para (quoted as Rule 321) held that since the post of Jr.Planner is filled up by considering staff of different seniority units, the inter se seniority in the cadre of Jr.Planner has to be determined on the basis of total length of service in the equivalent grade held by the employees. By holding so the Apex Court allowed the appeal.

14. In view of the legal position disucssed above. We have no hesitation to hold that on 1.1.88 the applicant was senior to Respondent No.4 in the cadre of Sr.Clerks in the Mancheswar Workshop. In the result while quashing Annexure-8 the gradation list so far as applicant and Respondent No.4 are concerned, we direct Respondents 2 and 3 to treat the applicant as Senior to Respondent No.4 as Sr.Clerk and grant him all consequential service benefits accruing ^{there} from.

15. Before closing we may observe that in the rejoinder applicant annexed some documents dated 25.11.97, 6.5.98, 1.7.98, 25.8.98 and 16.4.98 (Annex: 10 to 14). These documents being subsequent to filing of this O.A. in June, 1995 are not relevant to decide the issue of seniority as on 1.1.88 and are accordingly not dealt.

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15. The Original Application is allowed but without any order
as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.2001

29.8.2001
(G. NARASIMHAM)
MEMBER (J)

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