

4

2

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

ORIGINAL APPLICATION NO. 755 OF 1996
Cuttack, this the 11th day of October, 2002

Sunil Kumar Barai

.....

Applicant

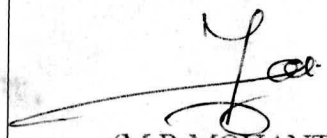
Vrs.

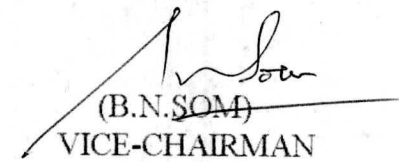
Chief General Manager, Telecom & others.....

Respondents

FOR INSTRUCTIONS

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


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

8

8

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH.
ORIGINAL APPLICATION NO. 755 OF 1996
Cuttack, this the 11th day of October, 2002

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

.....

Sunil Kumar Barai, aged 55 years, son of late Bhagaban Barai, Telegraph
Jamadar (O), Telegraph Office, Sambalpur, Orissa

..... Applicant.

Advocate for applicant -

Mr.Ashok Kumar Mishra.

Vrs.

1. Chief General Manager, Telecom, Orissa Circle, Bhubaneswar.
2. Director (T), Sambalpur, Telecom Bhavan, Court Road, Sambalpur.
3. Telecom District Engineer, Sambalpur.
4. Babaji Bhoi, Jamadar, Telegraph Office, Sambalpur

..... Respondents

Advocate for respondents -

Mr.A.K.Bose, Sr.CGSC.

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

1. The applicant, Sunil Kumar Barai, through this O.A.No. 755 of 1996, challenged the order No.ST/56-58/90, dated 19.8.1996, of C.G.M.T, Orissa, stating that the alleged transfer order under Rule 38 of P & T Manual, Vol.IV, was illegal, being arbitrary and violative of the principle of natural justice. He, therefore, prayed for re-fixation of his seniority on the basis of his date of joining in the post of Peon in the office of C.T.O, Rourkela, in 1965.
- 9

9

9

-2-

2. The facts of the case are that the applicant was appointed as Peon at C.T.O., Rourkela, with effect from 27.2.1965. He was declared quasi permanent in the same grade with effect from 27.2.1968. The said applicant, in 1970, requested for his transfer from C.T.O., Rourkela, to D.T.O., Sambalpur, on personal grounds and was transferred to that office vide Senior Traffic Superintendent, Cuttack Division's Memo No. Staff-18-2/68, dated 28.9.1970. He was confirmed with effect from 1.3.1974, vide Memo No. E-7, dated 2.11.1976 of the Telegraph Traffic Superintendent, I/C D.T.O., Sambalpur. The applicant in his petition has stated that two officials, namely, Babaji Bhoi (respondent no.4) and another Shri R.D. Singh, who were junior to him, their dates of appointment being 5.9.1966 and 3.6.1967 respectively, were promoted to the next higher post of Jamadar long before him. He has also stated that these two officials were assigned higher position than the applicant in the gradation list. It is further submitted by the applicant that he had made several representations to his higher authorities to redress his grievance in this matter, but without success. Ultimately, C.G.M., Telecom, vide his letter dated 19.8.1996 rejected his representation praying for re-fixation of his seniority on the grounds that his transfer from C.T.O., Rourkela, to D.T.O., Sambalpur, in October 1970, was made under Rule 38 and therefore, his seniority position had gone down in the gradation list. It is against this order that the applicant is claiming relief.

9

- 10
3. Shri Ashok Kumar Mishra, learned counsel appearing for the applicant, argued, on the strength of Rule 38 (2) and 38(4) of P&T Manual, Vol. IV, that although, as per Rule 38(2), "when an official is transferred at his own request,he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order was issued", but the authority did not abide by the condition set forth in Rule 38(4) *ibid*, which stipulates that the concerned authority should obtain a declaration from the official seeking transfer to the effect that he accepts the seniority on transfer in accordance with "this rule.....". He further stated that the order issued by the Superintendent, Telegraph Traffic Division, Cuttack, vide his Memo No. Staff/18-2/68, dated 23.9.1970, while indicating that the transfer was made at the request of the applicant, nowhere mentioned that the said transfer order was being made under Rule 38 of the P&T Manual, Vol.IV. He also stated that as the transfer was within the same Division, it was erroneous on the part of the concerned authority to treat this transfer under the said Rule to depress his seniority. He, therefore, contended that the depression of the seniority of the applicant was done arbitrarily and the action of the concerned authority is bad in law and liable to be quashed.
4. Shri A.K.Bose, learned Senior Standing Counsel, appearing for the departmental respondents, submitted that the Application was misconstrued and was not maintainable as the transfer took place in the
- 10
- e

11

-4-

year 1970 and therefore, no relief was available to the applicant under Section 21 of the Administrative Tribunals Act, 1985, as the cause of action arose before the constitution of the Tribunal. He also denied the fact of the case that the transfer was not made under Rule 38(2) of the P&T Manual, Vol.IV. The learned Senior Standing Counsel stated that it was not a fact that the applicant was not junior to respondent no.4, as the said respondent was confirmed from a date earlier than the applicant. He also stated that whereas respondent no.4 was appointed as Peon in D.T.O., Sambalpur, with effect from 5.9.1966, the applicant was appointed with effect from 27.2.1965 at C.T.O., Rourkela, but the former was confirmed in the grade of Peon with effect from 5.9.1966 whereas the applicant was confirmed only with effect from 1.3.1977, vide T.T.S., D.T.O., Sambalpur's Memo No.E-7/77, dated 7.12.1977. He further submitted that under the rules of the Department, Group D officials are appointed office-wise without any transfer liability. Group D officials are recruited on division basis but are allotted to Sub-Divisions, and the Sub-Divisional authorities function as appointing authorities for them and maintain gradation list for individual units. The confirmation of officials is also done by the appointing authorities on the basis of substantive vacancies available in their respective units. For the purpose of promotion of these officials to higher post, a divisional seniority list is prepared and followed. The divisional seniority is determined with reference to the

9

12

date of confirmation of the officials in their respective unit. He, therefore, stated that as the applicant's date of confirmation is much later than the date of confirmation of respondent no.4, the applicant was wrong in alleging that an official junior to him, namely, respondent no.4, was given promotion to the next higher grade earlier than him.

5. We have given our anxious thoughts to the various issues raised in the Application, the submissions made by the learned counsel for the applicant and also the averments made by the learned Senior Standing Counsel, appearing for the respondents, with regard to the issues raised in the Application. From the records submitted by both sides in support of their stated position, we find that the principle of fixation of seniority in the cadre of Group-D (then called Class IV) was the date of confirmation of an official in the grade. It is also seen that for the purpose of promotion of the officials in the grade of Peon to the higher grade of Jamadar, the Department used to maintain gradation list at the divisional level on the basis of date of confirmation of the officials posted in various recruitment units. It is also found from the records that the applicant had submitted a representation to the competent authority, vide his representation, dated 14.8.1982 for promotion to the grade of Jamadar in preference to respondent no.4 and another. His representation was disposed of by the competent authority, vide his letter dated 15.9.1982 (Annexure R/7) as untenable. It was clarified in the said letter that the applicant was
- 12

13

B

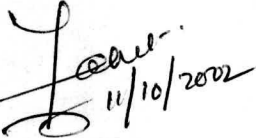
-6-

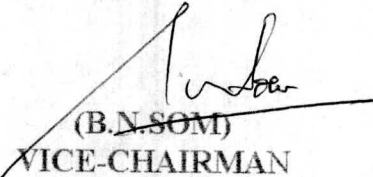
"quite junior to Sri B.Bhoi and R.D.Singh as per the Divisional gradation list" effective at that point of time. It was also stated therein that the said gradation list was duly circulated to all through their concerned officer in charge during the month of February 1982. The competent authority observed at the end that no one junior to the applicant had been promoted and he was advised accordingly.

6. With reference to the submission made by the learned counsel for the applicant that since the transfer of the applicant was not made in the year 1970 following the conditions laid down in Rule 38(4) of the P&T Manual, Vol. IV, he could not have been asked to suffer the adverse effect of transfer under Rule 38(2), because no declaration or undertaking was taken from him that he would have no objection to suffer in seniority position when he moved from C.T.O, Rourkela, to D.T.O., Sambalpur, we have perused the provision of Rule 38(4) and we find that the said provision, i.e., the competent authority should obtain a declaration from the official seeking transfer from one unit to another, refers only to those cases where a permanent official seeks transfer from one unit to another . In the year 1970, as admitted by the applicant, he was not confirmed, i.e., he was not a permanent official. He became permanent only with effect from 1.3.1977. The condition enshrined in Rule 38(4) is, therefore, not applicable in his case.

4

7. In view of the above findings about the applicant's representation regarding his position in the divisional seniority list vis-à-vis respondent no.4, his transfer from C.T.O., Rourkela, to D.T.O., Sambalpur, under Rule 38(2) and not under Rule 38(4) of the P&T Manual, Vol.IV, and that the gradation list, circulated in 1982, was prepared according to the principles of fixing seniority in the grade of Class IV officials prevalent at that point of time, we see no reason to interfere in the matter and accordingly, the Application is rejected. No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
11.10.2002/AN/PS