

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.508 OF 1998
Cuttack this the 03rd day of April/2001
May

Bijay Shankar Mishra ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the ~~NA~~
Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
S.J.A.M.O

3.5.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

12
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.508 OF 1998
Cuttack this the 03rd day of April/2001
May.

CORAM:

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

...

Sri Bijaya Sankar Mishra, aged about 31 years,
Son of Late Chandra Sekhar Mishra, Or.No.G/26/B,
New Colony, At/PO-Jatni-752050, Dist - Khurda -
at present working as Jr.Clerk, Sr. D.P.O., S.E.
Railway, Khurda Road, Jatni, Dist - Khurda

...

Applicant

By the Advocates

Dr.Dinabandhu Mishra
Mr.S.S.Das,
Mr.A.P.Mishra
Mr.T.K.Sahoo
Mr.P.K.Das

-VERSUS-

1. Union of India represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43
3. Divisional Railway Manager, S.E.Railway, Khurda Road, Jatni-752050
4. Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, Jatni-752050
5. Sri S.Govinda Rao, Jr.Clerk, Office of Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, Jatni-752050
6. Sri Sudersan Sahoo, Jr.Clerk Office of Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, Jatni-752050
7. Sri N.C.Sahoo, Jr.Clerk, Office of Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road, Jatni-752050

...

Respondents

By the Advocates

M/s.D.N. Mishra
S.K. Panda

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Original Application filed on 7.10.1998 for placing the applicant above Respondent No.5 in the provisional seniority list dated 22.8.1997 (Annexure-4), for fining the provisional seniority list

dated 22.2.1993 (Annexure-3) and list dated 22.8.1997 (Annexure-4); and for issue of direction to the departmental respondents 1 to 4 not to promote any one to the rank of Senior Clerk without finalizing the lists under Annexures-3 and 4, the applicant, a physically handicapped person was at first appointed in September, 1988 in Group D category as Tele Peon. While he was in this Group 'D' Category, he appeared in a direct recruitment for a Group 'C' post under Respondents 1 to 4 and was selected against physically handicapped quota and joined on 26.10.1992 as Junior Clerk in Group 'C' Category. In the provisional seniority list dated 22.2.1993 (Annexure-3), his name figured at Serial No.54 below serial nos. 47 to 53 including Respondents 5 and 6, who had joined in Group 'C' on dates subsequent to the date of his joining and these dates were shown under Column No.8 as effective date of seniority. Applicant represented to Respondent No.4 on 1.8.1997 (Annexure-5) requesting he be shown as senior to the employees under serials 47 to 53. In this letter dated 21.8.1997 (Annexure-6), Respondent No.4 intimated him that he was rightly placed at serial 54. Yet he sent another representation to Respondent No.4 on 25.8.1997 (Annexure-7). In the meanwhile another provisional seniority list dated 22.8.1997 (Annexure-4) was published showing the applicant ^{and others} below Respondent No.5, and further showing his effective date of seniority as 26.10.1992/19,11.1992. In this list, however name of Respondent No.6, Sudarshan Sahoo did not find place. Respondent No.4 published an addendum under Annexure-6 showing the position of Respondent No.6 at Serial No.24 A, in between Gopinath Mishra (Serial No.24)

14
Bauri Bandhu Sahu (Sl.No.25) indicating 19.11.1992 as the effective date of seniority in place of 30.11.1992 in the list under Annexure.3. The applicant submitted yet another representation to Respondent No.4 on 30.7.1998 (Annexure-10). Respondent No.4, however in letter dated 25.9.1998 (Annexure-11) selected the names of 15 junior Clerks including Respondent No.7 and excluding the applicant to conduct suitability test for the posts of Senior Clerks. These facts are not in controversy.

2. The grievance of the applicant is that when Respondent No.7 Sudarsan Sahoo, who like him selected as junior clerk under physically handicapped quota has been called for the suitability test, non inclusion of his name in the list under Annexure-11 amounts to discrimination. Further under Rule 302 of the Indian Railway Establishment Manual (in Short I.R.E.M.) 1989, inter se seniority in the initial recruitment grade is decided on the basis of the date of joining and he having joined earlier than the persons including Respondent No. 5 and 6 under Serial Nos. 47 to 53 of the seniority list under Annexure-3, he should be declared as senior to them.

3. Private Respondents 5, 6 and 7, though duly noticed had neither appeared nor contested the case. The Departmental Respondents in their counter pray that Original Application should be dismissed as barred by limitation, because the cause of action arose in the year 1993 and seniority list under Annexure-3 was circulated among all concerned 9 years back. Even on merits they opposed the application stating that in the recruitment test for junior clerk his merit position is

15

panel under physically handicapped quota was assigned at Sl.No.12, while the merit position of N.C.Sahu (Res.No.7) and Sudarsan Sahoo (Res.No.6) in that panel were assigned at Sl.Nos. 1 and 10 respectively and Respondent No.7 joined on 12.5.1991. As per Rule 303(b) of the I.R.E.M., 1989, Edition, merit position in ~~the~~ panel is the deciding factor for seniority where training is not involved. The seniority lists under Annexures 3 and 4 were prepared by assigning the merit position of the handicapped panel. Respondent No.5, Govind Rao was appointed as Junior Clerk against Departmental Promotion Quota. His merit position being 39 and he joined on 27.10.1992. The candidate whose merit order is 7 in the physically handicapped panel, ~~and~~ who joined on 9.11.1992 was placed below the seniority position of Gobind Rao. Thus the Respondents 5 to 7 are senior to the applicant. The applicant having not sent objection to the seniority list under Annexure-3 in time though circulated duly cannot ~~wake~~ make up the issue of seniority again and again. It is true Respondent No.6 has not been shown in the seniority list under Annexure-4. This is because he had his lien in the Mechanical Department. But as he was all along serving in the Personnel Department, the Competent Authority decided and approved to retain him in the Personnel Department and addendum under Annexure-7 was issued.

4. In the rejoinder the applicant reiterating the facts mentioned in the Original Application in an argumentative form, pleaded a new fact stating that Respondent No.5 is a promotee from the selection made pursuant to the advertisement made in 1990, and the relevant select list is dated 25.6.1992, whereas, he along with Respondents 6 and 7 were direct recruits

under physically handicapped quota, pursuant to advertisement made on 21.1.1987 and the select list of which was published on 14.1.1991 and as such under Rule-306 of I.R.E.M., he should have been placed above Respondent No.5 in the seniority list.

5. We have heard Dr.D.B.Mishra, the learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel for the Respondents (Railways). Also perused the records.

6. On 12.10.1998, while admitting this Original Application we had disposed of the interim prayer holding appointment if any, made to the post of Senior Clerk and the result of interview held on 10.7.1998 should be subject to result of this application and this condition should be specifically mentioned in the appointment orders to be issued.

7. In the rejoinder the applicant has not disputed the stand of the Department that in the direct recruitment under the physically handicapped quota merit list, while the applicant was assigned his position at Sl. No.12, Respondent Nos. 7 and 6 were assigned position at Sl. Nos. 1 and 10, respectively. It is also not disputed in the rejoinder that Respondent No.7 joined on 12.5.1992, as averred in the counter.

8. As per Rule-303(a) of Indian Railway Establishment Manual, Vol.I(1989 Edn.), in case of candidates recruited through Railway Recruitment Board or by another recruiting authority and who do not have to undergo any training in Training School, the seniority should be determined on the basis of merit order assigned by the Railway Recruitment Board or other recruiting authority. Hence under this Rule, the applicant, who in the merit list is below Res. 7 & 6,

has rightly been placed below them in the seniority list. But the contention of the applicant is that he is guided under Rule-302 of this Manual. Rule 302 runs as follows :

" 302. Seniority in initial recruitment grades- Unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment to the grade. The grant of pay higher than the initial pay should not, as a rule, confer on a railway servant seniority above those who are already appointed against regular posts. In categories of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due promotion in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits among themselves. When the dates of entry into a grade of promoted railway servants and direct recruits are the same they should be put in alternate positions, the promotees being senior to the direct recruits, maintaining inter-se-seniority of each group."

NOTE - In case the training period of a direct is curtailed in the exigencies of service, the date of joining the working post in case of such a direct shall be the date he would have normally come to a working post after completion of the prescribed period of training.

(No.E (NG) -I-78-SR-6-42 dt. 7.4.1982 ACS 132)

It will be clear that Rule-302 is a General Rule and if there is another rule otherwise, the latter Rule will prevail. This is quite clear from the very first expression under Rule-302 "unless specifically stated otherwise". Since there is a special Rule-303 (b) as discussed above, determining the seniority of candidates, who do not undergo any training, the contention of the applicant that Rule-302 will be applicable in his case cannot be accepted. Even otherwise, as explained in the note under Rule-302, if in case of direct recruit training period is curtailed, then this date of

joining shall be the date he would have normally come to a working post after completion of prescribed period of training. Apparently physically handicapped candidates are not sent for training. If the clarification made in the note is taken into account, the dates of joining of such candidates would be taken as dates on which the training period would be concluded. In that case the date of joining of the applicant and Res. 7 and 6 would be the same and the position of the applicant being lower than the position of Res. 7 and 6 in the merit list, he cannot but be junior to them.

9. In regard to seniority of the applicant vis-a-vis Respondent No.5, the positive case of the Department is that Res. 5 was a promotee and was assigned Sl. No.39 in the merit list. Under Rule-302, as noted above, in case of posts partially filled by direct recruitment and partially by promotion, the criterion for determination of seniority should be the date of regular promotion after due process in the case of promotee and the date of joining the working post after due process in the case of direct recruit, subject to maintenance of inter-se-seniority of promotees and direct recruits of each group. It is not at all the case of the applicant in the Original Application that his selection was completed earlier than the selection process, through which Respondent No.5 was promoted. Hence under aforesaid Rule-302, Respondent No.5, under normal circumstances will be senior to the applicant and Res. 6 and 7. The applicant, however, places reliance on Rule-306, which lays down that candidate selected for appointment at an earlier selection shall be

senior to those selected later, irrespective of the date(s) of posting. Referring to this rule in the rejoinder, as earlier stated, the applicant came up with a new case that his selection under direct recruitment is earlier than the selection that had taken place for promotion of Respondent No.5, which plea he could have as well averred in the Original Application. He having averred this for the first time in the rejoinder, the Department had no opportunity to counter the same. Under the provisions of C.A.T. Rules of Practice, which are statutory, after the respondents filed counter, an applicant has the right to file rejoinder. But no such right has been extended to respondents to give a reply statement to the rejoinder filed by the applicant. The object of filing rejoinder is only to clarify the inconsistency averred in the counter, on the basis of the averments made in the Original Application. It is only to achieve this object the applicant has been provided the right to file rejoinder, if any. No such right to reply on this having been provided to the respondents under the Rules of Practice, it is not expected of the applicant to aver new facts, which he could have verywell averred in the Original Application. We, are, therefore not inclined to take note of this new factual aspect introduced in the rejoinder with reference to Rule-306.

10. As the pleadings reveal, the seniority list dated 22.8.1997 (Annexure-12) though provisional is based on seniority list dated 22.2.1993 (Annexure-3). It is the specific stand in the counter that seniority list under Annexure-3 had been duly circulated inviting objections, if any, within one month. This specific averment has not been countered in the rejoinder.

Yet the applicant did not raise any objection till 1.8.1997, when for the first time under Annexure-5 he represented to the authorities claiming seniority over the employees under Sl. Nos. 47 to 53 in the seniority list under Annexure-3, dated 22.2.1993. In other words, for a period of more than 4½ years he slept over the matter without raising any objection. His 1st representation dated 1.8.1997 under Annexure-5 was submitted more than three years after the expiry of the period of limitation under Section 21 of the A.T. Act, 1985. Hence that representation and the subsequent representation, as mentioned in the Original Application will not save the limitation. It is true, in the Original Application the applicant had averred that this seniority list under Annexure-3 was never circulated. If indeed the said seniority list was not circulated, he would have highlighted this fact in his representation under Annexure-5, at least in order to explain the delay in preferring this representation. Hence his averment in the Original Application with regard to non circulation of the seniority list is far from truth. It is only when a representation is filed within the period of limitation, then such representation will save limitation to some extent. Hence we agree with the contention of the Department that so far as seniority is concerned the applicant is estopped from disputing his seniority position assigned to him under Annexure-3 dated 22.2.1993, in this application filed on 17.10.1998. Since Annexure-4 is based on Annexure-3 and the seniority position under Annexure-3 has not been agitated by the applicant in due time, it is too late for him to dispute the seniority position under Annexure-4 also.

2)

10

In the result, we do not see any merit in this Application, which is accordingly dismissed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHIRMAN
3.5250

3.5250
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//