

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 600 OF 1998

Cuttack, this the 11th day of December, 2000

Sri Rabinarayan Mohanty ... Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

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

(D.V.R.S.G.DATTATREYULU)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

10
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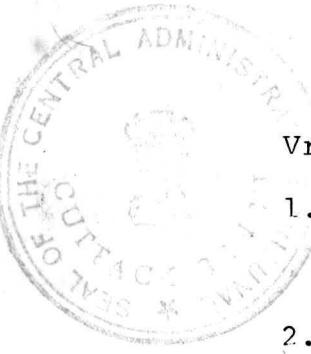
CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI D.V.R.S.G.DATTATREYULU, MEMBER(JUDICIAL)
AND

Sri Rabinarayan Mohanty,
aged about 46 years,
son of late Sadhu Charan Mohanty,
at present working as Office Superintendent,
Gr.I (on deputation) under the Chief Administrative
Officer (Construction), South Eastern Railway,
At/PO-Chandrasekharpur, Bhubaneswar, Dist.Khurda
Applicant

Advocates for applicant-M/s A.K.Mohapatra
A.K.Das

Vrs.



1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43 (West Bengal)
2. Divisional Railway Manager, South Eastern Railway, Khurda Road, Jatni, Dist.Khurda.
3. Chief Workshop Manager, Mancheswar Carriage Repair Workshop, South Eastern Railway, At/PO-Mancheswar, Dist.Khurda.
4. Sri Prakash Chandra Swain, Father's name not known, at present working as Office Superintendent, Gr.II, Mancheswar Carriage Repair Workshop, At/PO-Mancheswar, Dist.Khurda.
5. Sri Upendranath Behera, father's name not known, at present working as Office Superintendent, Gr.I, Mancheswar, District-Khurda....Respondents

JJM
Advocate for respondents-Mr.B.K.Bal

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has
prayed for quashing the gradation list dated 16.5.1992 of
Senior Clerks as on 31.12.1987 at Annexure-2 and gradation
list dated 16.4.1998 of the Head Clerks as on 31.12.1997.
His second prayer is for a direction to the departmental
authorities to fix his seniority as Senior Clerk with
effect from 1.10.1980 above respondent nos.4 and 5 and for

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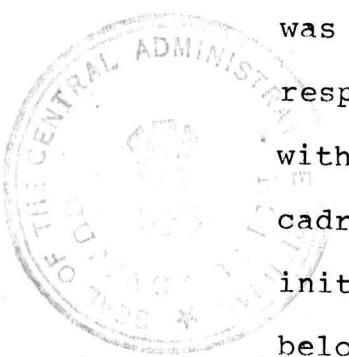
getting promotional benefits of the post of Head Clerk with effect from 1.1.1984 and of posts of Office Superintendent Grade-II with effect from 24.11.1992 and Office Superintendent Grade-I with effect from 31.1.1995 along with all service benefits. From the above recital of prayers made by the applicant it is clear that his prayers for retrospective promotion to the posts of Head Clerk, Office Superintendents, Grade-II and Grade-I flow from his original prayer of fixing his seniority at the level of Senior Clerk with effect from 1.10.1980 above respondent nos. 4 and 5.

2. The applicant's case is that he and respondent nos. 4 and 5 entered service as Junior Clerk on 6.5.1980, 2.4.1981 and 1.9.1977 respectively. While working as Junior Clerk, the applicant appeared at the Limited Departmental Competitive Examination for promotion to the post of Senior Clerk against 10% ^{quota} reserved for Graduate Clerks as on 1.10.1980. He came out ^{1st} successful in that examination. But under a misconception of fact and law the departmental authorities in their order dated 28.5.1984 at Annexure-1 promoted him as Senior Clerk with effect from 14.5.1984. The applicant has stated that respondent no.4 was due to get promotion to the post of Senior Clerk with effect from 18.5.1984 in his parent cadre and respondent no.5 was actually promoted to the post of Senior Clerk with effect from 4.12.1981. It is furtherstated that after establishment of Carriage Repair Workshop (CRW) the applicant and respondent nos. 4 and 5 came over to CRW at Mancheswar and opted for absorption in CRW. The conditions of their coming over to CRW, Mancheswar, were that the cadre in the CRW would be a floating cadre till a cut-off date is decided and till

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then the staff transferred to CRW, Mancheswar, would retain their lien in their parent Departments. The applicant and respondent no.5 reported for joining in CRW as Senior Clerk on 7.8.1986 and 13.12.1984 respectively and respondent no.4 reported at CRW, Mancheswar, for joining as Junior Clerk on 4.9.1981. As C.R.W. was a new establishment, a number of posts of Senior Clerk were available and respondent no.4 who joined CRW as Junior Clerk on 4.9.1981 was promoted as Senior Clerk on 2.2.1984 and again to the post of Head Clerk to manage day-to-day work pending formation of a cadre for CRW. The applicant was promoted as Head Clerk with effect from 1.1.1988 and respondent no.5 was given ad hoc promotion as Head Clerk with effect from 13.12.1987. After formation of a separate cadre for CRW, a gradation list of ministerial staff was initially published in which respondent no.4 was placed below the applicant. So respondent no.4 along with some others moved the Tribunal in OA Nos. 178 and 179 of 1988 and in order dated 8.9.1989 the gradation list was quashed and a fresh list was ordered to be prepared. In the fresh gradation list the applicant was placed below respondent nos. 4 and 5. Being aggrieved by that the applicant had approached the Tribunal in OA No. 343 of 1995 which is pending for disposal. The applicant has stated that in 1995 the departmental authorities gave promotion to respondent no.5 initially on ad hoc basis to Office Superintendent Grade-II and later on regularised him as such and further promoted him to the level of Office Superintendent Grade-I with effect from 31.5.1995. It is further stated by the applicant that some Graduate Clerks who had qualified in LDCE along with the applicant and

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were promoted as Senior Clerks against 10% quota reserved for Graduate Clerks as on 1.10.1980, moved the Hon'ble Supreme Court in SLP No.5177 of 1991 praying therein for fixation of their pay and seniority as Senior Clerks with effect from 1.10.1980. It is stated that the Hon'ble Supreme Court allowed the petition and directed the Railway authorities for fixation of pay and seniority of Graduate Clerks like the applicant who had cleared the LDCE and were promoted to the post of Senior Clerk with effect from 1.10.1980. It is further stated that in pursuance of the aforesaid direction of the Hon'ble Supreme Court, the departmental authorities in their letters dated 25.11.1997, 6.5.1998 and 1.6.1998 issued instructions for fixation of pay and determination of seniority of inservice Graduate Clerks who were in service prior to 1980 and were selected as Senior Clerks through LDCE with effect from 1.10.1980. Accordingly, seniority of all these Graduate Clerks was fixed in the rank of Senior Clerk with effect from 1.10.1980. The applicant's grievance is that even though he is similarly situated like those who had approached the Hon'ble Supreme Court and had got the order in their favour, the same benefit was denied to him and again in the order dated 20.7.1998 respondent no.4 was promoted as Office Superintendent Grade-II with effect from 8.2.1995. In the context of the above, the applicant has come up with the prayers referred to earlier.

3. The departmental respondents have filed counter opposing the prayers of the applicant. For the present purpose it is not necessary to refer to all the averments made by them in their counter. The relevant portions of the counter will be referred to while

considering the prayers of the applicant.

4. When the matter was called for hearing, Shri A.K.Das, the learned counsel for the petitioner wanted an adjournment on behalf of Shri A.K.Mohapatra, the arguing counsel. As no mention was made about adjournment at the mention time and such a request was made only when the matter was taken up for hearing, the prayer for adjournment was rejected and the learned Additional Standing Counsel Shri B.K.Bal was heard and records were perused.

5. From the above recital of case of the applicant it is clear that the applicant has based his claim for reckoning his seniority as Senior Clerk with effect from 1.10.1980 on the decision of the Hon'ble Supreme Court. The applicant himself has stated that for getting promoted from Junior Clerk to Senior Clerk against 10% quota meant for Graduate Clerks, the concerned candidate has to clear the LDCE. The departmental respondents have pointed out that on the applicant clearing the LDCE, he was promoted to the post of Senior Clerk with effect from 14.5.1984. The applicant has stated that on the basis of the decision of the Hon'ble Supreme Court, his promotion should date back to 1.10.1980. He has also stated that the Railway Board in their letters dated 7.10.1997, Establishment Serial No.168/97 had held that all inservice Graduate Clerks who were in service prior to 1.10.1980 and had been selected as Senior Clerk through LDCE would be eligible for proforma fixation of pay with effect from 1.10.1980 without any monetary benefits except for the purpose of pension. They would be entitled to emoluments that will be due to them only from the date when they took charge of

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the post of Senior Clerk. This circular has been enclosed by the applicant at Annexure-5. The departmental respondents have pointed out that this circular has been subsequently withdrawn by the Railway Board in their circular dated 7.3.1999 (Annexure-A to the counter). The relevant portion of the circular relied upon by the departmental respondents in which the observations of the Hon'ble Supreme Court have been quoted is extracted below:

"2. The Hon'ble Court while disposing of a Contempt Petition (No. 374/98) filed by some of the Railway employees challenging Board's instructions dated 5.6.1998, vide their order dated 24.2.99 have held:-

"But, having examined our earlier judgment and the directions contained in paragraph 7 of the said judgment, we have no hesitation to come to the conclusion that the Court merely directed that the proforma promotion would count only for the purpose of computation of pension and the concerned employees will neither get seniority nor any monetary benefit on that score. In that view of the matter, the order dated 5.6.1998 of the Railway Board is certainly contrary to the directions of this Court, but in the circumstances under which the same was issued, it is not possible to hold that the concerned Authorities deliberately passed the said order. Therefore, while we are not taking any action in the Contempt Proceedings, we direct that our directions be followed, as clarified in this order, within a period of six weeks from today."

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From the above extract of the order dated 24.2.1999 of the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court had directed for proforma promotion to be counted only for the purpose of computation of pension and the concerned employee would neither get seniority nor any monetary benefit on that score. In view of this order of

the Hon'ble Supreme Court, the applicant cannot claim seniority on the basis of the decision of the Hon'ble Supreme Court in the case of Smt. Anuradha Mukherjee and others v. Union of India and others, which has been referred to by him in page 2 of the OA. We find from Annexure-8 of the OA filed by the applicant himself that in accordance with the order of the Hon'ble Supreme Court, the applicant has been given proforma promotion with effect from 1.10.1980 and his pay has also been fixed notionally from 1.10.1980 and actually with effect from 14.5.1984, the date of his actual promotion to the post of Senior Clerk. This order of the Hon'ble Supreme Court has been fully complied with so far as the petitioner is concerned. In the present petition he claims seniority on the basis of such proforma promotion and this has been specifically denied in the order of the Hon'ble Supreme Court as explained in the subsequent orders of the Hon'ble Supreme Court extracted by us above.

6. As we have earlier noted, all his subsequent prayers flow from his first prayer of fixation of his seniority in the rank of Senior Clerk from 1.10.1980. As this prayer has been held by us to be without any merit in view of the observations of the Hon'ble Supreme Court quoted by us earlier, the other prayers automatically fail and are disallowed.

7. In the result, therefore, the Original Application is held to be without any merit and is rejected. No costs.

(D.V.R.S.G.DATTATREYULU)

MEMBER (JUDICIAL)

11/12

(SOMNATH SOM)

VICE-CHAIRMAN

December 11, 2000/AN/PS