

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 377 OF 1999

Cuttack, this the 27th day of March, 2001

Sri Siba Nanda Baskey

Applicant

Vrs.

Union of India and others ...

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? No.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

27.3.2001

9
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 377 OF 1999
Cuttack, this the 27th day of March, 2001

CORAM:

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

.....
Sri Saiba Nanda Baskey, aged about 47 years, son of late Durga Baskey, resident of Village/PO-Kathasirshi, P.S/Via-Kuliana, District-Mayurbhanj, at present working as Office Superintendent, Grade-I (Commercial) in the office of Sr.Divisional Commercial Manager, South Eastern Railway, Khurda Road....
Applicant

Advocates for applicant - M/s Dr.D.B.Misra
S.S.Das
A.P.Mishra
T.K.Sahoo
P.K.Das
N.C.Mishra

Vrs.

1. Union of India, represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E.Railway, Khurda Road, Jatni-752 050.
3. Senior Divisional Personnel Officer, S.E.Railway, Khurda Road, PO-Jatni, District-Khurda, Pin-752 050.
4. Sr.Divisional Commercial Manager, S.E.Railway, Khurda Road, Jatni-752 050.
5. Sri C.R.Bepari, Chief Office Superintendent, Office of Sr.Divisional Commercial Manager, S.E.Railway, Khurda Road, Jatni-752 050...Respondents

Advocate for respondents - Mr.Ashok Mohanty
&
O R D E R Mr.S.R.Patnaik

SOMNATH SOM, VICE-CHAIRMAN

S.Som
In this Application, the petitioner has prayed for quashing the order dated 27.7.1999 (Annexure-5) promoting respondent no.5 to the post of Chief Office Superintendent. He has also prayed for a direction to the respondents to promote him to the post of Chief Office Superintendent after reverting respondent no.5 to his former post.

2. The applicant belongs to ST and joined S.E.Railway as Junior Clerk on 28.11.1978 and was promoted to Senior Clerk on 22.4.1981, Head Clerk on 19.2.1982, Office Superintendent Grade-II from 9.8.1982 and Office Superintendent Grade-I from 8.2.1990. He has stated that in the rank of Office Superintendent Grade-II his seniority was counted from 1.10.1980. In the provisional gradation list of Office Superintendent Grade-II at Annexure-1 the applicant's position is against serial no.1 whereas respondent no.5's name is against serial no.4. At Annexure-2 is a letter dated 1.1.1990 publishing the result of suitability test for promotion to the rank of Office Superintendent Grade-I. In this letter the applicant's name is against serial no.1 and respondent no.5 is against serial no.2. The applicant has stated that being senior to respondent no.5 he has legitimate expectation of being promoted to the rank of Chief Office Superintendent. The newly introduced post of Chief Office Superintendent in the scale of Rs.7440-11500/- is required to be filled up as a selection post, as has been laid down in the Railway Board's letter dated 17.2.1999 at Annexure-3. In this letter dated 17.2.1999 the Railway Board had ordered that as a one time exception the post of Chief Office Superintendent may be filled up through the process of modified selection by scrutiny of service record. The applicant filed a representation dated 9.7.1999 at Annexure-4 stating that he being the seniormost Office Superintendent Grade-I with clean service record, he

should be promoted and not respondent no.5. Notwithstanding this, in the impugned order at Annexure-5 respondent no.5 has been promoted as Chief Office Superintendent. In the context of the above, the applicant has come up with the prayer referred to earlier.

3. The departmental respondents have filed counter opposing the prayer of the applicant. They have stated that respondent no.5 was appointed as Junior Clerk on regular basis on 19.11.1962 whereas the applicant joined as Junior Clerk on 28.11.1978. In the rank of Senior Clerk, respondent no.5 was promoted on 1.19.1976 whereas the applicant was promoted on 22.4.1981. The departmental respondents have further stated that the applicant was promoted to Selection Grade as Office Superintendent Grade-II provisionally to fill up shortfall vacancy in ST quota much before the said promotion was due to him whereas respondent no.5 was promoted as Office Superintendent Grade-II on 1.1.1984 after completion of 21 years of service. The departmental respondents have stated that the applicant is claiming seniority over respondent no.5 in the rank of Office Superintendent Grade-II because of his earlier promotion. But this is not correct as the applicant was promoted provisionally to man the shortfall vacancy according to forty-point roster which is no more in force. The departmental respondents have further stated that the newly created post of Chief Office Superintendent was to be filled up by selection and accordingly a written examination was held and three persons including the applicant and respondent no.5 who were in the zone of consideration took the

S. J. Som

written examination on 27.2.1999. The departmental respondents have further referred to the revised order of the Railway Board dated 17.2.1999 at Annexure-3 and have stated that in accordance with this circular, as a one time exception service records of the three persons were evaluated and on evaluation of the service records, respondent no.5 and one S.K.Patnaik were promoted to the rank of Chief Office Superintendent. They have further stated that the selection was finalised on 2.7.1999 prior to making of representation by the applicant on 9.7.1999. They have further stated that on the basis of scrutiny of service records of respondent no.5, Shri S.K.Patnaik and the applicant, the first two were given promotion. The respondents have further stated in paragraph 17 of the counter that respondent no.5 was initially senior to the applicant and respondent no.5 will retire after a period of two years whereas the applicant has many years of service to go. "It was thus decided by selection board to promote the respondent no.5." They have further stated that respondent no.5 has got outstanding performance certificate and on the above grounds they have opposed the prayer of the applicant.

S. Som

4. The applicant has stated in his rejoinder that the post of Chief Office Superintendent is a non-selection post and therefore, on the basis of seniority subject to elimination of unfit, he should have been given promotion. He has stated that even though this post was initially classified as a selection post, through the order at Annexure-3 it was directed that the post should be filled up on scrutiny of service record and therefore, it must be held that the post was converted into a non-selection post. He has also

stated that as it is a non-selection post the service records of three persons should not have been evaluated simultaneously and the departmental authorities should have scrutinised the service record of the seniormost person first and in the event of his being found unsuitable for reasons to be recorded, then the scrutiny of the service record of the next senior person should have ensued. This is laid down in Paragraph 214(a) of the Railways Establishment Manual which is enclosed at Annexure-A to the rejoinder. On the above grounds, the applicant has reiterated his prayer in the OA.

5. Respondent no.5 was issued with notice, but he did not appear or file counter.

6. We have heard Dr.D.B.Mishra, the learned counsel for the petitioner and Mr.Ashok Mohanty, the learned Senior Panel Counsel (Railways) for the departmental respondents and have also perused the record.

7. The first point for determination is whether the post of Chief Office Superintendent was required to be filled up as a selection post or a non-selection post. The applicant has stated that originally it was treated as a selection post. But in the Railway Board's circular dated 17.2.1999 (Annexure-3) this was converted into a non-selection post. We have carefully gone through the circular at Annexure-3. In this circular, in the first paragraph it has been clearly written that the post of Chief Office Superintendent has been classified as a selection post. It is further stated in this circular that the staff side have made a demand

in the Departmental Council under the J.C.M. that the post may be classified as non-selection. The Railway Board have further stated in this letter that it has been decided that while it is not possible to change the classification of the post, as a measure of immediate relief to the staff and to avoid delay in the implementation of the Board's instructions, the post of Chief Office Superintendent may be filled up through the process of modified selection by scrutiny of service record only as a one time exception. From this letter it is, therefore, clear that the demand of the staff to treat the post as non-selection post has been rejected, but it has been stated that as a one time exception the post may be filled up through scrutiny of service record. In view of this, it is not possible to accept the contention of the learned counsel for the petitioner that in this letter at Annexure-3 the post was converted to a non-selection post from selection post.

8. The second limb of the above submission of the learned counsel for the petitioner is that under Paragraph 214(a) of the Railways Establishment Manual (Annexure-A) non-selection posts are to be filled up on the basis of record of service or departmental tests, if necessary and a senior Railway servant may be passed over only if he has been declared unfit for holding the post in question. It has been submitted by the learned counsel for the petitioner that as scrutiny of service record has been adopted for filling up of the post of Chief Office Superintendent, it must be held that by necessary implication the post has been converted into a non-selection post. We are unable to accept this

contention because under Paragraph 214(a), even for filling up a non-selecting post by promotion, departmental tests are not ruled out, as we have already noted. Therefore, it cannot be held that just because as a one time exception, the post of Chief Office Superintendent was ordered to be filled up through scrutiny of service record in order to avoid delay in giving benefit of promotion, the post has been converted into a non-selection post. This contention is, therefore, held to be without any merit and is rejected. It is thus clear that the post of Chief Office Superintendent continued to be a selection post.

9. The next question which arises for consideration is whether in the process of filling up the post of Chief Office Superintendent, supersession of the applicant is legally justified and sustainable. Before addressing this question, it must be noted that in the rank of Office Superintendent Grade-II the applicant has asserted that he is senior to respondent no.5. He has enclosed at Annexure-1 the gradation list of Office Superintendent Grade-II showing him as senior to respondent no.5. The name of S.K.Patnaik, who has also been promoted to the post of Chief Office Superintendent as per averment in paragraph 11 of the counter, does not even appear in the seniority list at Annexure-1. With regard to the seniority of the applicant and respondent no.5 in the rank of Office Superintendent Grade-II, the departmental respondents have stated that the applicant was given promotion to Office Superintendent Grade-II provisionally to fill up the shortfall vacancy in ST

Sum

quota much before respondent no.5 was so promoted on 1.1.1984. In paragraph 8 of the counter the respondents have specifically stated that the applicant's provisional promotion to the post of Office Superintendent Grade-II was taken into account for the purpose of preparation of the seniority list under Annexure-2. The seniority list is actually at Annexure-1 to the OA. Be that as it may, from the pleadings of the parties, it is clear that the respondents have admitted that in the rank of Office Superintendent Grade-II the applicant is senior to respondent no.5. The applicant has specifically averred that in the rank of Office Superintendent Grade-I he is senior to respondent no.5, having been promoted on 8.2.1990 as a result of being successful in the suitability test the result of which is at Annexure-2. The departmental respondents have not stated when respondent no.5 was promoted to the rank of Office Superintendent Grade-I. But they have not denied the averment of the applicant that in the rank of Office Superintendent Grade-I he is senior to respondent no.5. Their silence on the point must lead us to accept the contention of the applicant that in the rank of Office Superintendent Grade-I the applicant is senior to respondent no.5. As this is a selection post, as per the order of the Railway Board at Annexure-3 the selection had to be made as a one time exception by scrutiny of service record. The respondents have stated that the service records of the applicant, respondent no.5 and one S.K.Patnaik were evaluated, and respondent no.5 and one S.K.Patnaik were promoted to the rank of Chief Office Superintendent. The departmental respondents have stated that the service record of respondent no.5

JJm

being much better than that of the applicant, the departmental authorities were right in promoting respondent no.5. The normal and universal practice in the matter of evaluation of service record is that officers are graded as Outstanding, Very Good and Good. The departmental respondents have stated that respondent no.5 had outstanding performance certificate. They have not stated specifically that the applicant's service record was evaluated as Very Good or Good. Therefore, merely on the bland assertion that the service record of respondent no.5 was better than that of the applicant, it cannot be held that the applicant has been rightly passed over by respondent no.5. Moreover, the departmental respondents have stated in paragraph 17 of the counter that respondent no.5 is due to retire within two years whereas the applicant has many years of service to render. This is entirely an extraneous consideration. The departmental respondents have averred and we have quoted this earlier in this order that this is a consideration which was applied by the Selection Committee as is evidenced by the use of the word "Thus" in the sentence quoted by us. In view of the above, we have no hesitation in holding that this consideration about the further length of service of the applicant and respondent no.5 is a totally extraneous consideration which could not have been applied by the Selection Committee. The above coupled with the fact that the departmental respondents have not made any specific averment that while respondent no.5 was graded as Outstanding, the applicant was graded as Very Good or Good leads us to hold that the applicant has been unfairly superseded by respondent no.5. In view of the

above discussion, we quash the order at Annexure-5 and direct the departmental authorities to reconvene the Selection Committee to re-evaluate the service records of the three persons who were considered earlier and give them specific grading on the basis of evaluation. Thereafter the recommendation of the Selection Committee should be worked out. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

10. In the result, therefore, the Original Application is allowed in terms of the observation and direction as above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
27.3.2001
VICE-CHAIRMAN

27th March, 2001/AN/PS