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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 532 of 2001
Cuttack, this the 31st day of August, 2004.

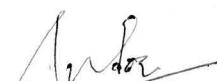
GOPINATH MISHRA & ORS. APPLICANTS.

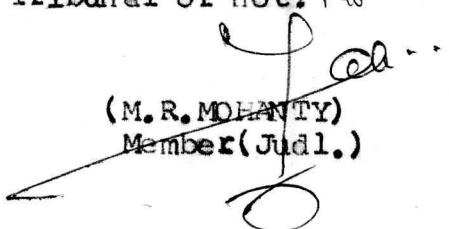
-Versus-

UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

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


(B.N. SOM)
Vice-Chairman


(M.R. MOHANTY)
Member (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 532 of 2001
Cuttack, this the 31st day of August, 2004

C O R A M:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDL.)

....

1. Sri Gopinath Mishra,
Aged about 39 years,
S/o. Kartik Chandra Mishra,
residing at Qr.No.C/20/G,
Rail Vihar, S.E. Railway Project Complex,
Bhubaneswar-23, at present working as
Jr.Clerk in the Office of the CSTE/ECOR/BBSR,
Rail Vihar, B-1, S.E. Railway Project Complex,
Bhubaneswar-751 023.
2. Sri Bidyadhar Sahoo, aged about 33 years,
S/o. Alekha Chandra Sahoo, residing at
Qr.No.E/14/A/E(Out House), At: Trafic Colony,
Po: Jatni, Dist. Khurda, at present working as
Junior Clerk in the office of Sr.D.P.O.,
S.E. Railway, Khurda Road, Jatni, Dist. Khurda.
3. Sri Bauribandhu Sahu, aged about 40 years,
S/o. Kesab Sahu, residing at Qr.No.G-67,
Accounts Colony, PO: Jatni, Dist. Khurda,
at present working as Jr.Clerk in the Office
of Sr.D.P.O., S.E. Railway, Khurda Road, Jatni,
Dist. Khurda.
4. Sri Sudarsan Sahoo,
Aged about 44 years,
Son of Gunduchi Sahoo,
resident of Vill. Jageswarpathna,
PO: Madanpur,
Via: Janla,
Dist. Khurda,
at present working as
Jr.Clerk in the Office of
Sr.D.P.O., S.E. Railway, Khurda Road,
Jatni, Dist. Khurda. Applicant.

By legal practitioner: Dr.D.B.Mishra, Advocate.



-V e r s u s-

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, 752 050.
4. Sr. Divisional Personnel Officer, S.E.Railway, Khurda Road, Jatni, 752 050.
5. Smt. Sanjukta Acharya;
6. Kumari Namita Bhatta
7. V.G. K. Patro;
8. Smt. Basanti Samantaray;
9. K.L.N. Rao;
10. Ramesh Kumar Das;
11. P.V. Kondala Rao;
12. P.A. Rama Rao;
13. Ranjit Kumar Das
14. J.S.N. Sharma
15. J.K. Dash
16. S. Govinda Rao
17. L.S.N. Ray;
18. Nageswara Panigrahi
19. Sri N.C. Sahoo

(Sl.Nos.5 to 8 and 19 are at present working as Sr.Clerk and Sl.No.9 to 18 are at present working as Jr.Clerk in the Office of the Sr.D.P.O., S.E.Railway, Khurda Road, Jatni, Dist. Khurda).

... Respondents.

By legal practitioner : Mr.R.C.Rath, Standing Counsel for Rlys.

Mr.Achintya Das (for Respondent

Nos.9 to 16 and 18.)

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

The four Applicants, having been selected through open competitive examination for Gr. 'C' post of Junior Clerks, were offered with appointment on 19-11-1992 and 09.11.1992. They were appointed against the Physically Handicapped quota and, accordingly, they joined in their respective posts on 19-11-1992, 20-11-92 and 11-11-1992 under the Respondents/South Eastern Railways. Being aggrieved ^{by} of their placements shown in the provisional gradation list published on 01-07-1997 between direct recruits and promotees and promotions given to the post of Senior Clerk from the said provisional gradation list, they made representations on 10-9-1997, 22-04-1998, 09-06-1999 and 01-01-2001 and since none of their representations were considered by the Respondents, they preferred this Original Application on 12-11-2001 praying for issuance of notice to the Respondents to show-cause as to why undue delay is being perpetrated in the matter of finalising the seniority list and fixing the seniority of the Applicants as per Para-306 of IREM and to issue direction to the Respondents to finalise the impugned provisional seniority list (Annexure-3) in the feeder cadre of Junior Clerk as per Rules outlined in para- 306 of IREM and not to further promote any one to the rank of Senior clerk without finalising the seniority list and to quash

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the promotions given to their juniors (Respondents 5 to 8) at Annexure-7 and/or to grant promotion to the Applicants (to the rank of Senior Clerk) from the date (15-02-1999) their juniors have been promoted.

2. By filing counter, the Departmental Respondents have disclosed that this Original Application is not maintainable being hit by Sec.21 of the Administrative Tribunals Act, 1985; as opportunity was given to the Applicants to make representations within a period of 30 days of publication of the gradation list (which were published in the year 1993 and 1997) about any error therein. As no such representation was filed by any of the Applicants, challenge of the gradation list is hit by Sec.21 of the Administrative Tribunals Act, 1985. Further, the Respondents have denied the receipt of any representation (as pointed out by the Applicants) except the one dated 24.08.2001; which was replied on 12.11.2001. With regard to merits of the matter, it has been disclosed by the Respondents (in their counter) that the Applicants were selected for appointment in Gr.'C' category as Jr. Clerks against Physically Handicapped quota in terms of GPO/GRC's letter dated 14-1-1992 and that prior to receipt of such recommendation dated 14-01-1992, a panel consisting of 21 candidates for promotion to the post of Office clerk Gr.II in the scale of Rs.950-1500/- (RP) against 33.33% Departmental quota was published on 20.11.1991 (Annexure-R/1) and that, from the said list, seven persons were posted vide order dated 26.11.1991 (Annexure-R/2). It has been disclosed

that the post of Office Clerk Gr.II is the initial recruitment grade/post and that the Respondents(9 to 18) joined in their promotional post against vacancies available on different dates much prior to the entry of the Applicants in Railway service; but the Respondent No.19 was posted at a later date. While Applicants joined against PHQ in the posts of Jr.Clerk on 19-11-1992, 10-11-1992, 19-11-1992 and 30-11-1992 (as per the PHQ panel published on 14-1-1992), the Respondents 7 to 18 belong to the panel for promotion dated 20-11-1991 and, as such, there was no wrong in giving the promotion to the private Respondents; the Applicants being juniors to private Respondents.

3. We have heard learned Counsel for both sides and perused the materials placed on record.

4. It is the case of the learned Counsel appearing for the Applicants that since the seniority list has not been prepared as per Para-306 of the Rules regulating seniority of non-gazetted Railway Servants; any action (that has been taken on the basis of the said seniority) is a nullity and, as such, direction be given to the Respondents to modify the seniority list showing the Applicants as senior to private Respondents and to grant the Applicants all other consequential service benefits.

5. Learned Standing Counsel appearing for the Respondents submitted that Para-306 of Rules is not applicable to the present case and the actual rule



is embodied in Para 302 and 303 of the Rules and that, basing on such Rules, the gradation list has been prepared.

6. In the above-said premises, for resolving the present dispute, it is worthwhile to quote para-306 of the Rules relied upon by the Applicants and para-302 of the Rules relied upon by the Respondents which reads as under:-

"306. Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above".

"302. SENIORITY IN INITIAL RECRUITMENT GRADES- Unless specifically stated otherwise, the seniority among 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 process 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-seniority of each group.

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

[Signature]

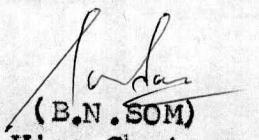
7. After considering the various submissions of the rival parties and on perusal of the records, it is seen that the Applicants were empanelled on 14.1.1992; whereas the private Respondents were empanelled under DPQ on 20.11.1991 and the Applicants joined the posts must later than the private respondents. Apart from the merit, it is seen that even though such gradation list were published in the year 1993 and 1997, the Applicants did not take any step for modifying the gradation list by filing any representation etc. They made such representation belatedly only on 24.08.2001. Law is well settled in a plethora of judicial pronouncements of the Apex Court that "a settled thing should not be unsettled" after a long lapse of time.

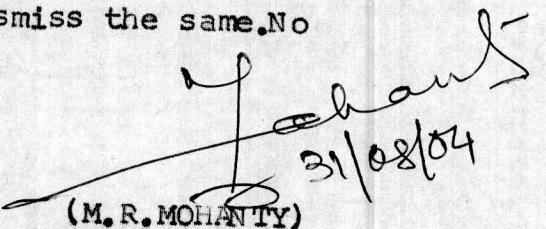
8. Since the Applicants did not submit any objection to such gradation list and slept over the matter for a long time, at this belated stage they are estopped to ask the Respondents to redo the settled position of seniority. That apart it is also seen that while considering the similar grievance of a similarly placed person, this Tribunal (in O.A.No. 508 of 1998 decided on 23.5.2001 - Bijaya Sankar Mishra Vs. Union of India and others) had held the same to be barred by limitation.

9. In the above view of the matter, we hold this

Y

Original Application to be hopelessly barred by
limitation and accordingly dismiss the same. No
costs.


(B.N. SOM)
Vice-Chairman


(M.R. MOHANTY)
Member (Judicial)

31/08/04