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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 355 OF 2003  
Cuttack this the 4th day of May 2005

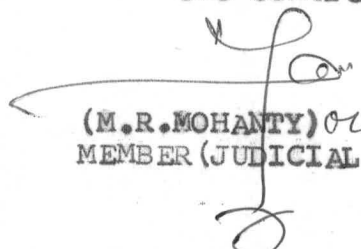
Susanta Ku. Mishra ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 74
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 73

  
(M.R. MOHANTY) 04.05.05  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 355 OF 2003  
Cuttack this the 4<sup>th</sup> day of May 2005

DORAM:

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

...

Susanta Kumar Mishra, aged about 42 years,  
S/o. late Laxman Mishra, at present working  
as Asst. Personnel Officer, East Coast Railway,  
Khurda Road, Khurda

...

Applicant

By the Advocates

M/s. J.M. Patnaik  
S. Mishra  
P. K. Rout

- VERSUS -

1. Union of India represented through its General Manager, S.E. Railway, Garden Reach, Kolkata-43
2. The Chief Personnel Officer, S.E. Railway, Garden Reach, Kolkata-43
3. The Divisional Rly. Manager, East Coast Railway, Waltair, Andhra Pradesh
4. The Works Manager, Mancheswar Workshop At/PO-Mancheswar, Bhubaneswar, Dist-Khurda
5. The Divisional Railway Manager (P) At/PO-Khurda Road, Dist-Puri
6. The Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
7. Ishak Hembram, Asst. Personnel Officer, S.E. Railway, through Chief Personnel Officer S.E. Railway, Bilashpur, M.P.
8. Sri Surendra Nayak, Asst. Pers. Officer, E. Co. Rly/ Khurda Road, At/PO-Jatni, Khurda
9. Sri S.C. Das, Executive Assistant to Chief Personnel Officer, S.E. Railway, Garden Reach, Kolkata-43
10. Miss. Anjushri Samanta, Asst. Registrar, Railway Claims Tribunal, Kolkata Bench, 2, Esplanade Masion, Esplanade East, Kolkata-700 069
11. Sri Naunihal Singh, Asst. Personnel Officer, S.E. Railway, TATA (Bihar)
12. Sri A.B. Sarkar, Asst. Personnel Officer (Court) S.E. Rly, Garden Reach, Kolkata-43

13. Sri G.C.Das, Asst. Personnel Officer, Wagon Repair Workshop, South East Central Railway, Raipur, Chhatishgarh
14. Sri P.C. John, Asst. Personnel Officer, South East Central Railway, Nagpur Division, Nagpur, Maharashtra
15. Sri Somra Oraon, Asst. Personnel Officer (Engg.) South Eastern Railway, Garden Reach, Kolkata-43
16. Sri R.V. Apotikar, Asst. Personnel Officer, South East Central Railway, Nagpur Division, Nagpur, Maharashtra
17. Sri J.S. Sukhadev, Asst. Personnel Officer, Motibagh Railway Workshop, South East Central Railway, Nagpur, Maharashtra
18. Sri Lappa Rao, Asst. Personnel Officer, C/o. through Sr. Divl. Personnel Officer, East Coast Railway, Khurda Road, At/PO-Jatani, Dist-Khurda
19. Sri H.C. Ram, Asst. Personnel Officer, South East Central Railway, DRM's office, Bilaspur Division, Bilaspur, M.P.

...

Respondents

By the Advocates

M/s. B. Pal  
R.C. Rath

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O R D E R

MR. B. N. SOM, VICE-CHAIRMAN: Applicant (Shri Susanta Kumar Mishra), presently working as Assistant Personnel Officer (in short A.P.O.) has filed this Original Application assailing the seniority list dated 14.3.2003 (Annexure-20) in respect of Group B Officers of Personnel Branch, circulated by the Chief Personnel Officer (in short C.P.O.), S.E. Railway, Kolkata. He has also approached the Tribunal with prayer to direct the Respondents-Railways to count his seniority in Group B with effect from 20.5.1997, i.e., the date from which the applicant entered into Group B service on regular basis; and to prepare a fresh

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merit list, taking into consideration the various judgments of the Courts/Tribunals and to assign him seniority at Sl. No.40, just below Shri M.N.Maity (Sl. No.39).

2. The undisputed facts of the case are that the applicant was appointed in Railway service in Group C cadre as Office Clerk, Grade-I (Legal) on 19.11.1984, promoted as Law Assistant from 1.7.1991, further promoted as Chief Law Assistant (Rs.2000-3500/- (PR) with effect from 1.3.1993. Thereafter, he was appointed as Estate Officer-cum-ALO (in Group-B service) in the scale of Rs.7500-12,000/- and thereafter, through Limited Departmental Competitive Examination (in short L.D.C.E.) was selected as Asst. Personnel Officer in the scale of Rs.7500-12,000/- from 20.5.1997. The plea of the applicant is that being the holder of the post of Chief Law Assistant in Legal Department, he was eligible for promotion either to the cadre of Assistant Law Officer or to the cadre of Assistant Personnel Officer or Assistant Commercial Manager, according to his option in terms of Establishment Serial No.32/93. His case is that he was first selected through the LDCE for the post of Estate Officer-cum ALO with effect from 12.5.1996 with the approval of the General Manager, Garden Reach. While working in that capacity, he applied for the post of Assistant Personnel Officer in terms of notification dated 11.7.1996. In the said notification (Annexure-6) the candidates were given option to remain in Group-B

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it was stipulated that Law Asst./Chief Law Asst., who have avenue for promotion to Group B in their own department are eligible to appear for the said selection. The applicant was empanelled for posting as A.P.O. Group B in the same scale of pay by the letter dated 7.1.1998 issued by the Deputy C.P.O. (Annexure-7). It is the case of the applicant that his release was delayed on administrative grounds and finally vide order dated 28.7.1999 (Annexure-12) he was posted as A.P.O., Mancheswar. Because of the delay in the release, his juniors were allowed to march over him as it would be apparrent from the seniority list published by the Respondents-Department dated 1.9.2000 (Annexure-14). He, therefore, submits that his service in Group B from 20.5.1997 to 10.9.1999 i.e., two years and four months has been ignored and while preparing the seniority list, his date of appointment to Group B has been shown as 10.9.1999 instead of 20.5.1997. His representation in this regard to Res. 2 was rejected on the ground that "there is no scope of considering your claim for considering your candidature in the status of A.P.O. Group B. Therefore, your seniority in the APO panel will be counted only with reference to your substantive seniority as Chief Law Assistant".

3. The Respondents have contested the application on the ground that seniority of the applicant was fixed according to seniority principle laid down for this purpose and that his claim for being placed at

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Sl.No.40 of the seniority list, which is below Shri M.N.Maity is liable to be dismissed in limine in the absence of the affected parties arraigned in this O.A. Secondly, that the seniority list at Annexure-20 was only provisional list of Group B officers, who were given permission to file representations, if any, within one month from the date of publication of the seniority list, so that any discrepancy in its preparation could be corrected. But the applicant, without exhausting the departmental remedies has rushed to the Tribunal, for which this O.A., being premature, is liable to be dismissed. Besides these preliminary objections, the Respondents have submitted on the merits of the case that while Law Assistants/Chief Law Assistants are liable to be considered for promotion to APO/AWO or ACM/Group B in addition to his former avenue of promotion to the post of ALO-cum-Estate Officer, he is to indicate clearly his option as envisaged in Estt.Sl.No.32/92 after his selection within 30 days of the publication of the result regarding the stream/cadre in which he would prefer to serve. The Respondents have submitted that the L.D.C.E.n for ALO was notified on 28.3.1996 and the panel was approved by the General Manager on 2.5.1997. On the other hand, notification for LDCE for the cadre of APO/AWO was issued on 11.7.1996 and the panel was approved by the G.M. on 7.1.1998. As per the rule provision, as he had to appear in the examination CLA first, he was entitled to exercise his

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option on his empanelment for the post of APO/AWO regarding his continuance in his own stream or to seek further promotion in the Personnel Department. The applicant was asked to exercise his option after he was empanelled as A.P.O. (Annexure-7) within 30 days of publication of the results of the selection. As his entry in the cadre of APO became final after expiry of 30 days from the date of publication of the results of the panel on 7.1.1998, he cannot claim any benefit of promotion/seniority in the cadre of APO/AWO from the date earlier than he actually tookover the charge of APO/AWO. However, they have admitted that his placement in the seniority list of Group B Officers below S/Shri A. Rao and S.C.Ram appears to be an error which is being examined, keeping in view the Group B panel position of the applicant vis-a-vis those two officers. They have, however, contended that the panel having been approved on 7.1.1998, his claim of seniority in Group B with effect from 20.5.1997 is not reasonable. They have also submitted that the seniority in Group B service is determined from the date of joining in Group B post in any department.

4. We have heard the learned counsel for the parties and have also perused the records placed before us.

5. The sole point for consideration is whether the applicant is entitled to seniority with effect from the date he joined Group B post in Personnel Department or from the date he had been promoted to Group B cadre, i.e., APO cum Estate Officer under Law Department.

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6. It is not disputed that each Department has Group B cadres and these cadres are independent. These cadres have also separate recruitment rules for filling up of vacancies. This being the basic fact of the case, we see lot of logic in the argument of the Respondents that the applicant cannot claim seniority earlier than the date when he actually joined the post of A. P. O. or according to his position in the merit list of APOs, approved by the General Manager on 7.1.1998. We have compared the position of the officers in the panel with the positions awarded to them in the seniority list. We find that the seniority list dated 14.3.2003 published by the Respondents was prepared strictly in accordance with the position of officers in the panel of APO/AWO Group B dated 4.1.1990 and in terms of that the applicant's position was at Sl. No.17 in a list of 19 and the names of officers under Sl.Nos.18 and 19 placed earlier than the applicant. The Respondents have already admitted that they noticed this error, and in this regard, they are taking necessary action to rectify the error. As the seniority position of APOs/AWOs (Group B) officers through LDCE has been made strictly according to their position in the merit list, we see no reason to interfere in the matter. We, however, hope that the mistake/error admitted by the Respondents in preparation of the said seniority list should be corrected by

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informing the applicant about the said change/  
rectification in his favour.

7. With this, the O.A. is disposed of. No costs.

*84-05-05*  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*Suba*  
(B.N. SOM)  
VICE-CHAIRMAN

BJY