

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.219 OF 2004
CUTTACK THIS THE 18th DAY OF August 2005

Bobbin Mohanty

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Applicant(s)

-VERSUS-

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?

Ye

2.

3. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Ye

Bobbin Mohanty
18/08/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)

Bob
(B.N.SOM)
VICE-CHAIRMAN

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ORIGINAL APPLICATION NO.219 OF 2004
CUTTACK THIS THE 18th DAY OF August 2005

CORAM:

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

Sri Bobin Mohanty, aged about 39 years, S/o. Promod Chandra Mohanty. At present working as Section Engineer (Design), East Coast Railway, Chandrasekharpur, Plot No.676, Sahid Nagar, Bhubaneswar

Applicant

By the Advocates

M/s.S.Patnaik
T.Paul
APradhan.

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar
2. General Manager, South Eastern Railway, Garden Reach, Kolkata
3. The Chief Personnel Officer (Engineering), South Eastern Railway, Garden Reach, Kolkata
4. Divisional Railway Manager(Personnel) Kharagpur Division (SE Railway) Kharagpur, West Bengal
5. The Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar

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Respondents

By the Advocates

M/s.S.K.Ojha
H.M.Das
Mr.Ashok Mohanty

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN:

Shri Bobin Mohanty, Section Engineer (Design) East Coast Railways, has filed this Original Application challenging the Office Order No.E/NG/Admn./Seniority/24 dated 24.2.2004 (Annexure-3) relating to fixation of his seniority. It may be mentioned here that the impugned seniority list has not been filed by him along with the O.A. Although this application was liable to be dismissed at the admission stage on this ground alone, as no objection was raised, we overlooked the same and decided to hear the matter.

2. The grievance of the applicant in a nut shell is that he was given appointment to the post of Design Assistant in the scale of Rs.1600-2660/- on 26.11.1993. Two departmental tests were held in the year 1995 and 2000 for promotion to the grade of Section Engineer, but the applicant was not called to appear in those tests although he was

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eligible. He was, however, called for the departmental test in the year 2003 and he ~~became~~^{came on} successful in the examination. He was given the benefit of actual promotion with effect from 1.8.2000, although, according to him, he should have been given the notional benefit of seniority from 26.11.1995, i.e., on completion of two years in the lower grade. The applicant, relying on the Establishment Sl. No.110/81 (Annexure-6) has argued that he having joined on 26.11.1993, his eligibility for the departmental test should have accrued after two years of his service and accordingly, he was eligible to be called for the departmental test in the year 1995, by treating the prescribed normal training period as eligible service. By referring to S.E.Railways Estt. Sl. No.183/87, he has argued that even if he was not eligible for promotion on this score(for non completion of the prescribed period of two years service in the immediate grade below), his name could have been empanelled for promotion although he need not have been promoted until he had completed two years of service in that grade. His argument is that had he been promoted in the year 1995, he could have appeared in the written test for promotion to Group – B cadre of A.E.N. against 75% vacancies in the year 2004 as the last person who was allowed to appear

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for the aforesaid examination, his effective date of seniority was 26.2.1999.

3. The facts of the case have been opposed by the Respondents by filing a detailed counter. In their counter they have assailed the application as bereft of any merit. They have pointed out that the applicant was recruited through Railway Recruitment Board (RRB in short), Bhubaneswar in the year 1993 purely on temporary basis for a period of three years (Annexure-R/1) for Construction Division. The nature of appointment as well as the terms and conditions of service were notified by RRB in Employment Notice No.2/93. Referring to the appointment letter issued to the applicant vide Annexure R/1, they have pointed out that in the appointment letter it was clearly mentioned that "you have been selected temporary Design Assistant for a period of three years". Adverting to Annexure R/2, they have submitted that in the requisition for recruitment of candidates for appointment, it was clearly disclosed that not only the appointment was temporary for three years, but there was no prospect of promotion to higher post or to the higher time scale of pay within two years. The applicant accepted those terms and conditions upon which he was offered appointment. However, after three years of his appointment, the General Manager (Res. No.1) on a

review of the matter regarding direct recruitment made from open market for filling up the posts in the Construction Project, whose life was ^{of which} temporary, decided that the service of such direct recruit officials should be transferred to the open line to enable them to get a permanent foot hold in railway service. Accordingly, the applicant was made permanent in the open line and his lien was fixed in Kharagpur as Head Draftsman in the scale of Rs.1600-2660/- It was also decided to interpolate the seniority of the applicant and other similarly placed employees in the existing seniority list as per their effective date(s) of seniority in the grade, i.e., from the date of joining the new grade as per rules applicable to direct recruits, i.e., by adding notionally the prescribed period of training as laid down in the Manual (Annexures R/3 and R/4). Accordingly, the effective date of seniority of the applicant as permanent direct recruit Head Draftsman was fixed as 26.11.1994. The Respondents have further submitted that the applicant's contention that the benefit of pro forma promotion should have been extended to him from the year 1995 is based on erroneous premises and untenable in view of the fact that the applicant was not eligible to be called for promotion test to the grade/scale of Rs.2000-3200/- held during the year 1995 as he did not have two years of residency period from the date of effective seniority in

the substantive grade. Regarding the question of granting permission in the year 2000, the Respondents have admitted that the applicant was entitled to ante dated seniority and accordingly the benefit of pro forma promotion had been given to him with effect from 3.3.2000 (Annexure-A/3). They have rebutted the claim of the applicant to count his seniority from 26.11.1995 in the higher grade as devoid of any merit in view of the position referred to earlier.

4. We have heard the learned counsel for both the sides and have perused the materials placed before us.

5. The short question to be answered in this O.A. is whether the applicant is entitled to count his seniority in the grade of Head Draughtsman from 26.11.1993 on wards. The admitted facts of the case are that 251 Technical Supervisors including Stenographers were absorbed in the Open Line with a view to offering them permanency in service and consequently, the promotional prospects with effect from 1997. The principles of seniority were determined by the General Manager in consultation with the Staff side and the minutes of the meeting dated 23.4.1997 in which these decisions were taken regarding fixation of lien and seniority of this category of officials have been produced by the Respondents under Annexure R/3. In that meeting it was

decided that the seniority position of the absorbee Technical Supervisions would be interpolated as per their effective date(s) of seniority in the grade, i.e., on completion of normal prescribed training period. Applying this principle, the applicant, who was absorbed in 1977, his seniority was determined vide Annexure-3, which reads as under:

“In terms of CPO/GRC’s letter No.P/Engg/W/TRPS/IOWs dated 22.01.2004, the seniority of Sri Bobin Mohanty, is reassigned in the category of Hd.Draftsman in scale Rs.5500-9000/- from the date of joining against working post after completion of training on 26.11.1994 and placed in the seniority list just above Sri S.Biswas whose seniority has been assigned with effect from 27.02.1997. Accordingly the benefit of proforma promotion is hereby admitted in favour of Sri Bobin Mohanty to the next higher grade as SE(DD) in scale Rs.6500-10500/- with effect from 3.3.2000 at par with his immediate junior Sri S.Biswas who has been promoted as SE(DD) in scale Rs.6500-10500/- w.e.f. 3.3.2000.

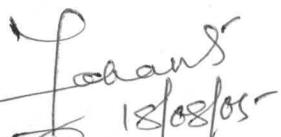
This issues with the approval of the Competent Authority”.

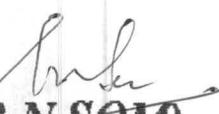
6. Thus, his seniority was reckoned from the year 1997 as the decision to absorb the direct recruit Technical Supervisors of the Project was taken only in April, 1997. It has also been disclosed that the applicant has been placed just above Shri S.Biswas, who was apparently immediate junior to him in the grade of Technical Supervisor in the Project.

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7. Having regard to the undisputed facts of the case that the applicant got a foot hold in the Open Line as Draftsman cadre in Kharagpur Division on the basis of his absorption on transfer, he could not have claimed seniority from a date earlier than that of his entry in the new cadre. He cannot also claim the benefit of his earlier service as his entry into the Open Line has been made following the principle of surplus staff, as otherwise, with the abolition of the project his service was liable to be dispensed with and he would have been rendered job less. The applicant could have claimed the benefit of past service had he been a substantive post holder. In the circumstances, we are of the view that the principles of fixation of seniority as decided by the General Manager (Res.1) S.E.Railway in consultation with the Staff side is rational and equitable. However, as the applicant was recruited through RRB facing a stiff competition, he may be given the benefit of past service for the purpose of pension and other service benefits, like A.C.P. etc.

8. The O.A. is accordingly disposed of. No costs.


18/08/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN