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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.1132 of 2004
Cuttack, this the 26th day of September, 2008

Renubala Harichandan Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.1132 of 2004

Cuttack, this the 26th day of September, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D


THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)


Smt.Renubala Harichandan, aged about 35 years, D/o.
Chaitanya Harichandan, working as Senior Clerk in the Office of
Senior Divisional Personnel Manager, East Coast Railway,
Khurda Road Division, At/Po. Jatni, Dist. Khurda.

.....Applicant

Legal practitioner :M/s. J.M.Pattnaik,S.Mishra,
A.P.Mishra, P.K.Rout, Counsel.

- Versus -

1. Union of India represented by its General Manager, East Coast Railway, At/Po.Chandra Sekharpur, Bhubaneswar, Dist. Khurda.
 2. The Chief Personnel Officer, East Coast Railway, At/Po.Chandrasekharpur, Bhubaneswar, Dist. Khurda.
 3. The Divisional Railway Manager, East Coast Railway, At-Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 4. The Divisional Railway Manager (Personnel), East Coast Railway, At/Po. Chandrasekharpur, Bhubaneswar, Dist.Khurda.
 5. The Senior Divisional Personnel Officer, Khurda Road Division, East Coast Railway, At/Po.Jatni, Dist. Khurda.
 6. The Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 7. Arun Kumar Sabat (Senior Clerk) working in the Office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 8. Purnima Das Mohapatra (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
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9. Jitendra Rout (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Division, At/Po. Jatni, Dist. Khurda.
 10. A.Laxmi (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 11. Laxmidhar Kar, Senior Clerk in the office of Senior Section Engineer (Carriage Wagon), At/Po. Station Road, Dist. Puri.
 12. Pramod Chandra Pattnaik (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 13. Rajendra Kumar Behera (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 14. Minatibala Rath (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 15. Pramila Singh (Senior Clerk), working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 16. Gouranga Ch. Pal (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 17. Mousumi Bose (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 18. Ella Mohapatra (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 19. Jagdish Dash (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
 20. Rabi Kumar Mishra (Senior Clerk) working in the office of Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.

....Respondents

Legal Practitioner :Mr.Ashok Mohanty, Sr. Counsel & Mr. R.C.Rath, Counsel.

M/s.T.Rath,R.K.Samantasinghar,
Counsel (for Respondent
Nos.8,10,11,13 & 19).




ORDER

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant (Smt.Renubala Harichandan) who is working as Senior Clerk in the office of Senior Divisional Personnel Manager of East Coast Railway, Khurda Road Division has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking direction to the Respondent No.5 for placing her name at Sl.No.46 in place of Respondent No.7 in the seniority list published as on 01.07.1998 under Annexure-A/5. She has also prayed for quashing the order of rejection of her representation under Annexure-A/7 dated 22.12.2003 rejecting her request for change of her place and position in the aforesaid seniority list.

2. The factual background of the case is that on 29.07.1988, the Applicant joined as Junior Typist on compassionate ground. On 27.11.1995 she was converted from Junior Typist to Junior Clerk. Her case is that in similar circumstances employees working under Respondents 1 to 6, got their seniority from the date of their original appointments and not from the date of conversion of their category of Junior Clerk. According to her in the seniority list published as on 01.07.1997 under Annexure-A/4 her name was shown at Sl.No.2 whereas while publishing the provisional seniority list of Senior Clerk under Annexure-A/5 dated 10.08.1998 the name of Applicant was placed below the names of Respondent Nos.7 to 20 though their dates of joining were much later than the Applicant. Her representation under Annexure-A/6 dated 16.09.2003 for change of her place and position in the seniority list under Annexure-A/5 based on the Estt.Srl.Nos. 419/63, dated 02.12.1963,



146/91 dated 01.08.1991 and 230/87 dated 20.08.1987 was rejected by the Respondents under Annexure-A/7 dated 22.12.2003. She has again submitted representations under Annexure-A/8 dated 29.01.2004 and under Annexure-A/9 dated 10.07.2004 requesting the Respondents for reconsideration of her case. As there was no response to the said representations, she has approached this Tribunal in the present Original Application with the aforesaid prayers.

3. In the counter, filed by the Departmental Respondents, it has been pointed out that on 29.07.1988; the Applicant was appointed as Junior Typist in the Railway and posted to Engineering Department under Sr.DEN/Khurda Road Division. While working as such, pursuant to Annexure-R/1 and R/2, she applied for change of her category from Junior Typist to Jr. Clerk. As per her option, she was called to attend the selection both written and viva-voce held on 04.01.1995 and 31.10.1995. She was declared suitable and accordingly provisionally empanelled for the post of office clerk vide order under Annexure-A/3 dated 27.11.1995. Thereafter, she was brought over to the category of Junior Clerk from junior Typist w.e.f. 29.07.1996. As per para 2 (iv) of Board's letter dated 21.06.1962 circulated under Estt.Srl.No.469/62 (Annexure-R/1), the Applicant was given the benefit of counting her seniority in the cadre of Junior clerk w.e.f. the date of her initial appointment as Junior Typist. In terms of Estt. Srl.No.83/89 vide Annexure-R/3 read with Estt.Srl.No.136/89 vide Annexure-A/11; an employee has to render minimum 02 years of service in the new cadre for further promotion. Applicant having completed two years of service in the new cadre of Junior Clerk on

29.07.1998 and having been found suitable to hold the promotional post of Sr. Clerk, was promoted to the next higher post of Senior Clerk under Annexure-R/4 dated 15.02.1999. It has further been averred by the Respondents that before the Applicant switched over to the grade of Junior Clerk, persons named at Sl.Nos.51, 61 and 63 of the seniority list of Senior Clerk have been empanelled for promotion to the said post vide order under Annexure-R/5 and Respondent Nos. 10, 11,12,13,14 and 15 (whose names appeared at Sl.Nos.51 to 56 of the seniority list of Sr. Clerk under Annexure-A/5) were promoted to the post of Senior Clerk w.e.f. 19.01.1996. Respondent Nos. 16 to 20 were promoted to the Senior Clerk on 01.11.1996, 25.11.1996, 01.02.1997, 01.02.1997, 01.03.1997 and on 01.05.1997 respectively. Respondent No.20 has come on inter Railway transfer on 07.04.1997. In other words, by the time of empanelment of Respondents 10 to 19 for promotion to Senior Clerk under Annexure-A/5, the Applicant was not born in the cadre of Junior Clerk and Respondent Nos.16 to 19 were promoted to Senior Clerk after the conversion of applicant to the post of Junior Clerk as they were empanelled prior to her conversion to Junior Clerk. It has been maintained that none of the persons shown above the Applicants in the seniority list of junior clerk had got their promotion prior to completion of two years regular service by the Applicant in the grade of Junior Clerk. It has been clarified by the Respondents that Respondent No.7 whose name appeared at Sl.No.46 of the seniority list of senior clerk was promoted to the said post on 21.12.1994 whereas the applicant was promoted to the post of Senior Clerk

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only on 15.02.1999. Accordingly, the Respondent-Department opposed the prayers of the Applicant and prayed for dismissal of this OA.

4. Applicant filed rejoinder in which besides reiterating some of the pleadings taken in the Original Application has stated that the Applicant should have been promoted to the post of Senior Clerk on completion of two years i.e. on 29.07.1998 instead of 15.02.1999; especially when the applicant was initially appointed as Junior Typist on 29.07.1988 and opted for conversion to the post of Junior Clerk on 29.07.1996. As she has been given the benefit of seniority in the cadre of Junior Clerk w.e.f. 29.07.1988, as per Estt.Srl.No.146/91, she should not have been deprived of the seniority in the senior clerk earlier than what has been assigned to her. It has further been averred that when in term of Estt.Srl.No.469/62, the Respondents have given the seniority to the Applicant from the date of her appointment as Junior Typist and as per the date of appointment the Applicant is senior to Respondent Nos.7 and others. Merely because the Applicant was not born in the cadre of junior clerk by the time the Respondent Nos.7 and others were promoted to the post of Senior Clerk cannot be a ground to deny the Applicant seniority above the private Respondents in the cadre of senior clerk. Accordingly, Applicant prayed for grant of the relief claimed in the OA.

5. Respondents 8,10,11,13,14,15,16,17,18, and 19 filed their counter apart from expressing that they adopt the averments made in the counter filed by the Respondent-Department, opposed the very maintainability of this Original Application being barred by the law of limitation. To this by filing rejoinder, the Applicant has explained that as the matter with in

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correspondence with the Respondent-Department, it is not correct to say that this OA is in any way barred by law of limitation.

6. Argument advanced by Learned Counsel for the Applicant was that by virtue of assignment of the seniority to the Applicant in the cadre of Junior Clerk with effect from her initial appointment as Junior Typist, the Applicant became senior to all the Respondents 7 to 20 in the grade of Junior Clerk. Conversion of the Applicant from Junior Typist to junior clerk of the Applicant was made on 27.11.1995. As per the Rules, after completion of two years in the grade of Junior Clerk, one is entitled to be promoted to the post of Senior Clerk. As such taking into consideration the date of appointment of the Applicant, she should have been promoted much before the date of promotion of Respondents 7 to 20 to the grade of Senior Clerk. Had it been so, her name would have been placed above the name of those Respondents. Repeated representations did not yield any result, she has approached this Tribunal. Therefore, hyper-technicality of law of limitation should not stand on the way of dispensation of justice when there has been glaring omission and injustice caused to the Applicant; otherwise, it would tantamount to perpetuating the wrong committed by the Respondents in the decision making process. In the light of the above, Learned Counsel for Applicant fervently prayed for allowing the prayer made in this OA.

7. On the other hand, Learned Counsel appearing for the Respondents vehemently opposed the above stand by stating that the Applicant having been completed two years of service in the new cadre of Junior Clerk on 29.07.1998 and having found suitable was promoted to the

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post of Sr. Clerk, under Annexure-R/4 dated 15.02.1999. But before the Applicant switched over to the grade of Junior Clerk, persons named at Sl.Nos.51, 61 and 63 of the seniority list of Senior Clerk had been empanelled for promotion to the said post vide order under Annexure-R/5 and Respondent Nos. 10, 11,12,13,14 and 15 (whose names appeared at Sl.Nos.51 to 56 of the seniority list of Sr. Clerk under Annexure-A/5) were promoted to the post of Senior Clerk w.e.f. 19.01.1996. Respondent Nos. 16 to 20 were promoted to the Senior Clerk on 01.11.1996, 25.11.1996, 01.02.1997, 01.02.1997, 01.03.1997 and on 01.05.1997 respectively. Respondent No.20 has come on inter Railway transfer on 07.04.1997. In other words, by the time of empanelment of Respondents 10 to 19 for promotion to Senior Clerk under Annexure-A/5, the Applicant was not born in the cadre of Junior Clerk and Respondent Nos.16 to 19 were promoted to Senior Clerk after the conversion of applicant to the post of Junior Clerk as they were empanelled prior to her conversion to Junior Clerk. It has been maintained that none of the persons shown above the Applicants in the seniority list of junior clerk had got their promotion prior to completion of two years regular service in the grade of Junior Clerk. Respondent No.7 whose name appeared at Sl.No.46 of the seniority list of senior clerk was promoted to the said post on 21.12.1994 whereas the applicant was promoted to the post of Senior Clerk only on 15.02.1999. As such, it has been argued that there being no wrong in the decision making process of the matter interfering in the matter at this stage would tantamount to unsettling a settled thing after long lapse of time. Hence,



Learned Counsel appearing for the Respondents argued for dismissal of this OA.

8. Giving in-depth consideration to the arguments advanced by parties, we have perused the materials placed on record. The question that has to be decided boils down to whether the Applicant has a right to claim a particular place and position in the seniority list of Senior Clerks to which she was neither recruited nor promoted at any point of time. The prayer of the Applicant, for interpolation of her name at a particular place and position in the seniority list of Senior Clerks has to be examined in the above context. On perusal of Annexure-A/5 we find that while the name of the Applicant did not figure in the said list, the name of Respondent No.7 finds place at Sl.No.46. According to Applicant, she entered to the service of Railway as Junior Typist on compassionate ground on 29.07.1988, converted to Junior Clerk on 27.11.1995 and promoted to the post of Senior Clerk on 15.02.1999 whereas, as reflected in the order under Annexure-A/5, Shri Sabat entered the service, as Junior Clerk on 22.08.1988 and promoted to the post of Senior Clerk on 21.12.1994 which was much before the conversion of Applicant from Junior Typist to Junior Clerk. Neither in her representations nor in this Original Application has she prayed for antedating her date of promotion to Senior Clerk. In service jurisprudence date(s) of appointment or promotion is the crucial date for determination of seniority in the particular grade/post. It is seen that date(s) of promotion of Respondent Nos.7 to 20 to the post of Senior Clerk was/were either when the Applicant was not born in the feeder cadre of Junior Clerk or before the promotion of the Applicant to the post of

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Senior Clerk. When the Applicant was brought over and her past service was reckoned in the grade of Junior Clerk, no opportunity was given to the existing personnel working in the grade of Junior Clerk. She did not agitate soon after her promotion to the post of Senior Clerk on 15.02.1999 and slept over the matter. Now asking for interpolation of her name in the seniority list of Senior Clerks over the Respondents 7 to 20 is an indirect effort to ante date her date of promotion to Senior Clerk and if the prayer of Applicant is allowed it would amount to erecting a super-structure where no foundation exists. Hence, the prayer of the Applicant being not sustainable in the touch stone of judicial scrutiny, the same is rejected.

9. From what has been discussed above, we find no substantial force in the contention of the Applicant to grant any of the relief(s) sought by her in this OA. Accordingly, this OA stands dismissed both on being devoid of any merit as also on the law of limitation. The parties to bear their own costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chandra Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)