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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 141 OF 2005
CUTTACK, THIS THE 1st Aug., 2008

Manoj Kr. Patnaik & Ors Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to the Principal Bench of the Central Administrative Tribunal or not ?


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


(K.THANKAPPAN)
MEMBER (JUDL.)

V

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 141 OF 2005
CUTTACK, THIS THE *1st Aug.*, 2008

CORAM :

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
AND
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

.....

1. Sri Manoj Kumar Pattnaik, aged about 30 years, S/o. Bipin Bihari Pattnaik, permanent resident of At/PO: Sagarpada, P.S./Dist: Bolangir.
2. Sri Jayanarayan Satpathy, aged about 35 years, S/o. Sri Braja Kishore Satpathy. Permanent resident of At./PO: Tikarpada, P.S./Dist: Bolangir.
.....Applicants

Advocate(s) for the Applicant- M/s. P.K.Mishra, S.S.Mohanty, A.K.Panda, S.S.Mishra.

VERSUS

1. Union of India represented through Director General and Chairman of Ordnance Factory Board, 10-A, S.K.Bose Road, Ayudh Bhawan, Kolkata-700001.
2. General Manager, Ordnance Factory, At/PO/P.S. Badmal, Dist: Bolangir.
3. Deputy General Manager(Admn.), Ordnance Factory, At/PO/P.S. Badmal, Dist: Bolangir
4. Samant Kumar Deep Store Keeper/Store-Section, Office of General Manager, Ordnance Factory, At/PO/P.S. Badmal, Dist: Bolangir
5. Kshama Sagar Bhoi, Store Keeper/Store Section, Office of General Manager, Ordnance Factory, At/PO/P.S. Badmal, Dist: Bolangir
6. Sambhu Prasad Dore, Store Keeper/Power Supply, Office of General Manager, Ordnance Factory, At/PO/P.S. Badmal, Dist: Bolangir

.....Respondents

Advocates for the Respondents – Mr. U.B.Mohapatra (SSCG),
Mr. P.R.J.Dash (ASC)

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J):

Two applicants have filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying that their seniority has to be fixed as per Service Rules and the Respondent-authorities have to be directed to re-issue the seniority list.

2. Short facts of the case of the applicants are that both the applicants were selected and recruited to the post of Store Keeper on 11.08.1995 and 09.08.1995 respectively. While they were working so, the 3rd Respondent, the Deputy General Manager(Administration) sent a letter dated 14.02.1996 enclosing a draft seniority list and requesting the concerned incumbents to file representation for correction or suggestion, if any, in the list. In the said draft seniority list the names of the applicants were shown at Sl.Nos. 9 and 10 whereas the names of the contesting Respondent Nos. 4,5 and 6 were shown at Sl.No. 13,14 and 15 respectively. Subsequently, the 2nd Respondent published another seniority list dated 05.09.1998 also inviting objection, if any, to the same. In the above seniority list the names of the applicants were at Sl. Nos. 9 and 10 and that of Respondent Nos. 4,5 and 6 were shown at Sl.No. 6,7 and 8. Accordingly, the applicants filed their objections (Annexure A/5). Thereafter a seniority list was circulated vide circular dated 18.01.2001 (Annexure A/6) wherein the applicants' names were at Sl.Nos. 4 and 5 and that of respondent nos. 4, 5 and 6 were at Sl.Nos.8,9 and 13. But, subsequently, as per the seniority list published on 23.06.2003/09.07.2003,



the names of Respondent Nos. 4 to 6 were shown at Sl.No.1,2 and 3 and that of the applicants were shown at Sl. Nos. 4 and 5. Challenging this action of the Respondents, the applicants have filed the present O.A. with the prayers as aforementioned.

3. The counsel appearing for the either sides have been heard and this Tribunal perused the documents produced and the relevant rules regarding the fixation of seniority.

4. The Ld. Counsel appearing for the applicants, firstly, invited attention of this Tribunal to the rules regarding fixation of seniority on the basis of the recruitment and joining in the duty. It is contended by the counsel that as per the seniority rules, the relative seniority of all direct recruits will be in order of merit as per the select list drawn by the UPSC, SSC or other selecting authorities. Further, it is contended that even if there is any delay occurred in joining duty, the seniority as per the select list will not get affected, if any person joins later but within the prescribed time. Further, it is contended by the Ld. Counsel that as per Annexure-A/1 circular, the seniority of the applicants has to be reckoned above Respondent Nos. 4,5 and 6, and if so, the present list assigning seniority to the Respondents 4,5 and 6 above the applicants is against the rules of seniority and even without application of the mind by the authorities. The Ld. Counsel further contended that in spite of representations and without assigning any reason for non-fixation of their seniority above Respondent Nos. 4 to 6, the authorities have drawn up the present seniority list, which is against the principles of natural justice and with the mala fide intention.

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5. Against the above contention, relying on the counter affidavit for and on behalf of the Respondents, the counsel appearing for the Respondents contended that the O.A. is devoid of any merit as select list presently drawn up is strictly in accordance with the rules governing fixation of seniority in the institution. It is further contended by the counsel that though 15 candidates were selected for appointment, in the list drawn up only 7 were given appointment in the first instance and this was due to non-release of vacancies for giving appointment to the other 8 candidates, including the applicants. Subsequently, when vacancies were identified after lapse of sometime, others were given appointment and they joined the institute. It is contended by the counsel that as the gradation list was prepared and published vide Annexure-R/1, after inviting objections from all concerned, the applicants kept quiet and they did not file any suggestion or objection against that gradation list. Further, for the list published in 1998, according to the counsel for the Respondents, also no objection had been filed by the applicants, and hence, once the gradation or the seniority list published, cannot be upset at a later stage.

6. Considering the rival contentions of the counsels appearing on the either side and going through the relevant rules regarding preparation of seniority list and the factual matrix upon which the applicants harked, it has to be decided by this Tribunal whether points raised by the Respondents are correct or not. Before considering the factual situation, it is advisable to note the relevant rules regarding the preparation of inter se seniority of direct recruits vis-a-vis their joining the duties. In this context, Annexure-A/1 is relied upon by the applicants, in which in

Rule 2 and 3 of Chapter 29, it is stated as follows:

"2. Seniority is delinked from confirmation- With effect from 4th November, 1992, the seniority of a person regularly appointed to a post according to Rule would be determined by the order of merit indicated at the time of initial appointment and not according to the date of confirmation. This is in modification of the General Principle 3, proviso to General Principle 4 and proviso to General Principle 5(i) contained in O.M.No. 9/11/55-RPS, dated the 22nd December, 1959 and Para 2.3 of O.M., dated the 3rd July, 1986.

3. Direct Recruits-(i) General procedure- The relative seniority of all direct recruits will be in the order of merit as per the Select List drawn by the UPSC,SSC or other selecting authorities. Persons appointed from an earlier Select List will rank senior en block to those appointed from the subsequent selection.

(ii) Where there is delay in joining duty- Persons selected for appointment are required to join duty within a specified time not exceeding two or three months. The offer of appointment should make it clear that if they do not join within the stipulated time, the offer would lapse. The seniority as per the Select will not get affected if any person joins later but within the prescribed time. In exceptional cases, there is provision to allow time up to six months for joining. Even in such cases, seniority will be retained."

7. Further, the above quoted Rule indicates an example of persons joining within the stipulated time of three months up to 31.07.2000, except one allowed six months time as a special case. This statute also shows that the position of seniority is not affected though a candidate joins later than those who joined on or before 28.05.2000. Admittedly, the applicants were selected during 1995 and the seniority lists, Annexure-A/3 and A/6 were published on 27.02.1996 and 18.1.2001 respectively, and if so, any deviation from the above list has to be supported with reasonable grounds. In Annexure-A/3, admittedly, the applicants were shown above the names of Respondent Nos. 4 to 6 in the seniority. When the change took

place in 1998, in Annexure-A/4, the applicants had filed Annexure- A/5 representations/objections. As per extant rules, seniority shall be fixed on basis of order of merit in the select list. Admittedly, the applicants were shown as more meritorious than Respondent Nos. 4 to 6 in the select list. In spite of Annexure- A/5, representations/objections, Annexure-A/6 seniority list dated 18.01.2001 had been drawn up. Further, it has to be noted that the present seniority list as on 1.6.2003 (Annexure-A/7) has been drawn up without considering the objections filed by the applicants. Now the applicants have also filed further representations dated 30.9.2003, annexed as Annexure-A/11. These representations are not attended hitherto. This is also taken as a ground for filing the present Original Application.

8. The stand taken in the counter affidavit that the applicants had never raised any objection or allegation/grievance against the seniority lists published from 1996 to 1998 appears to be not correct. That apart, the combined seniority list now published would show that respondent No. 4,5 and 6 belong to SC and ST categories whereas the applicants do not belong to any reserved category, and therefore, the respondent Nos. 4,5 and 6 have to be ranked above the applicants. This is also not correct as Respondent No.4 to 6 have not been given any accelerated promotion whereas their seniority can be considered only on the basis of the select list and in order of merit. If so, the case of the Respondents justifying the seniority list now published is not tenable. Further, by relying on the judgment of the Apex Court in Civil Appeal No. 5193/89 in Gujarat State Dy. Executive

Engineers' Association vs State of Gujarat, it is also not tenable, because the applicants were not the candidates left out in the waiting list and no such waiting list had also been drawn up. Only a select list of 15 candidates in order of their merit had been drawn up for appointment, and if so, the case of the applicants has to be reconsidered afresh.

9. Similarly, the stand taken in the counter affidavit by the Respondents that the applicants could not have joined the Department due to dearth of posts, does not hold any water in as much as it was only due to non-sanctioning of posts, the joining of the applicants got delayed or postponed. As per the seniority rules, even if a candidate selected by a common select list joins later, his seniority has to be reckoned on the basis of his merit order in the select list.

10. In the light of the discussions made above, the Original Application has to be allowed. Consequently, the O.A. is allowed. Seniority list drawn up on 23.6.2003/9.07.2003 (Annexure A/7) is hereby set aside to the extent applicable to the applicants and the 2nd and 3rd Respondents are directed to redraw the seniority list, and this has to be done within 60 days of the receipt of a copy of this order. It is also made clear that such redrawing of the seniority list shall be with notice to the Respondent Nos. 4 to 6 as they have not been represented before this Tribunal by any counsel.

11. In the result, the O.A. is allowed to the extent indicated above. No order as to costs.

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

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Kappan
(K.THANKAPPAN)
MEMBER (JUDL.)