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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

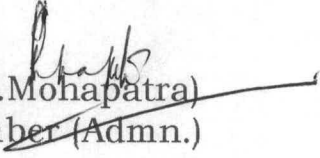
O.A.No.88 of 2007

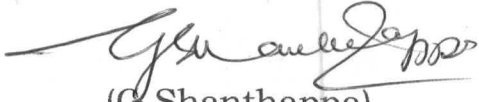
Cuttack, this the 6th August, 2010

V.V.S.C.R.PATTANAİK & ORS Applicant
-Versus-
Union of India & Others Respondents
.....

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?


(C.R. Mohapatra)
Member (Admn.)


(G. Shanthappa)
Member (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No.88 of 2007

Cuttack, this the 6th August, 2010

C O R A M

THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)

A N D

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

.....

1. V.SV.S.C.R.Pattanaik @ V.V.S.Chalapati Rao, aged about 33 years, Sn of Radhamohan Pattanaik, Door No.38-31-33, At-Green Garden, Marripalam, Visakhapatnam-18 (AP).
2. K.V.Ramana, aged about 31 years, S/o.Late N.A.Rao, Door No.51, 14.14, Kranti Nagar, Nakkaravipallam, Visakhapatnam-13(AP).
3. B.T.V.Satyanarayana, aged about 35 years, son of Satyam, Door No.37-3-6/7, Old ITI Junction, Industrial Estate Ltd., Visakhapatnam-7 (AP).
4. C.H.Eswar Rao, aged about 32 years, S/o.Late Veera swami, Door No.57-24-146, Tummada Pallum Visakhapatnam-8 (AP).
5. A.Sree Ramulu, aged about 36 years, Sonof Appalanaidu, Door No.37-3-6/2-1, Gajapati Nagar, Old I.T.I. Junction, Industrial Estate, Visakhapatnam-7 (AP).
6. K.V.V.Y Kumar aged about 31 yers, S/o.K.S.V.Siva Rao, Door No.43-1-5/1, Railway New Colony, Visakhapatnam-16 (AP).
7. N.Trinadha Rao, aged about 34 years, S/o.Late Krushna Murty, Door No.38-38-73, Siva Nagar, Mani Pallum, Visakhapatnam-18 (A.P).
8. P.V.S.R.Kumar, aged about 37 years, S/o.Venkata Rao, Door No.38-39-44/1, Bapuji Nagar, 104 Area, Visakhapatnam-7.



9. S.M.S.Rao, aged about 35 years, S/o.Satyanarayan, At-18/B, Type-2, Vadlapudi Railway Qtrs., Visakhapatnam.

All are working as Senior Assistants Loco Pilots under D.R.M.Waltair, East Coast Railway, Visakhapatnam.

.....Applicants

Legal practitioner: M/s.Agasti Kanungo,
S.K.Kar,
C.Nayak,
D.N.Pattanaik
Counsel.

-Versus-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, At/Po.Chandrasekharapur, Bhubaneswar, Dist. Khurda.
3. Chief Personnel Officer, S.E.Railway, Garden Reach, At/Po/Dist.Kolkata-43.
4. Divisional Railway Manager, Waltair Division, East Coast Railway, Waltair, At/Po/Dist.Visakhapatnam(A.P)
5. Divisional Railway Manager (Personnel), Waltair Division, East Coast Railway, Waltair, At/Po/Dist.Visakhapatnam(A.P).
6. A.Venkata Rao, Sr. Asst. Driver, Office of Divisional Railway Manager, Waltair Division, East Coast Railway, Waltair, At/Po/Dist. Visakhapatnam (A.P).
7. Sr.Arjuna, Sr. Asst. Driver, Office of D.R..M., Waltair Division, Waltair, East Coast Railway, At/Po/Dist. Visakhapatnam (A.P).

.....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

O R D E R

MR. G.SHANTHAPPA, MEMBMER(JUDL.)

9(Nine) Applicants by filing this Original

Application jointly under section 19 of the A.T. Act,

1985 seek this Tribunal to pass the following relief:



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- "A. The order under Annexure-9 be quashed;
 - B. Direction and/or directions be issued to quash the promotion of the Respondent Nos.6&7;
 - C. Direction and/or directions be issued to correct the seniority list of the Asst. Drivers and seniority position/placement of the Respondent Nos.6&7 and the corrected seniority list may be acted upon to govern the future promotion including the applicants;
 - D. Any other direction and/or directions be issued."

2. Respondent have filed their counter opposing the contentions made by the Applicants in support of the aforesaid relief in this Original Application. No rejoinder has been filed by the Applicants.

3. We have heard the rival submission of respective parties and perused the materials placed on record.

4. It is an admitted fact from either side that Provisional combined seniority list of Assistant Drivers (Diesel/Electrical) in the scale of Rs.3050-4590/- (RSRP) as on 30-06-200 was prepared/published by the Respondents in terms of Estt.Srl.Nos.59/93,66/95 and IREM paras 302 to 306 excluding 305 vide order dated 28-09-2001 under Annexure-1. While publishing



the said list under Annexure-1, opportunity of making objection on the assignment of the place and position of the employees whose names find place in the said list within a period of 30 days from the date of issue of the seniority list i.e. on or before 28.10.2000/13.11.2000 was granted. In the said seniority list names of the Respondents 6&7 are at Sl.Nos.274 & 278 whereas the names of the Applicant are at Sl.Nos.276, 314, 293, 297, 303, 292, 299, 310 and 280 respectively. Admittedly, the Applicants did not submit their objection to the said provisional seniority list within the time stipulated therein and, therefore, the Respondents finalized the said seniority list. After lapse of more than three years, Applicants submitted their objection through representation under Annexure-2 dated 24.5.2004/08-06-2004 and reminder under Annexure-3 dated 08-09-2004. Thereafter, based on the aforesaid seniority list, the Assistant Personnel Officer, Waltair with the approval of Sr.DME/WAT and Sr.DEE(OP)/WAT issued order of promotion of the Applicants promoting them to the post of Assistant Loco Pilot under Annexure-4 dated 17.9.2004 in that names of Respondent No.6 was



placed at Sl.No. 124, 1st Applicant was placed at Sl.No.125 and Respondent No.6 was placed at 126. Thereafter again the applicants submitted their objection under Annexure-6 dated 22.5.2005 to the said seniority list. While the said representation was pending, the Applicants have approached this Tribunal in OA No.472 of 2006 and the said OA was disposed of by this Tribunal vide order dated 02.06.2006 with the following orders/directions:

”.Order dated 02-06-2006.

As the grievances of the Applicants are still pending with the authorities under Annexure-6, in all fitness of things, this Original Application is disposed of at this admission stage with direction to the Respondents to consider and dispose of the representation of the Applicants under Annexure-6 within a period of 3 months from the date of receipt of a copy of this order and communicate the result thereof to the Applicants. Learned counsel appearing for the Applicants has also sought for a direction to the Respondents to allow the Applicants personal hearing in the matter. Respondents are free to consider such prayer of the Applicants.”

Thereafter, in compliance of the aforesaid direction of this Tribunal, Respondents considered the representation of Applicants and passed order under Annexure-9 dated 29-08-2006. It reads as under:

“In obedience to the above orders, your representation dated 22.2.2005 has been examined. In your representation you have



mainly claimed that the seniority has to be regulated from the date of completion of prescribed training in terms of Para 302 of IREM and your claim that Sri A.Venkata Rao and S.Arjun being appointed in the month of October, 1996 and were completing their prescribed training in the month of March 1998 and you are being appointed in June, 1996 to August, 1996 were treated as Junior to Sri A.Venkata Rao and Arjun is not correct as per rules.

In this connection it is to inform you that Sri A.Venkata Rao was appointed as Tr. Asst. Driver with a period of training (06) six month and on his completing his training period he was allowed to work independently w.e.f. 23.03.1997. However, his seniority was counted from the date his mutual transfer partner Sri K.K.Gupta was allowed to work against an independent charge post w.e.f. 18.06.1997 and his seniority was continued w.e.f. 17.12.1997 in terms of Estt.Srl.No.159/98. As such, Sri A.enkata Rao seniority was regulated w.e.f. 17.12.1997 in terms of para 310 of IREM which lays down ht Railway servants transferred on mutual exchange from one cadre of a Division, office or Railway to the corresponding cadre in another Division, office or Railway shall have their seniority on the basis of date of promotion to the grade or take the seniority of Railway servants with whom they have exchanged, whichever of he two may be lower.

Sri Arjun being appointed on 23.10.1996 and allowed to work on independent basis w.e.f. 20-05-97 and he is being transferred on mutual basis vice Sri Satendra Singh who was allowed to work against independent charge w.e.f. 19.6.97 and whose enormity was counted w.e.f. 17.12.97, Sri Arjun was entitled to count his seniority w.e.f. 17.12.1997 in terms of para 310 of IREM.

From the above it is seen that no injustice was met out in your case and the seniority of Sri




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Venkata Rao and Arjun was regulated as per extant rules.

However, it is further mentioned that the seniority list of Asst. Loco Pilots in scale Rs.3050-4590 RSRP has been circulated on 28.9.2000. Vide item No.7 at the foot note of the seniority list it is clearly mentioned that the representations if any should be sent to this office within 30 days from the date of publication of the seniority list. You have not submitted any representation till the year 2004. In the meantime the staffs against whom you are claiming seniority above have already been promoted to next higher grade. You are also as well promoted to the post of Sr.Asst. Loco Pilot. Hence the representation is time barred, in terms of para No.321 b of IREM Vol 1989 no case re revision in seniority list should be entertained beyond one year after publishing the seniority list and hence your claim cannot be entertained at this belated stage."

5. Learned Counsel for the Respondents submits that the applicants are challenging the seniority list at Annexure-1 only after their promotion based on the said seniority to next higher grade which is not permissible at this belated stage. He has also pointed out that their representation was duly considered in compliance of the orders of this Tribunal and rejected in a well reasoned order under Annexure-9 which needs no interference.

6. We have carefully considered the rival submission of the parties and perused the materials placed on record. Applicants admit that they did not




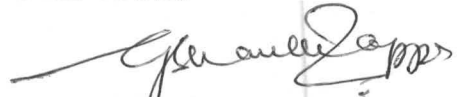
file any objection to the provisional seniority list under Annexure-1 within the stipulated period granted to them to do so and only after lapse of more than three years by submitting representation they seek alteration of their place and position showing in the said gradation list. It is also an admitted fact that meanwhile the applicants got promotion from the said seniority list to the next higher post on the admitted facts we do not find any irregularity/illegality/infirmity in the order of rejection of the representation under Annexure-9. Applicants are estopped under law to raise their grievance to the seniority list after long lapse of time that too after getting promotion on the basis of the said seniority list especially when they did not avail of the opportunity of making representation within the stipulated period. Interfering in the seniority list would tantamount to unsettling the settled thing after long lapse of time which is ~~impossible~~^{impermissible} in view of various decisions of the Hon'ble Apex Court. The Applicants have not established their stand for grant of relief sought in the OA. The Respondents have justified their defence in their counter.

Sd/-



7. In the result, this OA stands dismissed by leaving the parties to bear their own costs.


(C.R. Mohapatra)
Member (Admn.)


(G. Shanthappa)
Member (Judl.)

