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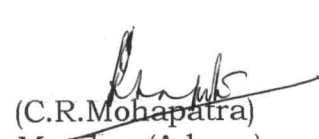
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 261 of 2008
Cuttack, this the 23rd day of September, 2010

Ashok Kumar Mohanty Applicant
Versus
Union of India & Ors. Respondents

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


(M.R. Mohanty)
Vice-Chairman(J)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.261 of 2008

Cuttack, this the 23rd day of September, 2010

C O R A M

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)

AND

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

Sri Ashok Kumar Mohanty, aged about 45 years, S/o. Agani Charan Mohanty, Village-Brahmanjharilo, PO- Raipur, Dist. Cuttack-754 001 at present working as Accts. Assistant, B-10, FA & CAO's Office, East Coast Railway, At/Po/Ps-Chandrasekharpur, Bhubaneswar-23, Dist. Khurda. **Applicant**

By legal practitioner: M/s. K.C.Kanungo, S.K.Patnaik, S.Beuria, Counsel.
-Versus-

1. Union of India represented through General Manager, East Coast Railway, At/Po/Ps-Chandrasekharpur, Bhubaneswar-23, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, At/Po/Ps-Chandrasekharpur, Bhubaneswar-23, Dist. Khurda.
3. Senior Deputy General Manager, East Coast Railway, At/Po/Ps-Chandrasekharpur, Bhubaneswar-23, Dist. Khurda.
4. Sri Satyanarayan Mishra, working at present as Law Asst., Office of CPO/RCT, East Coast Railway, At/Po/Ps-Chandrasekharpur, Bhubaneswar 23, Dist. Khurda.
5. Sri Bharat Kumar Sahoo, at present working as Law Asst., Office of CPO, East Coast Railway, At/Po/Ps-Chandrasekharpur, Bhubaneswar-23, Dist. Khurda. **Respondents**

By legal practitioner: Mr.T.Rath, Counsel

O R D E R

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

The short question for consideration, in this Original Application, filed under section 19 of the Administrative Tribunals Act, 1985 is whether seniority of candidates should be taken on the basis of their substantive grades as on the date of final selection or prior to the date of commencement of selection process. In other words, whether the seniority of the candidates should be frozen once the selection proceeding started which means that if a candidate gets promotion after the selection proceedings started that should not alter the inter-seniority. Further, whether in absence of any concrete Rules or instructions in regard to how and wherefrom the seniority of the

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candidate would be counted, the authority enjoys unfettered and arbitrary power to take decision on such a matter. The prayer of the Applicant in this Original Application is as under:

“to direct the departmental Respondents to strike down the name of the Respondent No.4 from the selection list at Annexure-A/9 and quash his order of appointment by promotion vide Annexure-A/10 to the post of Law Assistant for ends of justice;

And

To quash Annexure-A/6 to the extent it contains the principle of inter se seniority and name of Respondent No.4;

And

To hold that the Applicant is eligible and entitled to be selected and appointed by promotion to the post of Law Assistant for the ends of justice;

And

To hold that the proceedings of the selection committee dated 17.8.2007 vide Annexure-A/2 is in order and legal;

And

To hold that the Respondent No.5 is to be treated as junior to the Applicant on the basis of the substantive post hold by the Applicant as on the date of finalization of the Selection;

And

To pass any other order(s)/direction(s)/Relief(s) as deemed fit in the circumstances of the case.”

2. For answering the issues involved in this case, we do not think it very much necessary to delve into the detailed facts of the matter. It would, therefore, suffice to say that the CPO, ECoRly vide letter No.ECoR/Pers/01/Selection/LA dated 10-03-2005 and corrigendum No. ECoR/Pers/01/Selection/LA dated 06-01-2006 invited application from amongst serving regular Group C employees in the grade of Rs.6500-10500/- with five years of non-fortuitous service and Degree in Law as qualification having no bar in respect of the place of work and Department in the Railway for filling up of 6(six) vacancies (UR-

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3, SC-2 & ST-1) of Law Assistants. Last date of receipt of the application was fixed as 15.4.2005. Selection test was conducted on 12.2.2006 by a Committee comprising of 3 (three) JA grade Officers duly nominated by the competent authority. Sixty five candidates/employees took part in the said written test. Result of the said written test was published vide Memorandum No. ECoR/Pers/01/Selectoni/LA dated 07-06-2006 (Annexure-R/3) in which the name of the applicant having failed in the written test did not find place. But as Respondents 4 and 5 came out successful, their names could find place in the said list of successful candidates/employees. Subsequently, discrepancy having been noticed, as per the order of the competent authority, the written test was cancelled and once again written test was conducted on 29.10.2006. Result of the said written test was published on 19.1.2007 in which the Applicant and Respondents 4 and 5 came out successful and accordingly their names were included in the list published vide Memo dated 19.1.2007 (Annexure-R/5). Accordingly, viva voce test from amongst the qualified candidates was conducted on 06.07.2007. Based on the result of the written test as well as viva voce test final result of the post of LA was published vide office order No.535/2007 dated 10.12.2007 (Annexure-A/9). Accordingly, candidates who came out successful in the final list were promoted and they joined in the promotional post of Law Assistant. By filing representation under Annexure-A/11 applicant complained that some of the selected candidates are junior to him in the scale of Rs.5000-8000/- and, therefore the

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final result published under Annexure-A/9 is based on incorrect calculation and proposition of the seniority. The representation of the Applicant was considered but the same was rejected. These facts are not in dispute.

However, it is the stand of the Applicant that he entered to the service of the Railway on 12.07.1989 as Junior Clerk and in course of employment he was promoted to the post of Sr. Clerk w.e.f. 6.3.1995, Junior Accounts Assistant w.e.f. 9.1.2004 and Accounts Assistant w.e.f. 19.02.2007. It is the contention of the Applicant that he was senior as on the date of the finalization of the selection as he was holding the post of Accounts Asst. in the scale of Rs.5500-9000/- and Respondent Nos.4&5 were in the scale of Rs.5000-8000/-. Applicant contends that as per the principles of seniority it should be computed from amongst feeder categories with different scales of pay but lower than the scale of LA i.e. Rs.6500-10500/-, the higher in the post and scale will automatically be senior to the employee lower in post and scale of pay irrespective of length of service. He was promoted to the post of Accounts Assistant on 19.02.2007 sufficiently before the selection committee sat in session to draw the panel which was dated 17.8.2007. On that crucial date/17.8.2007, Respondent No.4 was in a lower scale holding the post of CMI III in the scale of Rs.5000-8000/- w.e.f. 5.5.2004 and Respondent No.5 was in the scale of Rs.5000-8000/-. Meanwhile applicant having been placed in the higher scale is definitely senior to both Respondents 4 and 5. The selection committee when drew the panel considered the inter se

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seniority aspect and held that the seniority of qualified candidates were taken on the basis of their respective substantive grades as on the date of finalization of the selection as there is no specific instruction on this . But the SDGM/Respondent NO.3 raised a query in regard to inter se seniority and expressed his opinion that once the selection proceedings started the seniority of candidate should be frozen and accordingly proposed to Respondent No.2 seeking his decision. Finally Respondent No.2 endorsed the view of Respondent No.3 and the name of applicant in the panel prepared by the selection committee was struck down on the ground that when the selection ^{process} was started after notification at Annexure-A/1 Respondent NO.4 being ⁱⁿ higher the grade in the scale of Rs.5000-8000/- senior to the applicant as the applicant by then was continuing to hold the post of JAA in the scale of Rs.4500-7000/-. Further contention of the Applicant is that the selection committee took into consideration the ACR dossiers of the applicant for the period from the date of notification till the result was published. As such there is no reason not to take into consideration the promotion which the applicant got after the notification and before the final result to make him senior to Respondents 4 and 5.

3. Heard the rival submission of the parties and perused the materials placed on record. Learned Counsel appearing for the Respondents in support of his stand that there was no wrong in the decision of the SDGM/Respondent NO.3 has placed two decisions of the Hon'ble Apex Court viz;

Ashok Kumar Sonkar v Union of India, (2007) 2 SCC (L&S) 19 holding that in absence of any cut off date specifying in the advertisement or in the rules, the last date for filing the application must be considered as a cut off date and Ashok Kumar Sharma v Chandra Sekhar and Another, 1997 SCC (L&S) 913 as also the decision of this Bench dated 1.9.2008 in OA No.314/2008 rejecting similar stand by this Tribunal earlier.

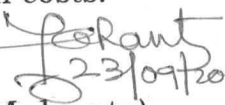
It is not in dispute that Respondents 4 and 5 were eligible to appear at the test along with the Applicant. It is also not in dispute that Respondents 4 and 5 were senior to the Applicant till the advertisement was made. But by the time the final result was published, the Applicant was in the higher scale than the Respondent Nos. 4 & 5.


4. It is well settled law that Court/Tribunal cannot sit as an appellate authority over the acts and deeds of the authority and seek to correct them. The doctrine of fairness evolved in administrative law is not supposed to convert the writ courts into appellate authorities over administrative authorities. Law is clear that seniority is an incidence of service and where the service rules prescribe the method of its determination, it is squarely governed by such Rules. In absence of a provision, ordinarily the length of service is taken into account. Those who were senior at the time of advertisement/by the cut off date should continue to be senior irrespective of the date of finalization of the selection; as it is trite law that position which stood as on the date of advertisement should be the adhering factor for filing up of the vacancy even if meanwhile rule has

undergone some change. Ordinarily rules which were prevailing at the time, when the vacancies arose and advertisement made would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedure as were prevailing on the date of advertisement should ordinarily be followed. If subsequent event is taken then there would be no end to the selection. As such, as on the last date of receipt of application the place and position of Applicant vis-à-vis the Respondents 4&5 should be the guiding factor. The rationale behind this view is that as per the notification in the present case, the authorities were bound to make the scrutiny of the applications which were received by the last date i.e. 15.4.2005. Hence any development that took place after the closing date cannot be taken into account for the purpose of scrutiny of the applications which is the first step of the selection process. As such, subsequent promotion of applicant to higher post has nothing to do and in our considered opinion the SDGM/Respondent No.3 has taken the correct decision to avoid unnecessary litigation. This is also fortified by the decision of the Hon'ble Apex Court in the case of **Ashok Kumar Sonkar v. Union of India and others** [2007] 2 SCC (L&S) 19 in which it was held by the Hon'ble Apex Court that in order to avoid any uncertainty in such matters, fixation of a cut off date is a must. However, in absence of any cut off date specified in the advertisement or in the rules, the last date for filing the application must be considered as a cut off date. If an uncertainty is allowed to prevail the employer would be flooded

with applications of ineligible candidates. In view of the above, we find no flaw in the decision taken by the Respondents in assigning the place and position of the Applicant and the Respondents 4&5 in the final selection list of Law Assistant.

5. For the discussions made above, we find no merit in this OA. This OA stands dismissed by leaving the parties to bear their own costs.


(M.R. Mohanty)
Vice-Chairman(J)


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