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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 490 AND 494 OF 2008

Cuttack this the 25th day of August, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER  
AND  
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

IN O.A.No.490/08

Shri Charan Sahu, aged about 33 years, S/o. Mulia Sahu, at –  
Paramhanspur, Vill/PO-Kualo, Dist-Dhenkanal – at present working as  
Senior Assistant Loco Pilot, Office of Chief Crew Control, East Coast  
Railway, Dist-Sambalpur

...Applicant

By the Advocates: M/s.J.Sengupta, D.K.Panda, G.Sinha,  
A.Mishra & S.Mishra

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Rail Bihar, Chandrasekharpur, Bhubaneswar, District-Khurda
2. Chief Personal Officer, East Coast Railway, Rail Bihar, Chandrasekharpur, Bhubaneswar
3. Divisional railway Manager (P), East Coast Railway, Sambalpur Division, Sambalpur
4. Prabir Kumar Bidhani, Sr.Asst.Loco Pilot, O/O. Chief Crew Controller, East Coast Railway, PO-Khetrajpur, Sambalpur Division, Sambalpur
5. P.Srinivasa Rao, Sr.Asst.Loco Pilot, O/O. Chief Crew Controller, East Coast Railway, Titligarh, Balangir

...Respondents

By the Advocates: Mr.T.Rath (Res.2 & 3)  
Mr.S.K.Ojha & S.K.Nayak (Res.4 & 5)

IN O.A.NO.494/2008

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Shri Arun Kumar Panda, ged about 29 years, S/o. Banamali Panda, present working as Senior Assistant Loco Pilot under the Chief Crew Controller, East Coast Railway, Titlagarh, District –Bolangir-767033  
...Applicant

By the Advocates: M/s.B.S.Tripathy, M.K.Rath, J.Pati, M.Bhagat

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Rail Bihar, Chandrasekharpur, Bhubaneswar, District-Khurda
2. Chief Personal Officer, East Coast Railway, Rail Bihar, Chandrasekharpur, Bhubaneswar
3. Divisional railway Manager, East Coast Railway, Sambalpur Railway Division, Sambalpur
4. Divisional Personnel Officer, East Coast Railway, Sambalpur Railway Division, At/PO/Dist-Sambalpur
5. The Senior Divisional Mechanical Engineer, East Coast Railway, Sambalpur, At/PO/Dist-Sambalpur
6. Shri P.K.Bindhani presently working as Loco Pilot Grade-II(Goods) under the Chief Crew Controller, East Coast Railway Sambalpur, At/PO/Dist-Sambalpur
5. P.Srinivasa Rao (under the order of promotion to the post of Loco Pilot Grade-II(Goods), presently working as Senior ALP under Chief Pilot, Loco Booking Office, East Coast Railway, Titligarh, Dist- Balangir-767 033

...Respondents

-VERSUS-

By the Advocates:Mr.T.Rath (Res.1 TO 5)  
Mr.S.K.Ojha & S.K.Nayak (Res. 6& 7)

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

Since in both the above mentioned O.As. the point to be decided arises out of same and similar set of facts, this common order is being passed. However, for the sake of reference, the facts as set out in O.A. 490/08 are being referred to.

2. Applicant, at present working as Sr. Assistant Loco Pilot (in short, SALP) under the Respondent-Railways, has filed this O.A. seeking the following relief:

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"i) To direct the Respondents to re-cast the seniority of the Applicant vis-a-vis Respondent No.4 and 5 in the rank of DDA and Sr. Asst. Loco Pilot by showing the Applicant to be senior to Respondents No. 4 and 5;

ii) To direct the Respondents to promote the Applicant to the rank of Loco Pilot (Goods) Grade-II from the date when the Respondent No. 4 and 5 were promoted.

iii) To direct the Respondents to grant the arrear service and financial benefits retrospectively".

3. It is needless to mention that the Private Respondents 4 and 5 herein are the same persons in O.A. 494/08 being arrayed as Respondent Nos. 6 and 7 respectively over whom the applicant in O.A. 490/08 and applicant Sri A.K.Panda in O.A. 494/08 have claimed seniority.

4. Respondent-Railways and Private Respondents have filed their counter separately opposing the prayer of the applicant. Applicant has also filed rejoinder to the counter.

5. We have heard the Ld. Counsel appearing for the respective parties in both the O.As. and perused the materials on record.

6. As revealed from the facts, both the applicants were initially appointed as Diesel Driver Assistant (in short, DDA) w.e.f. 13.06.2000 whereas the Private Respondents were so appointed w.e.f. 14.06.2000. Further, it reveals from the record that the effective date of seniority in that grade were assigned in respect of the applicants w.e.f. 13.03.2001 whereas in case of Private Respondents w.e.f. 14.03.2001. The

applicant upon receipt of Provisional Seniority List in the Grade of DDA vide Annexure-A/4 dated 15.09.2003 appears to have submitted a representation dated 3.11.2003 vide Annexure-A/5 for properly placing in the seniority list as the Private Respondents were shown senior to him. While the matter stood thus, applicants as well as Private Respondents were promoted to Sr. Assistant Loco Pilots. According to the applicant, in the year 2007, seniority list of Loco Running Side of the Mechanical Department of Sambalpur Division was published showing the applicant at Sl. No. 41 vis-à-vis Private Respondents at Sl. Nos. 36 and 37 respectively. In the above background, the Respondents decided to fill up 35 vacancies in the category of Loco Pilot (Goods), Grade-II and, accordingly, readiness list was published wherein the name of the applicant figured at Sl. No. 50 vis-à-vis Private Respondents at Sl. Nos. 45 and 46 respectively. However, the written examination for the purpose having been canceled a fresh selection was considered to be conducted against 48 vacancies. Accordingly, the written test was conducted and the name of the applicant figured at Sl. No. 38 as a qualified candidate whereas name of Private Respondents at Sl. Nos. 33 and 34 and, accordingly, promotion and posting orders to the Grade of Loco Pilot (Goods), Grade-II in Mechanical Department was issued vide order dated 12.11.2008. While the matter stood thus, the applicant along with another made a joint representation for correction of provisional seniority list published in the year 2007. The result of the representation being not palatable, the applicant has approached this Tribunal with the prayers referred to above.

7. According to the Respondents, the seniority was also published subsequently in the year 2005 and 2007 but there has never been any complaint received by the applicant to that effect. According to Respondents, it is too late to agitate the grievance with regard to correction of seniority list that has been published in the year 2003, which is intertwined with subsequent seniority list published from time to time in the year 2005 and 2007. In the circumstances, they have prayed that at this belated stage the Tribunal should not entertain the prayer of the applicant as in effect it would unsettle the settled position, which has long since been stabilized. Accordingly, they have prayed that the O.A. being devoid of merit is liable to be dismissed.

8. We have considered the submissions made by the Ld. Counsel for the parties. As it reveals from the record, the entire case of the applicant revolves round the provisional seniority list that was published vide Annexure-A/4 dated 15.09.2003. Admittedly, the applicant as per his effective date of seniority (i.e. 13.03.2001) should have been shown senior to Private Respondents their effective date of seniority being 14.03.2001 in the grade of DDA as would reveal from Annexue-A/4 dated 15.09.2003. However, the fact remains that the applicant was promoted to the post of Sr. Asst. Loco Pilot vide Office Order dated 24.02.2005 based on the seniority position of 2003, which in other words means that the seniority list in the grade of DDA published in the year 2003 holds good.

9. Since the basis of the seniority list of 2003 can by no stretch of imagination be called in question at this distant point of time having wider

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repercussions on the seniority of other persons which has long since been settled, it would not be desirable on the part of this Tribunal to enter into that arena particularly when the applicant has not filed petition for condonation of delay explaining the reasons as to what prevented him from approaching the Tribunal at the appropriate time. Seniority once settled in 2003 and based on which benefits of promotion have been secured by the applicants cannot be unsettled now.

10 With the above observation and direction, the O.A. stands dismissed.

SRI  
(C.R.MOHAPATRA)

MEMBER (ADMN.)

SRI  
(A.K.PATNAIK)  
MEMBER(JUDL.)

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