

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, CALCUTTA

O.A. No.92 of 1996

Date of order 14.6.2000.

Sri Shyam Prosad Bhattacharjee, son of Late Tarapada Bhattacharjee, Head Clerk, Sub-Regional Office, Employees' Provident Organisation, Bhavishyanidhi Bhawan, Dinbazar, Jalpaiguri.

Applicant

-versus-

1. Union of India through the Central Provident Fund Commissioner, Business Park, 25, Shivaji Marg, New Delhi.
2. Regional Provident Fund Commissioner, West Bengal, Andaman & Nicobar Island, 44, Park Street, Calcutta-16.

.. Respondents

Counsel for the applicant .. Mr. A.K. Banerji.

Counsel for the respondents .. Mr. K. Sarkar.

CORAM : Hon'ble Mr. Justice S. Narayan, Vice-Chairman.
Hon'ble Mr. L.R.K. Prasad, Member (Administrative)

ORDER DICTATED IN OPEN COURT

S. Narayan, Vice-Chairman:-

The applicant being a promotee to the post of Head Clerk (from the post of Upper Division Clerk), at the initial stage, when the O.A. was filed, ^{has} impugned the seniority list published on 28.6.1993 by the Assistant Provident Commissioner. In this seniority list, the applicant's name was nowhere but in some earlier two seniority lists, published on 7.1.1992 and on 16.7.1992, his name was, of course, there. Naturally, therefore, the applicant represented his case for inclusion of his name from the seniority list published on 28.6.1992. On his representation, the respondent-authority communicated him through the impugned letter dated 20.3.1995

that the change in the seniority list was for the reason that his promotion to the post of Head Clerk was made outside the normal channel as he was not entitled to.

2. In the subsequent development during the pendency of this O.A. a fresh seniority list was, however, published on 16.4.1997 and the applicant's name does find place in that seniority list. If we confine ourselves to this aspect of the matter alone, the instant case has become infructuous. Here, it would not be out of place to mention that nowhere in the application the applicant has been able to make out a case ^{by} ~~that~~ disturbing the earlier seniority list, ~~how~~ his position has been adversely affected by some one junior to him. The applicant has ^{thus} not been able to make out a case that some one junior to him has been given senior position in the seniority list. Of course, during the course of argument, two names were referred to, ^{an} such, Shri Sunil Kumar Das No.1 and Smt. Manju Kaur, who, according to the applicant's side, were junior to the applicant but they were given some superior position. In this context, it is ^{an} ~~is~~ pertinent to note that those ~~two~~ persons have not been impleaded in the case. No comparative facts have been put in in the application so as to compare the applicant's ^{case} with that of other two candidates. Apart from that those two candidates have since retired from service on superannuation and, therefore, there was no risk ^{of being superseded} for the applicant in future in his service career.

3. However, going into ~~deep~~ deep into the matter, we get an impression that the applicant wants his seniority to be given from the date he was appointed in officiating capacity. In order to appreciate his claim, as ^{would} ~~such~~, we straightway refer to the appointment letter dated 17.10.1989 whereby he got his

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promotion from the post of U.D.C. to the Head Clerk. This letter has clearly spelt out that the promotion given to the applicant and yet another was on the basis of willingness expressed by them for consideration for promotion outside the normal channel of promotion. We would like to put emphasis on the words "for promotion outside normal channel of promotion". On being asked to elucidate the matter on this aspect we were told that this promotion was made not on the basis of seniority, rather some-one had to be sent to Jalpaiguri from Calcutta Headquarters and, probably, some seniors were not willing to go there. So options were invited even from juniors who, of course, were eligible to promotion; and out of normal channel, the applicant was considered for promotion and he was promoted. Added to it, we would like to mention that clauses (3) and (4) of the promotion letter dated 17.10.1989 speaks that the promotion was for a temporary period and also on ad hoc and officiating basis which would not count towards their probation or seniority in the event of their promotion on regular basis. It was further spelt out that ^{the} officiation will be subject to the decision of the case pending before this Tribunal in O.A. 277 of 1988.

4. From the above facts, we gather that ultimately the seniority was to be arranged and acted upon the regular promotion given to one or other incumbents. It appears that the applicant subsequently got a regular promotion and, therefore, he has been retained in the seniority list dated 16.4.1997 and his seniority position has been secured on the basis of his earlier seniority in the cadre of U.D.C., ignoring the ad hoc promotion outside the normal channel. It would be apt to point out that the applicant got regular promotion in the year 1992 after going through the regular process of recommendation by the Departmental Promotion Committee.


5. ^{of} The result of O.A. 277/88 also has got some bearing

in the present case. From time to time the respondent-authorities, while publishing one or ^{the} other seniority list, ~~had~~ reiterated that the ~~seniority~~ seniority lists would be subject to the result of O.A.277/88. We have gone through our earlier order dated 31.3.1990 passed in O.A.277/88. We gather from the said order that the ad hoc promotion or officiating promotion had to be properly dealt with on the basis of quota as also in the light of the regular promotion granted subsequently. In this view of the matter also there was necessity for the respondents to revise the seniority list.

6. In the result, we do not find any merit in the instant O.A. The O.A. is, ~~accordingly, dismissed~~. There shall be no order as to costs.


(L.R.K. Prasad)
Member(A)

14.6.2000.


(S. Narayan)
Vice-Chairman

14.6.2000