

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.O.A.530 of 1996.

Heard On:10.08.2004

Date of Order: 12.8.2004

PRESENT : HON'BLE MR. S.K. HAJRA, ADMINISTRATIVE MEMBER  
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

PRASANTA KUMAR BHATTACHARYA

VS.

1. Union of India, through the General Manager, Eastern Railway, 17 Netaji Subhas Road, Calcutta-1.
2. Divisional Railway Manager, Eastern Railway, Malda.
3. Divisional Commercial Manager, Eastern Railway, Malda.
4. Divisional Personnel Officer, Eastern Railway, Malda.

....Respondents

5. Shri Manik Dev, Office Superintendent (Gr.II), Office of the Divisional Commercial Manager, Eastern Railway, Malda.

....Private Respondents

For the Applicant : Mr. P.K. Munshi, Counsel

For the Respondents : Mr. R.K. De, Counsel

For the Pvt. Respondents: Mr. S.K. Dutta, Counsel

O R D E R

MR. S.K. HAJRA, AM:

The applicant <sup>now</sup> is an employee of Eastern Railway filed this O.A. for recasting his seniority in the post of Office Superintendent (Gr.II) by placing his name above the name of private respondent with all consequential benefits.

2. Mr. P.K. Munshi, 1d. counsel for the applicant submitted as follows:-

The applicant was selected for compassionate appointment by an earlier panel dated 06.06.1984 whereas the private respondent(5th respondent) was selected for such appointment by a later panel dated 19.7.1984. The seniority list of office clerk grade-II accordingly placed the applicant at sl. no.02 and the private respondent at sl. no.03. The fact that the applicant was senior to the private respondent was further confirmed by orders on suitability test for the

post of Head Clerk, and continuance as Senior Clerk and officiation as Head Clerk. ~~to~~ <sup>which</sup> the applicant's dismay, the Provisional Seniority List of the Superintendent Gr.-II dated 07.04.94, placed the applicant below the private respondent contrary to the rule 306 of the Indian Railway Establishment Manual Volume-1 states that "Candidates selected for appointment at an earlier selection shall be senior to those selected candidates later irrespective of the dates of posting except the case covered by paragraph-305 above". Since the applicant was selected for appointment by a panel earlier than that of the private respondent (5th respondent), he is entitled to be placed above the private respondent in the seniority list. The plea of the applicant on the question of seniority was upheld by the judgments of this Tribunal dated 20.12.1991 passed in O.A. Nos.966 of 1990 and 967 of 1990.

3. Mr. R.K. De, 1d. counsel for the official respondents contended as follows:-

Rule 306 of the Indian Railway Establishment Manual Vol.-1 (I.R.E.M), is not applicable to the fixation of the seniority of the applicant and the private respondent. Both of them were appointed on compassionate grounds. No panel of appointment followed by ~~in~~ direct recruitment of an employee was prepared. The applicant and the 5th respondent were appointed by separate orders on compassionate grounds. The O.A. is barred by limitation as the applicant did not challenge the office order dated 16.4.1986 in which the private respondent was placed above the applicant on adhoc promotion as Office Clerk Grade-I.

4. Mr. S.K.Dutta, 1d. counsel for the private respondent submitted as follows:-

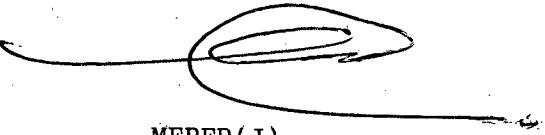
The contention of the applicant as he is senior to the private respondent is misconceived. The private respondent was selected for compassionate appointment in 1983. However, he could not join duty as he was medically disqualified. Subsequently he was appointed on compassionate ground on 17.8.1984. The reference to panel in the seniority list of Office Clerk Gr.-II was a mistake which was subsequently corrected. The O.A. is liable to be dismissed as the 5th respondent was rightly placed above the applicant on the seniority.

list.

5. We heard both sides and perused the pleadings.

6. It is undisputable that no panels ~~containing~~ the names of the applicant and 5th respondent were prepared. Both of them were appointed by separate orders on compassionate grounds. The applicant was appointed by order dated 15.10.1984 whereas the private respondent was appointed by the office order dated 14.8.1984. Rule 302 of I.R.E.M states among other things "unless specifically stated otherwise, the seniority among the incumbents of a post in a grade is governed by the date of appointment of the grade." Thus the appointment of the private respondent having preceded the appointment of the applicant, The private respondent was rightly placed above the applicant on the seniority list. This apart the private respondent joined on 17.8.1984 whereas the applicant joined on 17.10.1984. The applicant cannot claim seniority from the date before he joined service. The aforesaid ~~cited~~ judgments by the applicant is of no avail as the facts of those O.A.s are different from the facts this O.A. There is no ground for granting the relief as prayed for in this O.A. to the applicant.

7. Accordingly, the O.A. is dismissed. No order as to costs.



MEBER(J)



Swami K. Nayak  
MEMBER(A)