

In The Central Administrative Tribunal
Calcutta Bench

OA 123 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. G.S. Maingi, Administrative Member

Anil Kumar Sur

... Applicant

- VS -

- 1) Union of India, service through the General Manager, Eastern Railway, 17 N.S. Road, Calcutta-1.
- 2) The Sr. Divisional Personnel Officer, Eastern Railway, Sealdah Division, Sealdah.
- 3) The Divisional Personnel Officer, Eastern Railway, Sealdah Division, Cal.
- 4) Sri Santi Ranjan Dey, T/No.306, Skilled Grade I, posted under the Supdttn., Carriage & Wagon, E.Rly., Sealdah Divn.
- 5) Sri Santosh Kumar Das, T/No.307, Skilled Grade-I, posted under the Supdttn., Carriage & Wagon, E.Rly, Sealdah Division.
- 6) Sri Dilip Kr. Das, T/No.718, skilled Grade-I, posted under Supdttn., Carriage Wagon, Eastern Railway, Sealdah Division.

.... Respondents

For the Applicant : Mr. B. Mukherjee, Advocate

For the Respondents : None

Heard on : 3-5-2000

Date of Order : 3.5.2000

ORDER

D. PURKAYASTHA, JM

One Shri A.K. Sur filed this application before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 claiming seniority over the private respondent Nos. 4 to 6 in the Fitter Gr. III. According to the applicant he was given promotion to the said post w.e.f. 1.8.1978. But the seniority position was not correctly assigned by the authority. Being aggrieved by the said fact he made

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representation 25.3.94 which has been disposed of by the authority vide order dated 24.6.94 in which the railway respondents had stated that the seniority was correctly assigned and found no irregularity. So the applicant, being aggrieved by the said order, approached this Tribunal by filing an application bearing No.175/95. Respondents contested the said application and after hearing both the parties, the Tribunal directed the respondents to dispose of the representation filed by the applicant dated 22.8.94 (Annexure-9 to the application) by a speaking order after giving him personal hearing within a period of two months from the date of communication of the order. Accordingly respondents passed the impugned order dated 23.5.1995 (Annexure-A2 to the application) rejecting the claim of the applicant in respect of seniority over the private respondents. Being aggrieved by and dissatisfied with the said order, the applicant filed this present application challenging the impugned order passed by the respondents in pursuance of the judgement passed by the Tribunal.

2. Respondents filed written reply to the O.A. denying the claim of the applicant. It is noted by us that copy of the reply has not been filed in the Registry. However, for our convenience, we direct the Registry to make xerox copy of the reply filed by the respondents. In the reply filed by the respondents it is stated that the applicant was working as ex-cadre B.T.M. post whereas the other co-staff were working in cognate trade of fitter as B.T.M. In terms of C.P.O./Eastern Railway/Calcutta's serial Circular No.176/82, the ex-cadre BTM of striker was upgraded to scale of Rs.260-400/- and the same was re-classified as Skilled with effect from 1.8.78 against which the applicant was promoted w.e.f. 1.8.78. It is also stated that for his promotion against re-classified Skilled post (ex-cadre) the applicant is not entitled to the benefit of higher seniority in the cognate trade of fitter over those who were originally senior in Group 'D' according to the date of appointment in Group 'D' posts. The promotion against the ex-cadre post does not allow higher seniority in the cadre where one's lien is being maintained. In the present application, the applicant is demanding the higher seniority

by virtue of his promotion against ex-cadre post earlier than the respondents No. 4 to 6. It is also stated by the respondents that the applicant was never called for trade test for the post of Reve-tter. As such, the question of his passing the said trade does not arise. The applicant was merely put to officiate as Rivetter on a stop-gap-measure w.e.f. 28.8.76. It is also stated by the respondents that the respondent No.4 Shri Santi Ranjan De, whose date of appointment was 4.5.65, was promoted as Semi Skilled in the scale of Rs.210-290/- w.e.f. 1.8.78. Thereafter, he was promoted as Skilled in the scale of Rs. 260-400/- w.e.f. 22.12.79. The respondent No.5 Shri S.K. Das, whose date of appointment was 4.5.65, was promoted to Semi Skilled in the scale of Rs.210-290/- w.e.f. 1.8.78. Thereafter, he was promoted as Skilled in the scale of Rs.260-400/- w.e.f. 21.12.79. The respondent No.6 Shri Dilip Kumar Das, T/No.718, whose date of appointment was 4.5.65, was promoted as Semi Skilled in the scale of Rs.210-290/- w.e.f. 1.8.78 and thereafter, he was promoted as Skilled in the scale of Rs.260-400/- w.e.f. 19.12.79. The applicant who was appointed on 12.9.70 was put to officiate as Riveteer w.e.f. 28.8.76 which was not a regular promotion. Thereafter it is abundantly clear that all three staff as cited by the applicant were senior to him in all respect. It is also stated by the respondents that the pay scale of Rs. 70-85/- was revised as Rs.196-232/- w.e.f. 1.1.73 and was subsequently revised as Rs.750-940/- w.e.f. 1.1.86 due to the 4th Pay Commission's recommendation. It is also stated that S/Sh. S.R. Dey, S.K. Das and Dilip Kumar Das, T/No.718 were all promoted in the scale of Rs. 210-290/- w.e.f. 1.8.78 which was subsequently revised as Rs.800-1150/- w.e.f. 1.1.86. So, all the private respondents were senior to the applicant as per date of appointment to the post in different grade. It is also stated by the respondents that application is barred by limitation and respondents passed the speaking order in accordance with the rules. Therefore, applicant is not entitled to get benefit of seniority in this case.

3. None appears on behalf of the respondents. But Ld. Advocate Mr. Mukherjee appears on behalf of the applicant and submits that in

view of the direction given by this Tribunal in O.A. 175 of 1995, the respondents did not consider the material facts in respect of determining the seniority; on the contrary, the respondents rejected the claim of seniority of the applicant arbitrarily without considering the length of service of the applicant in the basic cadre post. It is also pointed out by the applicant that the respondents did not publish any seniority list till date. Since the applicant is senior to the respondent Nos. 4 to 6, therefore, he is entitled to get the benefit of seniority over the private respondent. Id. Advocate Mr. Mukherjee relied on a judgement reported in 1991 SC 424 (A. Sagayana-than and others - Versus - Divisional Personal Officer, S.B.C. Division, Southern Railway, Bangalore) where the Hon'ble Apex Court held that "promotion to higher post is governed by rule of seniority - applicants not considered for promotion - Tribunal not entering on their grievance - held that despite delay the matter required consideration". Referring to the said judgement Id. Advocate Mr. Mukherjee contended that the application on merit shall be considered despite delay in filing the application.

4. In the instant case, we consider the facts in respect of claim of seniority of the applicant. It is found from the impugned order dated 23.5.95 (Annexure-A2) which has been passed by the authority in pursuance of the Tribunal's order that the applicant was appointed in the Fitter Grade on 1.8.78 and other respondent Shri D.K. Das was also appointed in the scale of Rs.950-1500 on 1.8.78 and private respondents Shri S.R. Dey and Shri S.K. Das were appointed to the Fitter Grade in the scale of Rs.950-1500/- on 22-12-79 and 21-12-79 respectively. So, in the Fitter Grade, applicant was even though senior to the aforesaid respondents, he is not entitled to get the benefit of seniority over the private respondents Shri S.R. Dey and Shri S.K. Das for the reason noted by us that the aforesaid private respondents Shri S.R. Dey and Shri S.K. Das were promoted to the next higher grade of post in the scale of Rs.950-1500/- superseding the applicant w.e.f. 22.12.79 and 21.12.79 respectively and private

view that it will be highly injustice to direct the respondents to disturb the seniority of the private respondents and vis-a-vis the applicant after a lapse of 14 years. In view of above, we do not find any reason to entertain the claim of seniority of the applicant. Therefore, we find that application is a belated one and devoid of merit. Accordingly, we dismiss the application awarding no costs.

G.S. Maingi
3.5.2000

(G.S. Maingi)
Member(A)

D.P. Purkayastha

(D. Purkayastha)
Member(J)

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