

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.1356 of 1997.

Date of Order:01.07.2004

PRESENT : HON'BLE MR. NITYANANDA PRUSTY, JUDICIAL MEMBER
HON'BLE MR. N.D. DAYAL, ADMINISTRATIVE MEMBER

LAKSHAN CH. MONDAL AND ORS.

VS.

UNION OF INDIA AND ORS. (S.E.Rly.)

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Mr. S. R. Kar, Counsel
Dr. S. Sinha, Counsel


ORDER

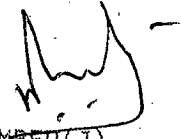
MR. NITYANANDA PRUSTY, JM:

This case is taken up on being mentioned by Mr. S.R. Kar, ld. counsel for the respondents. Mr. Kar, ld. counsel submits that he has appeared on behalf of the S.E. Rly. in place of Mr. P.Chatterjee. By mistake in the body of the judgment the name of P. Chatterjee, has been reflected as ld. counsel for the respondents, even though ~~he~~ ^{he} argued the matter on the date of hearing, his name has not been reflected on the cause title of the judgment.

2. Mr. P.Chatterjee, ld. counsel submits that he has already returned the brief since he is no more in the panel of S.E. Rly and also submits that his name may be deleted as counsel for the respondents.

3. Considering the above submissions made by Mr. P.Chatterjee as well as Mr. S.R. Kar, the name of Mr. P.Chatterjee be deleted from the cause title of the judgment and name of Mr. S.R. Kar be inserted in place of Mr. P. Chatterjee. This order will be effective from the date of passing judgment. Name of Dr. Sinha, remains as it is since she is appearing for the Eastern Railway (RRB).


MEMBER(A)


MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA.

O.A. NO.1356 OF 1997

This the 10th day of June, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER
HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER

1. Sri Lakshan Chandra Mondal,
Son of Late Phatick Chandra Mondal
residing at Village Durgapur,
P.O. Aramghata, Distt: Nadia Working as
Ticket Collector in the South Eastern Railway,
place of posting at Bhadrak, South Eastern Railway.
2. Sri Tusharkanti Sarkar,
Son of Late Ananda Kumar Sarkar,
residing at Vill : Shibpur, P.O.
Daluabari, Dist: Nadia working as Ticket Collector
in the South Eastern Railway, Place of posting at Jajjpur,
Keonjhar Road, S.E. Railway, Khemda Division.
3. Sri Arjun Kumar Sarkar,
Son of Sri Kalipada Sarkar residing at Vill Durgapur,
P.O. Aramghata,
Dist: Nadia working as Ticket Collector
in the South Eastern Railway, Place of posting at
Sambalpur.
4. Sri Nemai Chandra Mondal,
Son of Sri Netai Chandra Mondal
residing at Vill Sarkarpur,
P.O. Dhumtala, Dist: Nadia working as Ticket
Collector in the South Eastern Railway, place of
posting at Bhandrak S.E. Railway,
Khumda Division.
5. Sri Sital Chandra Biswas,
Son of late Rajendranath Biswas,
residing atg Vill : Kamalpur
P.O. Purbanopara, Dist: Nadia 741501
working as Ticket Collector in the South
Eastern Railway, place of posting at Bhadrak,
S.E. Railway Division.Applicants

(By Advocate : Shri P.C. Das)

Versus

1. Union of India, Service through
the Chairman, Railway Recruitment Board,
M.M. Building, 4th Floor, 16, Strand Road,
Calcutta-700001.
2. The General Manager,
South Eastern Railway, Garden Reach,
Calcutta.
3. The Chief Commercial Manager,
South Eastern Railway, 14, Strand Road,
Calcutta-1.Respondents

(By Advocates : Shri P.Chatterjee with Dr.Ms. S. Sinha)

C. Chatterjee

Dr. S. Sinha

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER:

Five applicants have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) Leave be granted to move one single application jointly under the Rule 4.(5)(a) of the Administrative Tribunal Procedure Rule 1987.
- b) Direct upon the Respondents to fix the appropriate inter se seniority and due promotion of your applicants from 1.4.86 in terms of the Employment Notice No.1/84 in light of the judgement and Order passed by this Hon'ble Tribunal in O.A. No.830 of 1991 Chhitralekha Chakraborty -Vs- Union of India & Ors.
- c) Direct upon the Respondents to pay the consequential arrear benefits to the applicants from 1.4.86 with interest @ 18% per annum.
- d) Direct upon the Respondents to produce the entire panel and merit list in connection with the Employment Notice No.1/84 before this Hon'ble Tribunal at the time of hearing."

2. It is stated by the applicants that pursuant to the Employment Notice No.RSC/CAL/EN-1/84 for the recruitment of Office Clerk/Accounts Clerk Grade II/Ticket Collector, the applicants had applied for their selection. The selection was to be based on written test and interview. The applicants claimed that they had succeeded in the written selection but the Railway Recruitment Board ('RRB' for short) made them unqualified in the said selection. Being aggrieved the applicants approached this Tribunal in OA No.15 of 1990 and CA 100 of 1993 & CPC No.119 of 1994, which were disposed of by judgments dated 18.3.1994 and 24.3.1995. This Tribunal in the said OA No. ⁵15 of ^{or} 1990 as per order dated 18.3.1994 decided as follows:-

"7. In view of the above position, we allow this application with this order that the applicants No.1 to 14 and 16 to 19 shall be considered for appointment for which they applied on the basis of the marks

C. B. S. P. M.



obtained by them in the written test and viva-voce test and on the basis of such marks obtained by them adding the marks of both the written and viva-voce tests, if any candidate securing less marks than that of anyone of them has already been given appointment, the Railway Recruitment Board shall select them as successful candidates and forward their names to the respective Railways where there are vacancies for giving appointment. All these processes shall have to be completed within a period of three months from the date of communication of this order."

3. The applicants further state that in pursuance of the said order of this Tribunal, they got appointment letters on or about 6.9.1995 and 13.10.1995. The grievance of the applicants is that because of "fault of the Railway Administration for not getting employment in time" "applicants have lost the appropriate seniority". The applicants sent a notice dated 26.5.1997 demanding justice through their counsel Shri P.C. Das (Annexure D). In this notice, it was pointed out that in a similar case being OA No.830 of 1996 in the case of Chitralekha Chakraborty Vs. Union of India and Ors. decided on 8.1.1996, it was ordered as follows:-

"i) Respondent No. 3 i.e. the Chairman, RRB, Calcutta, shall within two months from the date of communication of this order, separately convey to the petitioner as well as to respondent No.2 i.e. General Manager, Eastern Railway the specific position of the petitioner in the panel or consolidated panel for the examination in question for the purpose of determination of her inter se seniority amongst those appointed from the said panel. The relative position of the petitioner in such panel shall be ascribed keeping in view her aggregate marks and the relative aggregate marks of other candidates already appointed from the said panel.

ii) Respondent No.2 i.e. General Manager, Eastern Railway shall within two months from the date of communication of this order give appointment to the petitioner as per the recommendation of the Chairman, R.R.B. already sent to him and as per the further recommendation of the Chairman, R.R.B. assign her appropriate inter se seniority subsequently."

Chakraborty

4. It was, therefore, requested that the applicants be given benefit of the said judgement dated 8.1.1996 for fixing the appropriate seniority. It is clarified by the learned counsel for the applicants that the applicants have not been informed about any decision taken on their notice of demand for justice.

5. The learned counsel of the applicants further invited attention to the order dated 15.2.2002 in OA No.173 of 1997 in the case of Sukamal Dey and Ors. Vs. Union of India and Ors. wherein this Tribunal ordered as follows:-

"10. Consequently, the OA is allowed. The respondents are directed to fix the specific position of the applicants in the panel for the purpose of determination of the inter se seniority amongst those appointed from the said panel. The relative position of the applicants in such panel shall be ascribed keeping in view the aggregate marks obtained by the applicants and the relative aggregate marks of the applicants already appointed from the said panel.

11. It is further directed that the respondents shall ascribe the specific position as indicated above, to all the candidates who had been given appointment pursuant to the decision of this Tribunal dated 13.10.88, even if any of them has not approached this Tribunal. This exercise should be completed within three months from the date of the communication of this order."

6. He further informed that this decision of the Tribunal was subject matter of a Writ Petition No.W.P.C.T. No.192 of 2003 wherein the Hon'ble Calcutta High Court dismissed the Writ Petition filed on behalf of the respondents Railway department being without any merit. The learned counsel of the applicants further invited attention to the order dated 14.5.2004 in CPC No.8 of 2003 arising out of OA No.173 of 1997 in the case of Sukamal Dey and Ors. Vs. Union of India and Ors. wherein

Chandra B. Dey

this Tribunal directed the respondents Railways to implement the order of this Tribunal, in view of the fact that the Writ Petition filed by the original respondents had been dismissed. It was in this background that the applicants claim for extension of similar benefits of grant of seniority^{to} them.

7. Even though the Original Application was filed on 1.12.1997, no reply to the OA has been filed by the respondents. However, the learned counsel of the respondents made oral submissions which were considered. It was pointed out by the learned counsel for the respondents that request for joining together of the applicants should be rejected in view of bifurcation of the relevant regions. The learned counsel further pointed out that reliefs claimed are barred by limitation and they should not be permitted to prosecute their relief jointly. Attention was also invited to order dated 5.2.2003 in CCP No.86 of 1992 arising out of OA No.837 of 1989 in the case of Kamlesh Singh & Ors. Vs. Union of India and Ors. wherein this Tribunal had observed as follows:-

"2. On hearing both the parties, we find that the names of the applicants have already been forwarded to the General Manager, E.Rly, & S.E. Rly., for giving them appointment in December 1992. Both the General Managers will now offer the appointment to these 13 persons in the next available vacancies as per their position on merit and the applicants shall not claim any retrospective seniority. They will get the seniority from the date of joining. The process shall be initiated within a period of one month from the date of communication of this order as and when the vacancy arises."

8. Attention of the Bench was also invited to the order dated 2.5.2003 passed in OA No.1240 of 1997 in the case of Sharafat Hussain and Ors. Vs. Union of India and Ors. where in this Tribunal had stated as follows:-

Amr Singh

(10)

"6. Under these circumstances, the respondents are directed to fix the inter se seniority of the applicants on the basis of their date of joining and complete the same within 3 months from the date of receipt of this order. We further direct that the respondents should adopt the same uniform principle in fixing the inter se seniority on the basis of their date of joining duty in respect of all the candidates selected and appointed pursuant to the Employment Notice No1/84. If the applicants are aggrieved by the seniority list to be published by the respondents on any other ground, they will be at liberty to make representation to the respondents and then approach this Tribunal if so advised."

9. In view of these decisions, the learned counsel stated that the present Original Application deserves to be rejected and the seniority of the applicants has to be given from the date of joining.

10. We have heard the learned counsel of both the parties and have perused the material available on record.

11. There is no dispute that the applicants have been appointed on the basis of advertisement issued in 1984. However, they have been issued the appointment letters only in the year 1995 after the orders of this Tribunal in OA No.15 of 1990 dated 18.3.1994. We are of the view that the applicants were willing to work if appointed immediately ^{or after} they were ~~being~~ ^{or} selected. However, the delay in joining has occurred not on account of inability of the applicants to join but on account of delay primarily on account of errors and omissions on behalf of the respondent No.1, i.e., RRB. In the circumstances, we order that applicants be given notional seniority without benefit of any pay and allowances from the date of joining of their juniors. This

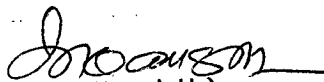
AmBogam

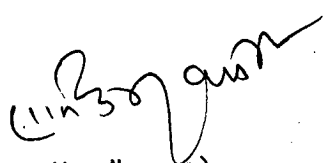
(7)

is so because of the order of this Tribunal in the case of Sukamal Dey (supra) as affirmed by the Hon'ble High Court of Calcutta. The applicants be given benefit of seniority accordingly.

12. Before parting, it may be mentioned that the two cases on which reliance has been placed by the learned counsel of the respondents are clearly distinguishable. In both those cases, this Tribunal mentioned that they will get seniority only from the date of joining duty. In the case of Sukamal Dey (supra) on which reliance has been placed by the learned counsel of the applicants, this Tribunal has observed that "Relative position of the applicants in such panel shall be ascribed keeping in view of aggregate marks obtained by the applicants and the relative aggregate marks of the applicants already appointed from the said panel" (emphasis supplied). This order of this Tribunal has been upheld by the Hon'ble Kolkata High Court. Therefore, we have issued the directions to the respondents in the preceding paragraph.

13. In the result, this Original Application is allowed as aforesaid without any order as to costs.


(J.K. Kaushik)
Judicial Member


(R.K. Upadhyaya)
Administrative Member

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