

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No. 233 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

1. N.B.Ghosh,  
Son of Late R.R.Ghosh,  
SLPO/GRC under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : P.O.Sainthia, Dist. Birbhum.
2. D.K.Nazra,  
Son of Late B.N.Nazra,  
AEN (Spl) under Sr. Divisional Engineer,  
S.E.Railway, Kharagpur,  
Residence : 8, S.B.Bose Road,  
Radhanagar, P.O. & Dist. Burdwan.
3. G.Natarajan,  
Son of Late A.R.Gopalakrishna Iyer,  
AEN/GE/Waltair under Sr.Divisional Engineer,  
S.E.Railway, Waltair,  
Qr.No. 606/IV/Jail Area,  
Visakhapatnam - 4.
4. R.C.Banerjee,  
Son of Late D.C.Banerjee,  
AEN/East/Adra under Sr.Divisional Engineer,  
S.E.Railway, Adra,  
Residence : North Settlement, P.O. Adra,  
Dist. Purulia.
5. S.C.Malakar,  
Son of late Dr. M.C.Malakar,  
AIF/I/CSP/GRC under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : Vill: Kotalhap,  
P.O. Nutanganj, Dist. Burdwan.
6. B.D.Mohapatra,  
Son of Sri A. Mohapatra,  
AEN/KUR under Sr. Divisional Engineer,  
S.E.Railway, Khurda Road,  
Residence : Qr.No.B-4A, Traffic Colony,  
P.O. Jatni, Dist. Khurda Road.
7. C.Venugopal,  
Son of Late M.Narayana Menon,  
APM/BES under Chief Project Manager,  
S.E.Railway, Bhubaneswar.  
Residence : Railway Colony,  
P.O. Jatni, Dist. Khurda Road.
8. S.K.Bandopadhyay,  
Son of Sri S.S.Banerjee,  
AEO/Engg/GRC under Sr.Dy.General Manager,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : Qr.No.12 A, Upper West,  
11, Garden Reach Road, Calcutta-43.
9. I.S.Mohandas,  
Son of Sri Sankinny,  
APM (Regirdering), Chandrasekharpur,  
Under Sr.Project Manager-D-2/ Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : Railway Colony, P.O. Chandrasekharpur,  
Dist. Khurda Road.
10. M.M.Saha,  
Son of Late Phani Bhusan Saha,  
Under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta,  
Residence: Upper West,  
11, Garden Reach, Road, Calcutta-43.
11. G.C.Roy,  
Son of Late A.T.Roy,  
AEO/GRC under Sr. Dy. General Manager,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : Railway Colony, P.O. Chandrasekharpur,  
Dist. Khurda Road.

12. J.C.Kar Majumder,  
Son of late A.C.Kar Majumder,  
AEN (TR-III) Under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : Qr.No.13 B, Flat-II,  
S.E.Railway Colony, Garden Reach, Calcutta.
13. S.Chakrabarty,  
Son of Late Tarapada Chakraborty,  
AEN (TR-III) Under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta.  
Residence : Vill: Mahiary Majumderpara,  
P.O. Andul Mouri, Dist. Howrah.
14. P.K.Dutta,  
Son of Late A.N.Dutta,  
AEN (TR-I), Under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta.  
Residence : Qr.No. D-22, Unit -2,  
Santragachi, P.O. Santragachi, Dist. Howrah.
15. J.Bandopadhyay,  
Son of Late M.C.Bandopadhyay,  
AEN/USPD under Chief Engineer,  
S.E.Railway, Garden Reach, Calcutta,  
Residence : 2/2 K/122, Ho Chi Min Sarani,  
Calcutta-61.

-vs-

... Applicants

1. Union of India  
through General Manager,  
S.E.Railway, Garden Reach, Calcutta.
2. General Manager,  
S.E.Railway, Garden Reach, Calcutta.
3. Chief Personnel Officer,  
S.E.Railway, Garden Reach, Calcutta.
4. E.K.S.Nair,  
Chief Permanent Way Inspector,  
Under Sr.Engineer, S.E.Railway, Cuttack.
5. U.M.Vijayan,  
Assistant Engineer, S.E.Railway, Mainpur,  
Nagpur Division S.E.Railway.
6. G.Ramaya,  
Assistant Engineer, S.E.Railway, Khurda Road,  
Khurda Road Division S.E.Railway.
7. K.V.Ramana,  
Assistant Engineer, S.E.Railway, Khurda Road.
8. Sri S.N.Murthy Nandy,  
Divl.Project Manager, S.E.Rly, Nagpur.
9. T.V.R.J.Sharma,  
Sr.AEN(TM), S.E.Railway, Sambalpur.

... Respondents

For the Applicants : Mr. S. N. Mitra, counsel

For the Respondents : Mr. P. Chatterjee, counsel

Heard on 19.05.2000

: : Date of order: 09-06-2000

O R D E R

D. Purkayastha, JM

The dispute raised in this application is regarding inclusion of the names of the applicants in the panel of Assistant Engineers, Group 'B' of 1990 as per their seniority and to give them all promotion prior to their juniors who are included in the panel of Assistant Engineers, Group 'B' in 1990. According to the applicants, they are senior to private respondents Nos. 4 to 9 of this application in the cadre of IOW or PWI or BRI etc. (Group 'C') of the S.E. Railway. According to the rules, all vacancies in Group 'B' are to be filled up by promotion of eligible Group 'C' employees. 75% of the vacancies are to be filled by selection and 25% on the basis of limited departmental examination. Accordingly for the purpose of formation of panel for appointment to the posts of Assistant Engineers, Group 'B' as per rules mentioned above the vacancies were assessed as 202 as on 1.8.1990 and 641 candidates were declared as eligible and were called to appear at selection vide C.P.O., S.E. Railway's letter No.DCPO(G)/CON/ SB/2/90 dated 31.7.90, Annexure/A to the application. Thereafter the respondents had issued another notification modifying the earlier notification dated 31.7.90, Annexure/A and reduced the vacancy number to 184 from 202 against 75% vacancies and they called 256 candidates instead of 641 candidates and in the said list of 256 candidates the names of the applicants as well as the names of the respondents Nos. 4,5,6,7,8 & 9 were not included which would be evident from the letter dated 8.10.90, Annexure/B to the application. It is alleged by the by the applicant that the respondents without disclosing any reason reduced the number of vacancies from 202 to 184 and denied the benefit of selection for the purpose of promotion to the said post. Feeling aggrieved by and

dissatisfied with the said order of reducing the number of vacancies the private respondents Nos. 4 to 9 filed an application under section 19 of the A.T. Act before the Cuttack Bench of this Tribunal, which was registered as OA 404/90 challenging the order dated 8.10.90 passed by the CP0, S.E. Railway, Annexure/B to the application. In the said application an interim order was passed by the Tribunal directing the respondents to allow the private respondents No.4 to 9, who are the applicants in OA 404/90 to sit in the examination which was going to be held on 10.11.90 and in pursuance of the direction given by the Tribunal by way of interim order on 6.11.90 the private respondents No.4 to 9 who are the applicants in OA 404/90 were allowed to sit in the said examination and the respondents published a panel of 147 candidates vide notification 14.8.91. In that panel the names of the private respondents No.4 to 9 were not there. Thereafter another selection against 75% quota of 135 vacancies of Assistant Engineers (Group/B) was held in reference to CP0, S.E. Railway's letter dated 5.11.92, Annexure 'D' and 415 candidates declared eligible to appear at the said selection/written test and in the said list the applicants were shown at Sl. Nos. 56, 70, 71, 75, 76, 79, 80, 81, 88, 91, 98, 101, 105, 108 and 143, whereas private respondents Nos.4 to 9 were at Sl. Nos.69, 135, 137, 142, 150 and 204 and the result of the said selection was published on 11.3.93 vide CP0, S. E. Railway order dated 11.3.93, Annexure/E to the application and seniority positions of the applicant were at Sl.Nos.7, 12, 13, 17, 18, 20, 21, 22, 28, 30, 32, 34, 35 and 36, and that of the private respondents Nos. 6,7,8 and 9 were at Sl.Nos. 41, 42, 47 and 65 and names of private respondents Nos.4 and 5 were not in the said panel. Therefore, the private respondents are juniors to the applicants all along. In pursuance of the direction of the interim order dated 6.11.90 the private

respondents of this application who were the petitioners in OA 404/90, were considered by the Railway administration, but the result was not published, but ultimately the Tribunal directed them to publish the result and as per direction of the Tribunal they were included in the panel of 1990 and on the basis of this panel the private respondents of this application were appointed. So, the case of the applicants is that since they were all along senior to the private respondents; therefore, they are entitled to be appointed to the post of Asstt. Engineer, Group 'B' prior to the private respondents.

2. The respondents filed written reply denying the claim of the applicants. It is admitted by the respondents that a selection was conducted for formation of panel of Asstt. Engineer, Group 'B' through 75% and the vacancies were previously calculated to 202 erroneously and 606 candidates were called for under the extant rule (1:3). But since there was no selection held during 1980 to 1990 due to Court case pending in the Hon'ble High Court, Calcutta, the vacancies were subsequently reassessed for the year 1980, 1982, 1984, 1986 and 1990 separately which came to 184 and 256 candidates were called for by fixing the zone of consideration on the basis of sliding scale in terms Railway Board's letter dated 9.4.81 restricting the number of eligible candidates. It is also stated that Shri S.R. Ghosh and six others filed an application bearing No. OA 404/90 before the CAT, Cuttack Bench with the prayer that they should also be called for selection under '3X rule' (i.e., 1:3), out of them Shri S.R. Ghosh was called for the selection, as he was in the list of 256 candidates called for selection as per seniority list. In terms of CAT, Cuttack Bench's interim order dated 6.11.80 the other 6 petitioners were allowed to appear in the selection of Asstt. Engineer on provisional basis and a provisional part panel dated 14.8.91 was published to all concerned subject for final disposal of OA

404/90, Annexure/C to the application and subsequently the Cuttack Bench by a judgment dated 12.8.1993 passed the following order:

"The result be published and the authority may act according to the result in regard to appointment to the post of AEN."

The respondents filed a review petition bearing No.42/93 before the Cuttack Bench explaining the full facts of the case and that was also dismissed. Thereafter they preferred an SLP before the Hon'ble Supreme Court and that has also been dismissed. In the meantime the private respondent, Shri E.K.S. Nair who was one of the applicants of OA 404/90 filed contempt petition No.20/96 which was disposed of on 17.11.95 on the basis of an undertaking given by the Railway administration that there will be complete compliance of the Tribunal's order (Annexure 'R/4') and accordingly the aforesaid private respondents were empanelled in the next selection for promotion to the post of Asstt. Engineer (Group 'B') against 75% vacancies vide memo dated 11.3.93. So, according to Rule 306 of Indian Railway Establishment Manual (Vol.I) candidates selected for appointment at an earlier selection shall be senior to those selected later in respect of the dates of posting. So, since the respondents acted as per direction of the Tribunal, therefore, the applicants' claim cannot stand and their names cannot be included in the panel of 1990 and hence they also cannot claim seniority over the private respondents in the cadre of Asstt. Engineers, Group 'B'.

3. Learned advocate, Mr. S.N. Mitra appearing on behalf of the applicants contended that admittedly the applicants are senior to the private respondents of this case in the cadre of IOW or PWI or BRI etc. (Group 'C') of S.E. Railway and the respondents for the purpose of promotion to the post of Asstt. Engineer, Group 'B' assessed the number of vacancies of Asstt. Engineer and declared as 202 as on 1.8.90 and 641 candidates

were declared as eligible and were called to appear at selection test which would be evident from Annexure 'A' to the application and the applicants are senior to the private respondents. But subsequently the respondents modified the earlier order in respect of declaration of vacancies of Asstt. Engineers, Group 'B' as on 1.10.90 and reduced the number of vacancies to 184 from the vacancies of 202 against 75% vacancies and 256 candidates instead of 641 candidates were called for written test scheduled to be held on 10.11.90. It is the admitted position that in the said list of 256 candidates the private respondents and the applicants of this case were not included and the private respondents challenged the order dated 8.10.90 issued by the CPO, S.E. Railway on the ground that the letter calling only 256 candidates for 184 vacancies, which is much less than three times of the vacancies as per statutory rules should be not in accordance with the rules. Therefore, the applicants' names should be included in the list of eligible candidates for selection to the post of Asstt. Engineers, Group 'B' including the private respondents who were the applicants of OA 404/90 for promotion to the post of Asstt. Engineer, Group 'B'. Since the aforesaid private respondents were junior to the applicants, therefore, they cannot be given preference for promotion to the post of Asstt. Engineer, Group 'B' ignoring the claim of the applicants. The respondents rather acted arbitrarily in violation of the rules and denied the benefit of the promotion to the applicants. So, the seniority should be counted on the basis of the basic seniority in the cadre of Group 'C' of S. E. Railway. Hence the applicants are entitled to be included in panel of 1990 on the basis of the selection as per their seniority.

4. Learned advocate, Mr. Chatterjee appearing on behalf of the respondents submits that the present application is not maintainable in view of the fact that the private respondents

of this instant case sought reliefs before the Cuttack Bench of this Tribunal and got the benefits of the judgment and they were selected and included in the prior panel of 1993 and they were posted accordingly, to the post of Asstt. Engineer, Group 'B' on the basis of the earlier panel and admittedly the present applicants were selected in the year of 1995 and included in the panel of 1995. So, as per rule 306 of IREM (Vol.I) they are not entitled to get seniority as claimed in the application and learned advocate Mr. Chatterjee relied on a judgment of C.S. Elias Ahmed and others vs. Union of India and others, reported in Full Bench Judgments (CAT) Vol.III of Central Administrative Tribunal, 1991-94, (p.169) and another judgment in All India Postal Employees' Union Class III, Tamil Nadu Circle and others vs. Union of India and others, reported in (1994) 28 ATC 810 and submits that the applicants were not a party to the case and hence the implementation of the judgment in their favour without filing a separate OA for reliefs is not permissible. The applicants did not seek any remedy for implementation of the judgment passed in OA 404/90 filed by the private respondents for inclusion of their names in the said panel. Therefore, the application is not maintainable.

5. We have considered the submissions of the learned advocates of both the parties and perused the records. It remains admitted fact in this case that one Shri S.R.Ghosh and six others filed an application bearing No. OA 404/90 before the Cuttack Bench with a prayer that they should also be called for selection for the post of Asstt. Engineer, Group 'B' in pursuance of the notification bearing No.DCPO(G)/CON/SB/2/90 dated 8.10.90 issued by the CPO, S.E. Railway for filling up the vacancies of Asstt. Engineer, Group 'B' as on 1.10.90, which have been reduced to 184 vacancies from 202 vacancies against 75% vacancies. In the said notification names of the present applicant and the private respondents were not included



but as per direction of the Cuttack Bench by way of interim order and subsequent order passed by the Tribunal the names of private respondents were included in the panel for consideration for appointment to the post of Asstt. Engineer, Group 'B'. But the applicants did not seek any remedy along with the private respondents at that time when their names were not included. It remains admitted fact that the private respondents Nos. 4 to 9 of this OA are juniors to the applicant and the present applicants are senior to the private respondents. In pursuance of the judgment and direction given by the Tribunal and the Hon'ble Apex Court the private respondents were included in the panel of 1990 and the applicants were retained in 1993 panel since they didnot seek any remedy in any appropriate Court like the private respondents who filed the application before the Tribunal of Cuttack Bench. As a result of inclusion of the names of the private respondents Nos. 4 to 9 in the panel of 1990, the applicants who are senior to private respondents in the seniority list published in 1990 and who are also empanelled in the immediately next selection panel of 1993 became junior to the aforesaid private respondents. From the aforesaid fact it is found that the applicants were not inducted in the panel of 1990 since they did not seek any remedy and the private respondents were not initially included in the panel of 1990 and they were subsequently included in the panel of 1993. We like to refer to the judgment reported in AIR 1993 SC 1171 (State of U.P. v. Omker Nath Tandon). In the said case the respondent No.3 was not selected by the Public Service Commission on merits along with the respondent Nos.1 and 2 for the promotion to the post of Section Officer for the general category vacancies even though he was senior to the respondent Nos.1 and 2 in the feeder post. However, he was inducted subsequently in the promotional post of Section Officer on

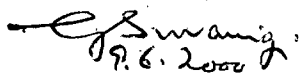
dereservation of the Scheduled Caste post. The question before the Supreme Court is whether on being promoted he would claim seniority over the respondent Nos.1 and 2 on the ground that he was senior to them in the feeder post. The Supreme Court has negatived such a plea. It is observed that if the junior supersedes the senior on merit basis his senior cannot claim seniority in the higher cadre on being promoted at a subsequent date unless it is shown that he was left out of consideration on the earlier occasion in advertently and he ought to have been considered. When in the particular case, the respondent No.3 was considered and found unfit by the Public Service Commission and it was on that account his name was not entered in the select list and did not secure promotion in the next higher post, he cannot claim seniority over his juniors on being subsequently promoted. It has been found that his subsequent promotion was arranged by persuading the Public Service Commission to dereserve the vacancy meant for the Scheduled Caste candidates and treat it as one belonging to general category and consequently his entry in the cadre of Section Officer was not on merit but on a special contingency. So he cannot claim seniority over his juniors who were selected and appointed on merits to the next higher post prior to him. In the instant case the respondents has relied on the provision of Rule 306 of IREM, Vol.I which runs as follows:

"Candidates selected for appointment at an earlier selection shall be senior to those selected later irrespective of the dates of posting except in the case covered by paragraph 305 above."

We find that the applicants could have approached the Tribunal in appropriate time for inclusion of their names in the panel of 1990 and their names have been included in the panel of 1993. That fact is not disputed. No explanation has been given by the applicants as to why they did not approach the Tribunal for getting similar benefits of the judgment passed by

the Cuttack Bench. Instead of seeking implementation of the judgment passed by the Cuttack Bench, they have come with a separate application for inclusion of their names in the panel of 1990 instead of panel of 1993. We find that the applicants are guilty of laches in respect of seeking reliefs in appropriate forum. We have considered the judgments referred by the learned advocate, Mr. Chatterjee, mentioned above. In view of the aforesaid circumstances we do not find any reason to entertain the claim of the applicants for inclusion of their names in the panel of 1990 for the purpose of appointment as Assistant Engineer, Group 'B' as per their seniority and to give them all consequential benefits. Whatever reliefs the private respondents got that has been granted to them in pursuance of the direction given by this Tribunal. That relief cannot be given on the basis of the application filed by the applicants.

6. In view of the aforesaid circumstances we do not find any reason to entertain the application and it is found devoid of merit and hence liable to be dismissed. Accordingly, it is dismissed without awarding any cost.

  
P. 6. 2000  
(G. S. Maingi)

MEMBER (A)

  
9/6/2010  
(D. Purkayastha)

MEMBER (J)

  
22/0000