

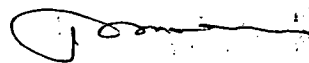
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

In the matters of :

1. O.A. No. 164 of 2001
Bidhan Chandra Ghosh & Ors Vs Defence
2. O.A. No. 217 of 1998
Sajal Kr Kundu Vs Defence
3. O.A. No. 362 of 1997
Narendra Nath Dey & Ors Vs Defence

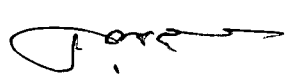
SYNOPSIS OF THE CASE

The applicants have approached this Hon'ble Tribunal being aggrieved by the order of deprivation in regard to their promotion to next higher grades of Chargeman Gr. II at par with other colleagues, who had been allowed a march ahead of them on the only alleged ground that the applicants got antedated notional seniority and consequent promotion to Supervisor Gr. B and Chargeman Gr. II and in some cases even to Chargeman Gr. I, whereas the said other benefited colleagues had been holding the said posts on normal seniority basis. The said benefited colleagues would have been otherwise remained junior to the applicants in terms of seniority and promotion had they not taken the advantage of the wrong action of the respondents in depressing the legitimate seniority position of the applicants. In other words, in the instant matters, the only issue to be decided is as to whether the persons holding notional seniority and consequently getting antedated promotions based thereon would continue enjoying same and similar treatment and consequent benefits at par with those who had been initially holding the said promotion. The relevant issue to be decided herein is therefore the



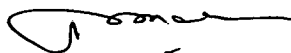
difference, if any, between the concept of application of notional seniority and initial holding the said seniority position by some others from before. According to the applicants, there is no difference at reckoning of notional seniority by way of amending the wrong seniority position made by the respondents earlier and the actual earlier seniority position drawn up in cases of others similarly situated without committing any mistake.

2. That although the aforesaid O.A No. 164 of 2001 was filed in 2001, but the fact remains that the initial O.A arising out of which O.A 164/01 was filed in 1999 i.e, almost simultaneously with the other two O.As.. The earlier O.A. No 932 of 1999, which was disposed of on 10.12.1999 by this Hon'ble Tribunal, with a direction upon the respondents that the changed seniority on the basis of Principal bench judgment, Supreme Court judgment and more particularly by executive order dated 23.8.94, which was issued by the respondent No. 2 as their controlling officer, was kept concealed in the department marked with 'confidential'. The applicants were directed to file fresh representations covering their stand for defence on those aspects and thereafter the respondents were directed to issue a reasoned and speaking order on such representations. As such when the aforesaid three matters were filed in 97, 98 and 99, the same issue was considered afresh as per direction disposing of O.A. No 932 of 1999 on 10.12.99. The respective order dated 4.8.2000, and the speaking order based thereon are annexed at page 81 and 93 to O.A. No 164 of 2001, Bidhan Chandra Ghose & others. It is clear from the impugned speaking order dated 11.12.2000 that the respondents have been relying upon the judgment dated 22.12.95 of the Principal Bench, stating that in the said judgment it has been held that persons getting notional seniority cannot go ahead in seniority and promotion beyond those similarly situated persons who were regularly promoted earlier. In the other matters they have also raised extra alleged grounds in favour of their contention by citing the judgment in O.A. No 217 of 1987 S.K. Chattopadhyay & Ors Vs U.O.I & Ors of the Jabalpur Bench. They have also



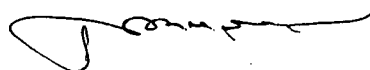
stated that the aforesaid contentions have been upheld by the Hon'ble Supreme Court in S.L.P.No 13257 of 1991, K.K.M. Nair & ors Vs U.O.I. by way of dismissal of the S.L.P. The applicants state vehemently that all the aforesaid contentions are absolutely untrue, based on deliberate misrepresentation of legal and factual position and making of untrue submissions in that no such contention has been upheld in the Principal bench case or in the K.K.M. Nair case. Rather, the Hon'ble Supreme Court at para 14 of the judgment in K.K.M. Nair case has been pleased to make it clear that the said contentions were not accepted by the Apex court. The only reason for which the S.L.P. was dismissed, which was clearly stated therein, was that the executive order of the respondents to promote persons contrary to the statutory rules under Art-309 of the Constitution was void and as such K.K.M. Nair & Ors could not rely upon the same. In fact, the said S.L.P. judgment has merely repeated and re-iterated the above judgment and order passed in Palaru Ramkrishnaiah case. As already stated above, at para 14 of the said judgment it has been clearly stated that the reason shown by the Jabalpur Bench of the Tribunal can not be accepted. Both the aforesaid judgments have been annexed at annexure 'Y-5' and 'Y-4' i.e page 63 and 53 respectively to the rejoinder in O.A. No. 164 of 2001, Bidhan Chandra Ghosh Vs U.O.I and also to the rejoinder in Narendranath Dey's case supra.

3. It is worthwhile to mention in this connection that all the aforesaid grounds raised by the respondents in the context of notional promotion vis-a-vis actual promotion have been rejected in no uncertain terms by this Hon'ble Tribunal in O.A. No 789 of 1996 by order dated 12.12.96, Sudhendu Kr. Ganguly Vs U.O.I. & Ors (relevant portions are at para 56 and para 78 at page 52 and 69 herein), in the appeal filed by U.O.I in W.P.C.T. No 1 of 2001 and finally by the Hon'ble Supreme Court dated 24.1.2006 (at page 100 herein) in the appeal against the High court order. Be it stated that the same grounds have also been taken all along by the same respondents in the case of similarly situated Purnendu Mukhopadhyay & Ors and the Hon'ble Supreme Court in the relevant S.L.P. No 145 of 2003 by order as recently as dated 1.8.2007 (page 115 herein) has been pleased to direct the same respondents to complete implementation without considering the judgment of



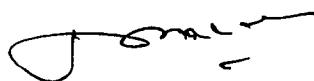
Full Bench i.e Principal Bench. Thus all the grounds raised by the respondents in the aforesaid matters have been finally rejected by the Hon'ble supreme court as submitted above.

4. To revert to the instant matters, the applicants filed S.L.P against the impugned order of dismissal in T.A No. 255 of 1986 dated 8.8.1986 passed by this Hon'ble Tribunal by Mr. J. Ashamukul Pal with the then Hon'ble Administrative Member of this Hon'ble Tribunal before the Hon'ble Supreme Court. The said SLP was admitted and was re-numbered as Civil Appeal No. 2555 of 1988. The Hon'ble Supreme Court vide order dated 5.8.1988 was pleased to set aside the impugned order dated 8.8.1986 passed by this Hon'ble Tribunal and ordered that the applicants are liable to be promoted to the post of Supervisor - 'B' grade on the basis of notional seniority subject to their found fit in other respects and on their willingness to accept the promotion on transfer to other Factories (vide annexure 'R-2' at page 19 of the reply to OA 362/97 and page 11 herein). Subsequently, however, the respondents found it difficult to transfer all the applicants and accordingly the condition of transfer was deleted as per subsequent Court order.. The respondents accordingly issued two vital orders in the form of instruction to all the Ordnance Factories concerned dated 7.9.1992 (Annexure 'A-1' at page 13 to the O.A 362/97) and clarificatory order dated 19.10.1992 (Annexure 'Y-2' to the rejoinder to OA 362/97 at page 38 and also in all the above matters) specifying therein in most clear terms the policy decisions adopted by the same respondents in favour of the applicants in regard to the implementation of the said judgment and order of the Supreme Court. Now they are denying the strength of the said order of the Hon'ble Supreme Court although the said order is still in existence without getting the said judgment reversed or modified by any subsequent higher Bench of the Hon'ble Supreme Court. It is respectfully submitted that such action is absolutely illegal as the respondents are barred by the principle of resjudicata. The present applicants had been undisputedly issued order of re-appointment by the same respondents in the next higher grade of Workman 'A' from a date six months after their post-training appointment as Workman 'B' grade. It has been made specifically clear in the said order dated 19.10.1992 in the penultimate paragraphs that super session of the



erstwhile 'A' grade employees by such re-appointment of these applicants is imperative and can not be avoided. The impugned order dated 7.9.93 and 23.8.94 have also been held as not valid ones by this Hon'ble Tribunal by recent order dated 26.5.06 in O.A. No. 355 of 1999 in the matter of Shri H.N. Mukherjee (at page 1 herein) after considering a number judgment on the similar issue. The said subsequent impugned orders have also been set aside by the Hon'ble Supreme Court in different judgment and order like the cases as stated above, by the Hon'ble Madras Bench by order dated 5.7.2002 in O.A. No. of 2001, A.P. Mohandas & others Vs the same respondents (at page 5 herein). In short, the respondents are once again trying to go back to their original stand ignoring the order of the Hon'ble Supreme Court to commit super session by the admitted juniors, even contrary to their own order dated 19.10.1992 supra.

5. Reverting to the statement made at paragraph 3 hereinabove and in continuation of the same, it is added that by the latest judgment & order dated 12.10.2007 in Appeal (civil) No. 4862 of 2007 arising out of SLP (Civil) No. 145 of 2003 and out of TA 1069 of 1986, Purnendu Mukhopadhyaya & others vs the very same respondents, the same respondents have been imposed exemplary cost to the extent of an amount of Rs. 25,000/- by the Hon'ble Supreme court for still sticking to the plea of alleged ground that the Principal Bench has held that the persons regularly promoted by the respondents can not be superseded by the colleagues getting subsequently advanced seniority position ahead of them, since the object and purport of the order of the Tribunal as well as of Supreme Court were to remove discrimination meted out to the appellants by promoting their juniors. Moreover, lots of similarly situated persons among the retired employees as well have already been given the claimed benefits by the very same respondents without even approaching before any Hon'ble Court/ Tribunal. This statement will be evidently clear from two pending original applications before this Hon'ble Tribunal being Nos. 277 of 2007, Arun Kumar Chatterjee & 7 others and O. A No. 563 of 2007, Bijoy Kumar Roy & 5 other similarly situated employees, who have claimed in the said O As that they were originally graded as Workman A on the basis of the selection test vis-à-vis the private respondents and alike. But they have been superseded by the said private respondents and others, since the said pvt. respondents have superseded them in the



matter of fixation of pay and consequential benefits after they were accorded the very same benefits as claimed by the applicants in the instant three matters. The said benefit as earlier accorded to them have never been withdrawn by the very same respondents till date, rather they have been enjoying further promotions and pay fixation as per with the so-called original seniors besides obtaining notional seniority exactly similar to those of the instant applicants on the basis of the same order. Thus, while one group of similarly situated persons have been already enjoying the same relief(s) as claimed by the instant applicants, the applicants herein are being unnecessarily discriminated against and as such the aforesaid judgment of Purnendu Mukhopadhyays' case is equally applicable in the present matters. A copy of the said judgment & order imposing cost of Rs. 25000/- dated 12. 10. 07 upon the very same for similar lapse is annexed hereto as the last annexure.

6. It is therefore respectfully submitted that all the applicants are entitled to notional seniority and promotion as Chargeman-II, Chargeman-1, Assistant Foreman etc. based on their respective appointment as Workman 'A' grade in 1966,1967 or as the case may be, and the same having been refused in 1997 or 1998 in sheer violation of the order of the Hon'ble Supreme Court by way of taking an attempt to getting them superseded by their admitted junior colleagues in the matter of promotion, the instant O.A. has been filed by the applicants between 1997 and 1999 praying for redressal from this Hon'ble Tribunal.

