

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 817/87
T.A. No. ---

198

DATE OF DECISION 22.6.93

Shri Narayan Ramkrishna Kuttarmane

Petitioner

Mr. M. M. Sudame

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Mr. P. N. Chandurkar for official Respondents

Advocate for the Respondent(s)

Respondent No. 5 Mr. G. P. Vishwakarma in person

CORAM :

The Hon'ble Ms. Usha Savara, Member(A)

The Hon'ble Mr. V. D. Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

U. Savara
22.6.93
(USHA SAVARA)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.817/87

Shri Narayan Ramkrishna Kuttarmane,
288, Reshimbagh Layout,
P.O.Hanuman Nagar,
Nagpur - 440 009.

.. Applicant

-versus-

1. Union of India
2. General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 43.
3. Divisional Railway Manager,
South Eastern Railway,
Nagpur.
4. B.M.Singh
Office Superintendent Gr.I,
Office of Assistant Engineer,
S.E.Railway,
Gondia.
5. G.P.Vishwakarma,
Office Superintendent Gr.II,
Office of the Senior Divisional
Engineer,
South Eastern Railway,
Nagpur.
6. S.S.Ganthale,
Office Superintendent Gr.II
Office of Permanent Way Inspector
South Eastern Railway,
Kamptee,
Nagpur.

.. Respondents

Coram: Hon'ble Ms.Usha Savara, Member(A)

Hon'ble Shri V.D.Deshmukh, Member(J)

Appearances:

1. Mr.M.M.Sudame for the
Applicant.
2. Mr.P.N.Chandurkar for
Official respondents.
3. Mr.G.P.Vishwakarma
Respondent No.5 present
in person.

JUDGMENT:
Per Usha Savara, Member(A)()

Date: 22.6.93

The applicant joined the South Eastern
Railway as Junior Clerk on 1-2-1957 through
Railway Service Commission. He was working in
the Construction Department of the Railways till

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31-3-85. He was transferred to Open Line Department, where his lien was fixed but his seniority was maintained in Construction Department. The main challenge of the applicant is that some of his juniors have been placed above him. In the seniority lists of 1-1-79 and 23-4-80(Annexure II) he was placed above Shri B.M.Singh, and Shri Vishwakarma. Even in the seniority list of Sr.Clerks, as on 15-7-81 (Annexure III) he was shown at Sr.No.21, whereas Shri B.M.Singh was at Sr.No.25, and Shri Vishwakarma was at Sr.No.51. In the seniority list of Head Clerks as on 15-7-81, the applicant was at Sr.No.21, Shri B.M.Singh was at Sr.No.25, and Shri Vishwakarma's name did not figure in this list dated 19-1-82(Annexure IV). In the seniority list of Senior Clerks in lines of Est. Sr.No.300/63, the applicant was shown at Sr.No.33, and Shri B.M.Singh was at Sr. No.6. The seniority list was dated 18-1-85(Annexure V). This seniority list has been impugned by the applicant along with provisional seniority list of Sr.Clerks dated 31-7-85(Annexure XIII), letter dated 26-10-87 (Annexure XXV) and note sheet dt. Nov.'87(Annexure XXVI) regarding promotion of O.S.Gr.I consequent to revision of seniority. By this order Shri G.P.Vishwakarma & S.S.Ganthale were promoted as O.S.Gr.I, though the applicant was senior to Shri Vishwakarma, and should have been promoted before Shri Vishwakarma..

2. A reply has been filed on behalf of the respondents. It is denied that Shri Vishwakarma is junior to the applicant. It is submitted that Shri Vishwakarma was promoted as Sr.Clerk w.e.f.

1-10-62 when the applicant was still working as Jr.Clerk in the lower grade. Similarly, Shri B.M.Singh, respondent No.4 who is working as O.S.Gr.I on ad hoc basis was also promoted as Sr.Clerk w.e.f. 1-10-62 against Shankar Saran award.

3. The respondents do not deny that the applicant joined the Deptt. on 1-2-1957, but he was a temporary clerk and was posted directly in construction organization. The directly recruited personnel whose services were utilized in the temporary construction organization on loan basis were provided lien in a permanent cadre in Open line **establishment** and therefore the applicant's lien was fixed in Open Line establishment as Addl.Clerk (110-180AS) in Nagpur Division in the seniority unit of Engineering Deptt. of Open Line. With effect from 10-7-68, the posts of Time Keepers and Addl.Clerks in grade of Rs.110-190(AS) were merged into one group as Asstt.Store Clerk. The seniority of the applicant and the respondents as Clerk merged into one group vide seniority list dated 23-8-69 and the applicant was shown at Sr.No.3 in the seniority list. However, his seniority as Sr.Clerk was revised and he was brought on par with his junior Shri D.R.Pujari by order dt. 26-4-90(R11). He would also be given proforma seniority as OS II even Shri Pujari subject to his empanelment as OS Gr.II(1600-2660) RPS(Annexure R 1). Shri Chandurkar learned counsel for the respondents submitted that the seniority list of Sr.Clerks(Stores & Accounts) on 1-1-1979, was prepared according to CPO's Memorandum No.233 dated 16-11-79. Similarly,

the seniority list of Junior Clerks and above (Annexure III) was also prepared by the authority of Memo No.233 dated 16.11.79. The seniority list of Head Clerks (Annexure IV) was also prepared as per Memorandum No.233 dated 16.11.79. It is the applicant's case that he was shown senior to the respondents Shri B.M.Singh, S.S. Ganthale & Shri Vishwakarma in the above seniority lists, and therefore, his seniority should be restored, and he should be placed above the respondents. Shri Chandurkar submitted that the above seniority lists, and the Memo No.233 of 1979 were challenged in the Calcutta High Court. On 29-6-83 the judgment was delivered and it was held that the Memo No.233 was contrary to the instructions and orders issued by the Railway Board, and therefore the Memo No.233 was quashed. It was further held that the Railway Board's instructions should be followed in all departments so that there may be no scope of discrimination. The appeal against this order was decided by the Division Bench on 18-11-87, and the Division Bench confirmed the order passed on 29-6-83. Further, Bombay High Court has also followed the Calcutta High Court, and held that the principle for determining seniority of staff when persons from different seniority groups are brought together as laid down in Memo No.300/63 dated 27-8-63, which was issued on the basis of instructions and orders issued by the Railway Board from time to time, should be followed and the South Eastern Railway would implement the circular No.300/63 for determination of the seniority on merger of different

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units. In view of this, the learned counsel stated that the seniority lists relied upon by the applicant to prove his seniority over the respondents have to be ignored totally, as they were prepared on the basis of Memo No.233 of 1979, which has been quashed by the Hon'ble High Courts of Calcutta & Bombay. In the provisional combined seniority list of Senior Clerks prepared in terms of Circular No.300/63, the applicant is at Sr.No.33 whereas Shri B.M.Singh is at Sr.No.6 as his date of promotion to the grade was 1-10-62, whereas the applicant's date of promotion according to this list was 7-4-67, Shri Ganthale was shown at Sr.No.7 as he was also promoted as Senior Clerk on 1-10-62. Shri Chandurkar drew our attention to Annexure XXXXII which is a statement showing seniority and promotion of construction staff. A copy of this was marked to the applicant on 26-9-73. The applicant's name figures at Sr.No.4 in the Engineering Department, and his date of proforma seniority and promotion is 7-4-67. It is clear from this that the applicant's lien was in Construction department on relevant date i.e. September, '73, and the applicant did not either challenge it or question his date of proforma promotion.

4. Shri Chandurkar relied upon Annexure XXXXXXII being upgradation orders on the basis of combined seniority list of Stores and Accounts group in terms of order No.300/63 to prove that the respondents Shri B.M.Singh, S.S.Ganthale, G.P.Vishwakarma were senior to the applicant being placed at Sr.No.12, 13 and 15 whereas the applicant was at Sr.No.38. The applicant

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as well as the respondents were confirmed as Head Clerk on 1-1-984 according to this order dated 28-3-88. The next promotion is to the post of OS Gr.II. This is a selection post, and the applicant would be considered for the post if he were to be expanelled for the same.

5. Respondents No.4,5 and 6 have also filed a reply. It has been clarified that though the applicant and the respondents are from **Stores** group, yet their channels of promotion are different. The applicant, it is claimed, is junior in length of service in the promotional grade and therefore, has always been placed in a lower position since 7-4-67 when he was given his lien as Addl.Clerk Gr.I, whereas the respondents were in the stream of Asstt.Stores Clerks Gr.I from 1-10-62 onwards. The seniority lists in which the applicant was shown above the respondents were prepared on the basis of Memo 233 dated 16.11.79 which has been quashed by the Calcutta High Court and therefore these seniority lists are no longer relevant. It is also stated by Shri Vishwakarma, Respondent No.5 that the applicant was placed below the respondents in the seniority lists published in 1969, 1976, and 1978, but he did not protest against them at that time, therefore he cannot raise an objection at this late stage.

6. We have heard Shri Sudame, learned counsel for the applicant, Shri Chandurkar learned counsel for the respondents and Shri Vishwakarma, respondent No.5 at length.

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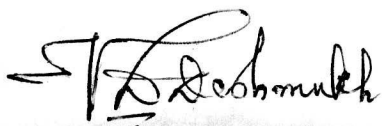
From a perusal of the annexures filed by the respondents it is clear that the applicant was given higher seniority than the three respondents due to Memo No.233 of 1979, which has subsequently been quashed by the Calcutta High Court as well as the Bombay High Court. In view of this, the very foundation of the applicant's case is shaken. The subsequent seniority lists prepared on the basis of order No.300/63, which has been upheld by both the Calcutta High Court and the Bombay High Court have placed him below the respondents in accordance with the rules. In the circumstances, the applicant's case has no merit, and deserves to be dismissed.

7. Shri Sudame sought to raise the issue of the applicant's lien having been fixed in the open line department instead of construction department, thereby affecting his seniority, but as pointed out by the respondents, this fact is not borne out by the annexures. Annexure XXXXII is letter dt. 28-8-73 being statement showing seniority and promotion of construction staff, in which the applicant's name figures at Sr.No.4 in the Engineering Department. A copy of this letter was marked to the applicant. This letter also gives the date of his proforma promotion in the grade of 130-300 on 7-4-67 whereas the three respondents were promoted to this grade on 1-10-62, and were obviously senior to the applicant. On 26-4-90, the applicant's representation to refix his seniority vis-a-vis D.R.Pujari was accepted and he was placed above him in the

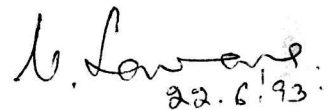
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seniority list of Addl.Clerks, as well as the combined seniority list of Store Clerks. However, this did not affect his position vis-a-vis the three respondents.

8. In the circumstances of the case, it follows that the application has to be dismissed as being devoid of merit. We, accordingly, dismiss the same, but there is no order as to costs.



(V.D.DESHMUKH)
Member(J)


22.6.93

(USHA SAVARA)
Member(A)

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