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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Original Application No: 836/88

Transfer Application No: ---

DATE OF DECISION 14-9-93

Kantikumar Kuldakumar Sanyal
----- Petitioner

Mr. A. M. Gordey
----- Advocate for the Petitioners

Versus

GM, SE Rly., Calcutta and Ots.
----- Respondent


Mr. P. S. Lambat
----- Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, V.C.

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

1. ~~Whether Reporters of local papers may be allowed to see the Judgement?~~
2. To be referred to the Reporter or not ? ^{NO}
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 ? ^{NO}


(M.S. DESHPANDE)
VC

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(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A.836/88 (

Kantikumar Kuldakumar Sanyal,
Railway Quarter No.E/7,
Railway Colony,
Gondia.
Dist.Bhandara

.. Applicant

-versus-

1. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.

2. The Chief Engineer,
South Eastern Railway,
Garden Reach,
Calcutta.

3. The Union of India

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman.

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

Appearances:

1. Mr.A.M.Gordey
Advocate for the
Applicant.
2. Mr P.S.Lambat
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 14-9-93
{ Per M.S.Deshpande, V.C. }

who

The applicant/was appointed as
Apprentice Permanent Way Inspector on 2-1-1960
was promoted in June,1962 as Assistant Permanent
Way Inspector and thereafter as Permanent
Way Inspector (Grade - I) in June,1968. He was
promoted as Chief Permanent Way Inspector
w.e.f. 1-1-1984. A combined seniority list was
prepared for promotion to the post of Assistant
Engineer from five cadres, () cadre of PWI
being one of them. A seniority list was prepared
on 13-3-1986 and in December,1987 a panel was
prepared for the promotion to the post of
Asstt.Engineer and the name of the applicant

figured in that panel.

2. The applicant's grievance is that his juniors have been promoted and their names are at Sr.No.174/17 to 174/32 appended to the application. The applicant could not be promoted because a chargesheet was given to him on 9-4-88. He came to be exonerated on 4-5-88. He was ultimately promoted on 24-10-89 during the pendency of this present application. The applicant prays for a deemed date of promotion in the cadre of Assistant Engineer and for fixation of pay from the date his junior came to be promoted and consequential benefits.

3. The application is opposed on behalf of respondents. In the reply it has been admitted that seniority was not only the criteria for the adhoc promotion to Group -B post of Assistant Engineer. Besides the seniority the fitness for promotion to Group 'B' post on adhoc basis is to be considered and it is made on considering the confidential reports, integrity clearance and working reports. It is urged that the applicant could not be promoted for want of integrity clearance as departmental enquiry was pending against him. At one stage Shri P.S.Lambat, learned counsel for the respondents, urged that the applicant would not be entitled to any of the reliefs because the post to which he was to be promoted was only on adhoc basis. However, it is apparent from para 7 of the reply that certain considerations weighed with the respondents even while filling the post in Group 'B' cadre and applicant having answered all other requirements was empanelled. There is no dispute about the fact that the applicant has been exonerated in .3/-

the departmental enquiry.

4. It is difficult to accept the proposition that even if a person qualifies at all the tests which have been carried out for an adhoc promotion and seniority list is prepared on that basis the person selected would have no claim to the seniority. In fact in the present case a seniority list has been prepared. The normal consequence of the seniority list would ^{be} that the seniors would not be retrenched and it would be juniors who have to go first should a question of reversion or retrenchment arise. It is therefore difficult to accept as a general proposition that seniority would not count at all in the empanelment made for filling up the post on ad-hoc basis. In the present case the applicant was at Sr.No.174/10 and before him his juniors came to be promoted. The only reason for holding up the promotion of the applicant was the pendency of disciplinary case and he was exonerated in that enquiry. By now it is well settled, as held in the wellknown case of Union of India vs. K.V. Jankiraman, (1991)4 SCC 109, that "there is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post and FR 17(1) would not apply to such cases." The Supreme Court however modified paragraph 3 of the memorandum by substituting the sentence from "But no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion" to "However, whether the officer concerned will be entitled to any arrears

of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceedings/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

5. In the present case we find that the applicant was entitled to a place above his juniors here at Sr.No.174/11 to 30 in the seniority list and a deemed date of seniority shall have to be given in view of his promotion on 24-10-89. He will be entitled to his seniority over his juniors but the question regarding arrears shall have to be determined by the authority concerned in the light of observation of the Supreme Court at the end of para 26 of the judgment in Jankiraman's case.

6. We, therefore, direct the respondents to give a deemed date of seniority to the applicant in the adhoc panel from the date the applicant's juniors at Sr.No.174/11 to 32 were promoted. His pay shall be fixed with reference to that date. The question of arrears payable to the applicant shall however be determined by the respondents in the light of the observation of the Supreme Court at the end of para 26 which we have quoted above. The respondents shall ~~has~~ do so within two months from the date of receipt of a copy of this judgment. The arrears if any which the applicant may be entitled to on the basis of the findings of the

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authority shall be paid to the applicant within two months thereafter.

Usha Savara
(USHA SAVARA)
M(A)

M.S. Deshpande
(M.S. DESHPANDE)
V.C.

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