

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 836/89

Transfer Application No:

DATE OF DECISION 13.1.1994

Shri J.G.Dhakate. Petitioner

Shri M.M.Sudame. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri P.S.Lambat. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri M.R.Kolhatkar, Member (A).

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? ~

M.S.Deshpande
(M.S.DESHPANDE)
VICE-CHAIRMAN

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT NAGPUR.

ORIGINAL APPLICATION NO. 836/89.

Shri Jageshwar Gangadhar Dhakate. Applicant.

V/s.

Union of India & Ors. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri M.M.Sudame,
Respondents by ~~Shri~~ Ms.Khan.

Oral Judgment:-

¶Per Shri M.S.Deshpande, Vice-Chairman¶ Dt. 13.1.1994.

The applicant seeks a direction to the Respondents to correct the seniority list dt. 2.8.1988 and to place the applicant at Sl. No.38 and grant him the deemed date of seniority and arrears of pay and allowances upon such seniority in the post of Guard 'A'. The applicant was appointed as a Class IV employee in 1964 and came to be appointed in Class III on 13.1.1973 as Junior Roster Clerk. He claims to have been promoted substantively to the post of Senior Roster Clerk on 17.4.1976. On 29.4.1980 a panel was prepared for the post of Guard 'C'. The applicant was sent for training and in the final panel which was drawn up on 12.6.1980 the applicant was placed at Sl.No.2. A seniority list was prepared on 20.3.1986 in which the applicant's Sl.No. was 50. The applicant made a representation on 10.8.1987 for being given proper seniority on the basis of appointment being as Senior Roster Clerk. On 11.9.1987 the applicant was asked to produce the promotion order. On 9.11.1987 the applicant intimated to the Respondents that the applicant was not supplied a copy of the order but he gave the number of the order and the date. On 8.1.1988 a fresh seniority list was prepared on the basis of the

position obtained ^{1⁹} on 31.12.1987 and the applicant was placed at Sl. No.59. Aggrieved by the serial number allotted to him the applicant made a representation on 7.2.1988 and that came to be rejected on 4.4.1989. According to the applicant he lost the opportunity to be promoted as Guard 'A' and he has therefore come up by way of this application which was filed on 1.11.1989.

2. The respondents contend that the applicant was not regularly appointed as Senior Roster Clerk and the criterion adopted for assigning seniority for the candidates chosen from different streams was the pay which they drew in their respective cadres.

3. The letter dt.18.6.1979 (Annexure - I) shows that there were five different streams from which the candidates for the post Guard Gr. 'C' came to be empanelled and the applicant belonged to the 5th category of Roster Clerk in the scale of Rs.260-400. Shri Sudame, the learned counsel for the applicant urged that in Annexure - I which was the panel prepared for the selection of Guard 'C' and came to be approved on 24.4.1980 (Annexure- I) the applicant was placed at Sl. No.2. He referred to the normal Rule, Rule No.20 which prescribes merit as the criterion para 314 of the Establishment Manual which provides that ⁱⁿ selection post the seniority of the employ is determined according to the merit on the panel. If Annexure - I is examined it would show that interse seniority had not been assigned by the Selection Board and the panel does not represent the interse seniority. The persons who came from different streams came to be grouped separately and the Sl. No.2 to which reference was made on behalf of the applicant as having been assigned to him was nothing but his being mentioned at Sl. No.2 in the group from which he came to be

appointed. This is further clear from the penultimate paragraph of the letter which says that the seniority of the candidates of Guard Gr. 'C' will be determined with reference to the date of taking over independent charge after necessary training in ZTS SNY. This shows that the contention of the Respondents that pay so adopted as the criterion was incorrect and that the seniority had to be determined on the basis of taking over of independent charge. Annexure III to the application shows that the seniority of the applicant was reckoned from 21.9.1980 and the date of empanelment was 29.4.1980. The submission on behalf of the applicant that his service as Senior Roster Clerk should have been taken into consideration for the purpose of determining his seniority does not appear to be correct in view of what we have pointed out above.

4. At our instance the Respondents produced the service book of the applicant which showed that the applicant was promoted as Senior Roster Clerk from 17.4.1976 and continued to be so till 1.4.1980. The Service Book does not show whether the applicant held the post substantively or ad hoc but that would not make any difference to his seniority in view of the position we have indicated above. In fact, we are inclined to think that the appointment was ad hoc because as stated in Annexure - I only the Roster Clerks in the grade of Rs.260-400 would have been eligible and not Senior Roster Clerks or Senior Clerks ~~as~~ of the other categories in category No.5 in the letter dt. 18.6.1979.

5. Though we are not satisfied with the plea raised by the Respondents, we find that the submissions of the Respondents with regard to the criteria to be applied for seniority has also been mis-placed. It has not been shown that the applicant had taken independent charge ^{of} over the post of Guard 'C' before the others who have

ranked above him and in view of this position it is difficult to grant any of the reliefs sought by the applicant. The application is therefore dismissed.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

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(M.S.DESHPANDE)
VICE-CHAIRMAN

B.