

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT & PRE DELIVERY JUDGMENT IN OA 465793

Hon'ble Vice-Chairman / Member (J) / Member (A).

may kindly see the above Judgment for

approval / signature.

M/R Kolhatkar
V.C. / Member (J) / Member (A) (K/S)

14/4/96.

Hon'ble Vice Chairman

Hon'ble Member (J) ✓

Hon'ble Member (A) (K/S)

Agm Asyde 12/11

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 465/1993

Date of Decision: 18-11-96

Narayan Ganapati Sindewale

Petitioner/s

Shri C.S.Taide

Advocate for the
Petitioner/s

V/s.

Union of India & Anr. & A

Respondent/s

Shri P.S.Lambat.

N.Silekar(Shri M.Ayyub)

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member (J).

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

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ?

abp.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG?NO.6,PRESCOT RD, 4TH FLR..

MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 465/93.

promised DATED THIS 18th DAY OF NOVEMBER, 1996.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

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

Narayan Ganpati Sindewale,
Head Clerk in Loco Foreman Office,
Motibagh, Nagpur under
Divisional Mechanical Engineer,
South Eastern Railway,
Nagpur.

... Applicant

By Advocate Shri C.S.Taide.

v/s.

1) Union of India Through
General Manager,
South Eastern Railway,
Garden Reach, Calcutta.

2) Divisional Railway Manager,
South Eastern Railway,
Nagpur.

By Advocate Shri P.S.Lambat.

... Respondents

3) Shri N.Silekar, Head Clerk,
Divisional Mechanical Engineer, (Diesel),
South Eastern Railway,
Motibagh, Nagpur-4.

... Private
Respondent.

By Advocate Shri M.Ayyub.

I O R D E R I

I Per Shri M. R. Kolhatkar, Member(A) I

In this OA, the applicant has challenged the provisional seniority list of Head Clerks of Mechanical Department of Nagpur Division (Annexure-VIII to the OA). In this seniority list, the applicant is shown at Sr.No.19 whereas respondent No.3 is shown at Sr.No.15. The applicant challenges the seniority list mainly on the ground that grant of higher seniority to respondent No.3 is against the rules and therefore illegal.

2. The applicant was appointed initially on 12/6/78

as Junior Clerk under SS/WRE at Raipur. He came to be transferred to Nagpur division at his own request and posted under Divisional Mechanical Engineer, Nagpur from 17/11/80 on loss of seniority. The applicant was allowed to work as Senior Clerk on regular basis w.e.f. 22/1/82. The applicant was promoted to the post of Head Cler w.e.f. 18/3/85. In the provisional seniority list of Head Clerks of the Mechanical Department of the Nagpur Division Circulated on 9/9/87, the applicant's name is at Sr.No.35, whereas the name of respondent No.3 does not figure therein. Therefore the applicant is aggrieved by the impugned seniority list in which the name of respondent No.3 appears above his name. According to the applicant, respondent No.3 was appointed to the post of Khalasi in class-IV cadre on 22/2/70 and was confirmed as material checker on 1/1/84. According to him the post of material checker is in class-IV. The applicant therefore prays for quashing the impugned provisional seniority list and also protection of his position in respect of promotion in terms of restructuring of certain Grade 'C' and 'D' cadre vide order of the Railway Board dated 27/1/93.

3. The official respondents have opposed the OA and filed written statement. Respondent No.3 who has opposed the OA has also filed written statement. Official respondents have stated that the respondent No.3 was appointed as Shed Khalasi on 22/2/70 and subsequently promoted as Material checker on 1/11/74. On being found suitable for the post of Junior Clerk in Grade 260-400, he was promoted as Junior Clerk from 15/1/87. His subsequent promotions as Sr.Clerk and Head Clerk took effect from 23/6/87 to 30/4/88 respectively. His name was not included in the earlier seniority list of Head Clerks issued on 9/9/87 as he was not physically working as Head Clerk on that date. However, he has got the benefit of notional promotion with reference to his juniors w.e.f. 18/3/85.

Respondents have stated that there was an earlier litigation namely

Writ petition No.3725 of 1976 decided by the High Court of Judicature at Bombay, Nagpur Bench on 24/9/80, by which the reversion order of the applicant dated 7/9/76 was set aside. In the year 1976, in terms of restructuring upgradation, the promotion was required to be given to respondent No.3 to the post of clerk as per the seniority cum suitability but at that time in that post Shri R.N.Upadhyay was promoted as Clerk though he was junior to Shri N.Silekar (respondent No.3). Since the High Court had quashed the order of Shri Silekar reverting to the post of Khalasi, respondent No.3 was entitled to promotion to the post of clerk w.e.f. 1/11/74 prior to Shri R.N.Upadhyay. Hence he was given proforma seniority in terms of order dated 18/3/87 which appears at Annexure R-1 to the written statement of the respondents. The same reads as below:-

"Shri N.Silekar, Material Checker in Scale Rs.825-1200/RP of Diesel Shed/Motibagh who has been promoted as Jr. Clerk in Scale Rs.950-1500/RP and posted at Diesel Shed/Motibagh vide this office memorandum No.F/G2/Mech/MC/17 dt. 5/8.1.87, is hereby granted proforma seniority as a junior clerk in scale Rs.950-1500 RP w.e.f. 5/12/74 his name is included in the seniority list of Jr.Clerk at Sr.No.32 'A' i.e. in between Shri K.Jagga Rao and R.N.Upadhyay in the seniority list issued vide No.F/G2/Mech/Seniority/Jr.Clerk dt. 18/2/82."

4. The respondents have contended that as a result of the proforma promotion granted to the applicant as Junior Clerk w.e.f. 5/12/74, he was given further promotion as Sr.Clerk on 23/6/87 and Head Clerk from 18/3/85.

5. The applicant counts his seniority as Junior Clerk w.e.f. 12/6/78 and the respondent No.3 counts his seniority as Jr.Clerk with effect from 1/11/74. Naturally, the respondent No.3 is senior to applicant.

6. The respondents have further pointed out that the orders

granting ~~proforma~~ seniority to respondent No.3 were issued on 18/3/87 as mentioned above. Therefore, the cause of action for applicant to challenge the seniority of respondent No.3 had arisen ~~in 1987~~. He is challenging the seniority given to respondent No.3 by OA filed on 12/4/93 and therefore the OA is barred by limitation.

7. Respondents also pointed out that the applicant had represented to the departmental authorities regarding irregularities in the seniority of Head Clerks through the Union and a reply was sent on 22/1/92 which is enclosed as Annexure-XI to the application in which various objections made by the applicant have been dealt with.

8. The Counsel for applicant would not only challenge the grant of proforma seniority as Junior Clerk to respondent No.3 and the provisional seniority as Head Clerk, but he also challenges the grant of provisional seniority to respondent No.3 above applicant and he is also aggrieved by non-grant of promotion to the applicant in terms of Railway Board restructuring order and therefore he contends that the OA cannot be considered to be barred by limitation.

9. In our view, the challenge made by the applicant to the seniority list is time barred because the interpolation of the respondent No.3 in the seniority of Head Clerk flows from the order of the official respondents dated 18/3/87 giving proforma promotion to the respondent No.3 as Junior Clerk w.e.f. 5/12/74. All subsequent promotions granted to respondent No.3 namely Senior Clerk, Head Clerk and further promotions flow out of this initial order. Since the applicant did not challenge the order dated 18/3/87, he cannot in the guise of challenging seniority list challenge the action of the respondents in giving proforma promotion as Junior Clerk to respondent No.3 from 5/12/74. We also note that the action of granting proforma

promotion to respondent No.3 is by way of implementation of a judgement of the High Court of Judicature at Bombay, Nagpur Bench as observed by us earlier. Even on merits therefore, the action taken by the respondents appears to be free from any infirmity.

10. The applicant has raised another point regarding violation of rules. According to him, respondent No.3 was promoted to Junior Clerk even without completing 5 years of service as material checker which is a class-IV position. The official respondents have clarified that respondent No.3 was promoted as Junior Clerk against departmental quota and hence the condition of completion of 5 years of service as material checker was not applicable in the case of respondent No.3.

We are inclined to accept this contention of the respondents.

11. Considered from all angles namely, the bar of limitation, the position in rules as well as legality of the action, we are of the view that the OA has no merit and the same is therefore dismissed with no orders as to costs.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

B. S. Hegde

(B. S. HEGDE)
MEMBER (J).

abp.