

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A.No.138 of 1994

Date of decision 30.11.1995

Shri Ajoy Dutta

PETITIONER(S)

Shri J.L. Sarkar, Shri M. Chanda and
Shri A. Deb Roy

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India and others

RESPONDENT(S)

Shri B.K. Sharma, Railway Counsel

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE-CHAIRMAN

THE HON'BLE SHRI G.L. SANGLYINE, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
 2. To be referred to the Reporter or not?
 3. Whether their Lordships wish to see the fair copy of the Judgement?
 4. Whether the Judgement is to be circulated to the other Benches?
- } No

M.G. Chaudhari
Judgement delivered by Hon'ble Vice-Chairman

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.138 of 1994

Date of decision: This the 30th day of November 1995

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative)

Shri Ajoy Dutta,
Khalasi (S&T), N.F. Railway,
Lumding.

.....Applicant

By Advocate Shri J.L. Sarkar, Shri M. Chanda and
Shri A. Deb Roy.

- versus -

1. Union of India
Through the General Manager,
N.F. Railway, Maligaon,
Guwahati.
2. The Divisional Railway Manager (P),
N.F. Railway,
Lumding.

.....Respondents

By Advocate Shri B.K. Sharma, Railway Counsel.

.....

O R D E R

CHAUDHARI.J. V.C.

Mr A. Deb Roy for the applicant.

Mr B.K. Sharma, Railway Counsel, for the respondents.

The applicant was earlier working as a casual labourer of S & T Department under Construction Organisation of N.F. Railway at Maligaon. By order dated 2.3.1993 issued by the DRM(P) his seniority position as on 1.6.1990 was changed from serial No.28 to serial No.30. However, prior thereto he was transferred to Lumding from Maligaon by order dated 11.4.1987. At that stage he approached the Tribunal in G.C.No.131/87. The grievance of the applicant was against the transfer to Lumding and an apprehension was expressed that he would loose the benefit of past service for seniority and absorption in Group D. The



then learned Members of the Bench while giving liberty to the applicant to make a representation to the General Manager after joining at Lumding for his transfer to Maligaon also held in the order dated 5.7.1988 while disposing of the case as follows:

.....We order that seniority and the benefits that the applicants were enjoying at Maligaon including the benefits of past service of the applicants will be protected on their transfer to Lumding. This will apply to the question of screening also."

(It may be mentioned that there were other applicants also alongwith the present applicant in that case).

2. A circular had been issued by the General Manager (Personnel), N.F. Railway, Maligaon, dated 8.9.1988 on the subject of screening of casual labourers to all the Divisional Heads. It was directed that the casual labourer working in the jurisdiction of a particular Division initially recruited on the Division would be entitled for absorption against the Group 'D' post of the Division to the extent of 50% in LMG, TSK and Assam portion of APDJ Division and to the extent of 100% in the KIR Division. For that purpose it was directed that separate lists will have to be maintained in each Division and the casual labourers working in the jurisdiction of a particular ^{Division} and in the particular department of the Division will be arranged in the order of seniority and the list of persons should be interpolated Department wise of each Division and combined seniority lists formed based on the principle laid down in the circular. It was, however, clearly provided that where casual labourer was engaged in the jurisdiction of a particular Division and was subsequently used in another Division for want of work in the earlier Division, the name should figure only in the Division in which he was initially recruited and engaged, but the number of days of service put in by each of such persons from the date of initial recruitment should be taken into account for determining their number of days of service, i.e. no attempt should be made to ignore the period for such a person engaged outside the Division on which they were recruited. All these decisions were taken in consultation with both the organised ~~unions~~ ^{Union}.

Handwritten signature

The above noted direction in the circular relating to taking into account the period for which a casual labourer is engaged outside the Division implied that the length of service for the purpose of screening was to be counted by taking the total length of service irrespective of it having been put in a different Division, where the labourer might have been required to work. This guideline is consistent with the order dated 5.7.1988 in the earlier case protecting the past service of the applicant at Maligaon even after his transfer to Lumding.

3. The DRM(P), however, by order dated 30.3.1994 in reply to the representation filed by the applicant against the change in his seniority position in the interpolated seniority list dated 30.12.1993 as on 1.6.1993 informed the applicant that his working period from 18.3.1982 to 30.4.1987 has been deleted as the same was pertaining to other Division, i.e. Tezpur. It appears that the applicant was transferred from Lumding to Tezpur. That, however, would not make any difference. This action of the respondents is quite contrary to the previous order of the Tribunal dated 5.7.1988 and the policy guidelines issued by the General Manager(P) on 8.9.1988. The respondents could not have deprived the applicant of the benefit of the past service for the period from 18.3.1982 to 30.4.1987 in view of the previous order. In other words the period spent by the applicant at Maligaon as well as at Lumding as also at Tezpur had to be totally taken into account for determining his eligibility for screening.

4. A screening was notified by the DRM(P) on 20.7.1994 vide Annexure-G. Since the name of Subir Mazumder who was just above the applicant in the seniority list as on 1.6.1990 as per Annexure-B has been included in this list at serial No.1 itself, it would be reasonable to assume that had the past service of the applicant not been ignored he might have been eligible to be put up for screening. He has not, however, been called for the screening.

5. The respondents have not filed any written statement. However Mr B.K. Sharma, learned counsel appearing for them, fairly stated that after the respondents were advised that they were acting contrary to the previous orders of the Tribunal in ignoring past service of the applicant

he.....

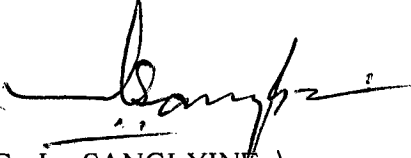


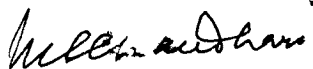
he has not been given any instructions as to whether the respondents proposed to call the applicant for screening or what was their stand in that respect. In our opinion for the reasons discussed above it is not necessary for us to depend upon the decision the respondents might be inclined to take in the light of the advise rendered to them as and when that pleases them.

6. We, therefore, direct the respondents through the Divisional Railway Manager(P), N.F. Railway, Lumding, to count the past service of the applicant for the period from 18.3.1982 to 30.4.1987 into the length of service of the applicant for the purpose of being considered eligible for being placed at a screening test. We further direct the concerned authorities to examine as to whether on that basis the applicant was eligible to be put up for screening that was held on 27.7.1994. In the event of it being found that he was so eligible we direct the respondents to take appropriate steps to hold the screening of the applicant and if he is selected then to place him at the appropriate position in Group D post. The above exercise to be completed within a period of two months from the date of communication of this order to the respondents.

7. For the purpose of the aforesaid order, Annexure-E dated 30.3.1994 is hereby quashed and it is declared that in view of the same if the position of the applicant stands altered in the interpolated seniority list as on 1.6.1993 or any subsequent seniority list relevant for the screening as on 27.7.1994^u shall stand accordingly modified to the extent of the applicant. We make it further clear that in the event^t of the applicant not being found eligible for screening as on 27.7.1994 he should be placed for screening as soon as he becomes eligible on the basis of his total length of service as casual labourer irrespective of the Division where he may have been put on duty.

8. The original application is partly allowed in terms of the aforesaid directions. No order as to costs.


(G. L. SANGLYINE)
MEMBER (A)


(M. G. CHAUDHARI)
VICE-CHAIRMAN