

9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 139 of 1994.
T.A. NO.

DATE OF DECISION 1.8.1997.

Sri Sukhamay Dutta

(PETITIONER(S))

Mr H.Rahman

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Mr J.L. Sarkar.

ADVOCATE FOR THE
RESPONDENT (S)

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Vice-Chairman.



9

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 139 of 1994.

Date of Order : This the 1st Day of August, 1997.

Justice Shri D.N.Baruah, Vice-Chairman.

Shri G.L.Sanglyine, Administrative Member.

Shri Sukhamay Dutta,
son of late Nirode Behari Dutta,
working as Senior Loco Foreman,
Badarpur, N.F.Railway,
Badarpur.

. . . Applicant.

By Advocate Shri H.Rahman.

- Versus -

1. The Union of India,
represented by General Manager,
N.F.Railway, Maligaon, Guwahati-11.
2. The General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
3. The General Manager(P),
N.F.Railway, Maligaon, Guwahati-11.
4. Chief Mechanical Engineer,
N.F.Railway, Maligaon, Guwahati-11.
5. Divisional Railway Manager,
Lumding, P.O. Lumding,
Dist. Nagaon, Assam.
6. Divisional Railway Manager(P),
N.F.Railway, Lumding,
Dist. Nagaon (Assam)
7. Divisional Mechanical Engineer(P)
N.F.Railway, Lumding,
Dist. Nagaon, Assam.
8. Sri B.K.Sinha,
Senior Loco Foreman,
New Guwahati, N.F.Railway,
Guwahati-21.

. . . Respondents.

By Advocate Shri J.L.Sarkar, Railway
Standing counsel.

O R D E R

BARUAH J.(V.C)

In this application the applicant has challenged
Annexure-4 seniority list and also Annexure-7 appellate
order dated 19.4.1994 issued for the General Manager(P)

rejecting the appeal preferred by the applicant. The facts for the purpose of disposal of this application may be stated thus :

The applicant was promoted to the post of Assistant Loco Foreman in December 1978 in the scale of pay of Rs.425-700/- and was posted at Lumding. At that time the 8th respondent was in the Fitter Chargeman commonly known as FC(B). The 8th respondent was appointed in the said cadre on 5.11.1976. His scale of pay was also 425-700/-. The applicant was dismissed from service on 10.2.1981. However, his order of dismissal was later on set aside by an order dated 21.6.1988. He was thereafter, reinstated with all consequential benefits. Pursuant to that by Annexure-2 letter dated 29.12.1988 the Divisional Railway Manager(P) Lumding informed the applicant regarding the regularisation of his pay which was prior to the re-fixation of pay. As per the said regularisation the pay was fixed at Rs.560/- on 1.12.1980 and this was increased to Rs.680/- on 1.12.1995. However, the applicant remained in the same scale that is Rs.425-700/-. As per the new pay scale his pay was later fixed at Rs.2000/- in the scale of pay of Rs.2000-3200/-. The 8th respondent was inducted to the Loco Foreman with a pay scale of Rs.560-750/- on 10.1.1985. There are two scale of pays in the grade of Assistant Loco Foreman, the higher scale is Rs.550-750/- and the lower scale is Rs.425-700/-. The provisional selection list prepared by the authority put the applicant in serial No.5, the 8th respondent Shri B.K. Sinha however, had been placed in serial No.2. The

applicant is aggrieved at the fixation of the seniority in the manner indicated in Annexure-4. Hence the present application.

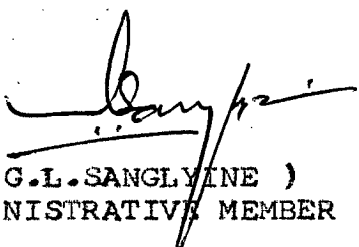
2. We have heard both sides. Mr H.Rahman, learned counsel for the applicant submits that the authority had unreasonably and unfairly put the 8th respondent above the applicant, namely, his position was shown in sl.No.2, whereas, the applicant's name appeared in No.5 even though the 8th respondent was a new entrant in the cadre and at that time the applicant was already in the said cadre. Therefore, the applicant ought to have been put above the 8th respondent. Besides Mr Rahman submits that the scale of pay do not determine the seniority, it is the entry in the cadre which determines the seniority.

3. Mr J.L.Sarkar, learned Railway standing counsel on the other hand disputes the claim of Mr Rahman. Mr Sarkar submits that in the Assistant Loco Foreman there are two grades, one is a higher scale at Rs.560-750/- and the other is Rs.425-700/- respectively and the seniority can be determined in the scale of pay which is also said to be a grade. Mr Sarkar submits that it is true that the 8th respondent was inducted in the cadre of Assistant Loco Foreman on 10.1.85 when the applicant was already in the said cadre, but according to Mr Sarkar that is not the determining factor. It is to be seen in which scale of pay the applicant and the respondent No.8 belonged. The respondent No.8 was inducted in the higher scale of pay when the applicant

was still in that lower scale of pay. Therefore, the applicant being in a lower scale of pay cannot claim seniority over respondent No.8 who was on higher scale. Mr Sarkar further submits that the "Common avenue of promotion" (for short CAP) is the determining factor for fixing the seniority as it appears from Annexure-B to the written statement. Therefore, according to Mr Sarkar on the basis of the "CAP" the 8th respondent who was in Fitter Chargeman (FCB) was brought in the higher scale and therefore he will be senior to a person who was in the lower scale of pay.

4. On hearing the counsel for the parties we are of the opinion that the scale of pay at which the person is serving is the determining factor besides the "CAP" should also to be looked into while fixing the seniority. In this case though 8th respondent came from FC(B) on the basis of "Common avenue of promotion" and was brought in a higher scale of pay, his seniority should be fixed higher than the applicant who was at that time in the lower scale of pay. In view of the above we find no merit in the application. Accordingly, we dismiss the application.

However, considering the entire facts and circumstances of the case we make no order as to costs.


(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER


(D.N.BARUAH)
VICE CHAIRMAN