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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

Original Application No.141 of 1994.

Date of Decision 26.11.9

Smt K.P.Mazumdar

Applicant (s)

Sri J.L.Sarkar

Advocate for the applicant(s)

VERSUS

Union of India & Ors.

Respondent(s)

Sri G.Sarma, Addl.C.G.S.C

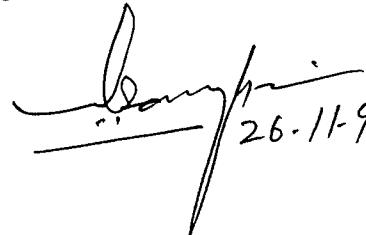
Advocate for the Respondents.

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 ? NO
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 Administrative Member


26.11.9

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 141 of 1994.

Date of Order: This the 26th Day of November, 1997.

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

Shri G.L. Sanglyine, Administrative Member.

Smt K.P. Majumder
Wife of Shri S.S. Majumder
Vivekananda Road,
Silchar-7, Dist. Cachar, Assam Applicant

By Advocate Shri J.L. Sarkar.

- Versus -

1. Union of India
through the Director(Staff)
Department of Telecommunications,
'Sanchar Bhawan',
New Delhi-1.
2. Chief General Manager, Telecom.
Assam Circle,
Guwahati-7.
3. Shri M.R. Das,
T.O.A.(G) - Grade-IV,
Office of T.D.E., Silchar
Dist. Cachar, Assam.
4. Shri M.L. Suklabaidya,
T.O.A.(G) - Grade - IV,
Office of the T.D.E., Silchar-1.
Dist. Cachar, Assam. Respondents.

By Advocate Shri G. Sarma, Addl.C.G.S.C.

O R D E R

G.L. SANGLYINE, ADMINISTRATIVE MEMBER

The applicant was appointed as Lower Division Clerk in the office of Accounts Officer, Telephone Revenue, Shillong on 26.9.1957. The post of Lower Division Clerk(TR) was re-designated as TS Clerk(TR) on 1.7.1959. In January 1968 there was a decentralisation of the Telephone Revenue Unit. Staff of the Accounts Officer, Telephone Revenue, Shillong were allotted to Telegraph Engineering Divisions at Shillong, Guwahati and Dibrugarh under the respective Divisional Engineers, Telegraphs. Staff for the Guwahati

Engineering Division were released on 1.3.1968 to join in the office of the Divisional Engineer, Telegraph, Guwahati Engineering Division and their names were struck off from the establishment of Accounts Officer, Telephone Revenue vide order dated 1.3.1968 (Annexure-P to the rejoinder). The applicant opted for transfer to Shillong Telegraph Engineering Division and for posting in Silchar. Consequently she was transferred to the office of the Sub-Divisional Officer(T) Silchar which was then under the Divisional Engineer, Telegraph Shillong. Her name was struck off from the strength of the office of the Accounts Officer, Telephone Revenue, Shillong on the afternoon of 14.6.1968. In compliance to the transfer order the applicant joined duty in the office of SDOT, Silchar on 20.6.1968(Forenoon). This transfer was stated to be under Rule 38 of P&T Manual Vol.IV. It was also stated that the transfer was treated to be at her own request and consequently she was not allowed travelling allowance and joining time. The period of joining time was subject to leave as admissible. In 1990 a draft gradation list of SS/SS(O)/TOS of Silchar Division in the Telecom District Engineer, Silchar as on 1.4.1990 was circulated in which the applicant was shown junior to respondent No.3 & 4, namely, Shri M.R.Das and M.L. Suklabaidya respectively. The applicant submitted representations regarding her seniority and for her promotion and on 7.2.1994 a reply was given by the authorities to the effect that her seniority could not be altered at that stage and that her promotion was not due as per Divisional Gradation List. She made another representation on 2.3.1994 but this was withheld and rejected. Hence this application.

2. In this application the applicant has prayed that the order dated 6.4.1994 be set aside and her seniority be counted correctly. Further, that she be promoted to

TOA(G) Grade IV with effect from 1.7.1992, that is, with effect from the date her alleged junior was promoted with all consequential monetary benefit. The applicant had since retired from service in July 1995. The learned counsel for the applicant has however, submitted that the reliefs prayed for may be allowed as they will bring consequential financial benefits to the applicant.

3. The respondents have contended that the applicant is not entitled to any reliefs in this application. According to the respondents the applicant had requested for change of cadre from TS Clerk (TS) to TS Clerk (Engineering) and also for a transfer to Shillong Telegraph Engineering Division under Rule 38 of P&T Manual Vol.IV with the intention to get her posting at Silchar. The request was approved by the competent authority, Post Master General, on 8.4.1968. The applicant was accordingly transferred to Sub-Divisional Officer(T), Silchar which was under the Shillong Engineering Division. As a result of the abolition of the Telephone Revenue unit in 1969 the TS Clerks(TR) were merged with the TS Clerks(Engineering) and they were absorbed in different Engineering Divisions. It has therefore/contended that the case of the applicant cannot be compared with the case of the respondent No.3 and 4 because the applicant had changed her cadre before the merger of the TS Clerk(TR) cadre to which she belongs with the TS Clerk(Engineering) cadre. Secondly, she had joined the cadre of her own accord whereas the respondents No.3 and 4 were merged with the TS Clerk (Engineering) cadre of Shillong Engineering Division in public interest as a result of the policy of the Government. Respondents No.3 and 4 therefore had not lost their seniority but the applicant had lost her seniority under the Rule 38

as she had taken bottom seniority in the TS Clerk(Engineering) cadre. The respondents also submitted that the applicant cannot now raise her contention regarding her seniority because the seniority position of TS Clerk of Engineering Division, North East Telecom was finalised in 1976 as evident from the gradation list as on 1.7.1976 submitted together with their written statement.

4. Mr J.L.Sarkar, learned counsel for the applicant, has submitted that the applicant was transferred to SDOT, Silchar in the same seniority unit and circle and therefore the applicant did not lose her seniority by her transfer to SDOT, Silchar. In support of his contention he relies on clause (3) of Rule 38 of P&T Manual Vol.IV. Further he submitted that according to the seniority list of Clerks as on 1.7.1968 the applicant was senior to respondents No.3 and 4 as she occupied the position No.54 in the list while respondents No.3 and 4 occupied position No.87 and 91 respectively in that seniority list. The fact of existence of this gradation list and the positions occupied by the 3 persons as stated by the applicant in the application have not been controverted by the respondents in their written statement. Therefore, relying on AIR 1993 SC 2592, he has submitted that the position as stated by the applicant in her averment in this regard is to be treated as having been admitted by the respondents. He also submitted that the stance of the respondents that the seniority position of the Engineering Division of TS Clerks of Engineering Division of N.E.Circle, Telecom as on 1.7.1976 was finalised in 1976 is unacceptable because the gradation list referred to and enclosed by the respondents in their written statement is only a draft gradation list. According to him no final gradation list of TS Clerk Engineering in the Division as on 1.7.1976 was ever published or circulated

by the respondents. In this regard he has pointed out that this contention was raised by the applicant in her rejoinder but the respondents have remain ^{ed} silent without controverting the claim of the applicant. Further, he submitted that the respondents have not also produced any final gradation list of TS Clerk of the Division as on 1.7.1976 before the Tribunal.

5. The applicant had raised her objection to the draft gradation list of SS/SSO/TOAS of Silchar Division as on 1.4.1990 (Annexure-B). In her representation dated 22.8.1992 pending disposal of her representation Shri M.L.Suklabaidya and Shri M.R.Das were promoted in 1992 and 1993 to the cadre of TOA(G) Grade.IV vide order dated 26.6.1992 and order dated 27.12.1993. She protested against the promotion and submitted representation vide her representation dated 10.1.1994. The respondents had entertained her representation and had given their final reply on 7.2.1994. The applicant further made appeal and the respondents gave the reply dated 6.4.1994. This application was submitted on 26.7.1994. Therefore, the contention of the respondents that the application is barred by limitation is not acceptable.

6. The order of transfer of the applicant conveyed via No.20-68/E-8-Transfer/130 dated 10.7.1968 (Annexure-A) states that the applicant was transferred under Rule 38 of P.T.O. Manual Vol.IV. The order in this regard is vague as it does not mention under which clause of the Rule 38 the transfer of the applicant to the Engineering Division was made. Even in the written statement the respondents maintain their vagueness and have not stated the clause of the Rule applicable to the transfer of the applicant from the office of the Accounts Officer, Telephone Revenue, Shillong to the Tele Engineering Division, Shillong and subsequently to its Su

Division at Silchar. It appears that the respondents are now in their written statement as well as in the impugned order dated 6.4.1994 thinking about a clause (2) of the Rule 38. The applicant, on the other hand, contends that her transfer was covered by clause (3) of the Rule. The clauses of this Rule are reproduced herein below for ready reference :

"(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade as on that date.

(3) If the old and the new unit form parts of a wider unit for the purpose of promotion to a higher cadre, the transferee (whether by mutual exchange or otherwise) will retain his original seniority in the gradation list of the wider unit."

We have therefore, to consider whether in the facts and the circumstances of her case the applicant would fall under clause (3) of the Rule 38 as contended by her. As already stated the order dated 10.7.1968 does not specify the clause of the Rule 38 applicable to the transfer of the applicant. In the circumstances we are of the view that it is unfair on the part of the respondents to contend in a later date in order to deny the applicant the benefit of retaining her original seniority position that her transfer was made under clause (2) of Rule 38. More so when considered in the light a that they had rejected her representation without assigning any reason or ground in the order dated 7.2.1994. The respondents have contended that the cadre of TS Clerk(TR) was merged with that of TS Clerk (Engineering) after the applicant had joined in the Engineering Section and since the applicant had been transferred to the latter

cadre before the merger of the two cadres at her own request she had lost her seniority. It is noticed that in the order dated 1.3.1968, Annexure-P to the rejoinder, certain employees of the office of the Accounts Officer, Telephone Revenue, Shillong were allotted to the Guwahati Engineering Division consequent to decentralisation of the Telephone Revenue Organisation and their names were struck off from the rolls of the office of the Accounts Officer, Telephone Revenue, Shillong on 1.3.1968 for joining in the office of the Divisional Engineer, Telegraphs, Guwahati under the Telegraph Engineering Division, Guwahati. Those employees had opted for Guwahati Telegraph Engineering Division and they were posted in the office of the Divisional Engineer Telegraph, Guwahati as a result of the scheme of decentralisation of the Telephone Revenue organisation. In a similar manner the applicant also opted for her transfer to the Divisional Engineering Telegraph Shillong and her option was accepted on 8.4.1968. Subsequently on her own request she was transferred to Silchar Telegraph ^{Sub-} Engineering Division which was then within the jurisdiction of the Shillong Telegraph Engineering Division. It is not the case of the respondents that those employees of the Accounts Officer who went over to Guwahati Divisional Engineering in March 1968 had lost their seniority. In the circumstances, there cannot be any reasonable ground why the respondents should not treat the applicant who had been transferred from Telephone Revenue organisation in April 1968, in the same manner as they had treated the employees of the same office who are transferred to the Guwahati Engineering Division in March 1968. Further, one most important aspect that is noticed from the records of this case, namely, the draft gradation list annexed to the written statement that it is apparent that after decentralisation and abolition of the

Telephone Revenue Organisation and merger of the two cadres of TS Clerks the promotion avenue of both the cadres became one. In the light of the forgoing discussions, we are of the view that the applicant could not have been deprived of her original seniority position simply on the ground that she had joined the Engineering Division allegedly before the merger of the two cadres. The question however is whether the applicant can raise ^{the issue now} of her seniority in order to obtain the relief ^{she has sought for} in this application. The contention of the respondents in their letter dated 7.2.1994 is that the seniority position of the applicant cannot now be altered. There is no doubt that the averments of the applicant that even after she had joined in the Telegraph Engineering Division she was shown senior to respondents No.3 & 4 in the alleged Gradation List of 1968 (copy of which was not produced by either side before us) have gone uncontested by the respondents. So also is the case with the alleged 'Divisional Gradation List' mentioned in the impugned order dated 6.4.1994 of the respondents. A copy of this divisional Gradation List too was not produced by either side before us and the applicant has not contended with any evidence to the statement made in the impugned order that the applicant was junior to respondents 3 & 4 in the said Divisional Gradation List. We have, however, before us one document, namely, Annexure-B to this original application, which we can and do rely on. We have noticed the Draft Gradation List of SS/SS(O)/TOAs of Silchar Division as on 1.1.1990 (Annexure-B). This Draft Gradation List consists of 3 draft gradation lists, namely, (1) Draft Gradation List of 10% Section Supervisors wherein the name of Shri M.L. Suklabaidya was included, (2) Draft Gradation List of 20%

Selection Grade in which the name of Shri M.R.Das was included and (3) Draft Gradation List of One Time Bound Promotion/TOAs wherein the name of the applicant was included. From the details available in the said Annexure-B, such as pay and allowances and details of posts, we can discern that those employees in the draft gradation lists (1) and (2) above were of higher status than those in the draft gradation list (3). In her representation dated 22.8.90, Annexure-C, the applicant has not disputed the superiority or seniority of those employees appearing in the Draft Gradation list (1) and (2) over those employees including herself appearing in the Draft Gradation List (3). She has not also mentioned in her representation that respondents 3 & 4 were junior to her. In fact, there is no reference to them in her representation. Again, we noticed from the details of the said Annexure B that in 1974 some important events had taken place, namely, respondents No.3 and 4 were allowed to officiate in higher posts of selection grade. It is the submission of the respondents that such promotion was made on seniority-cum-fitness basis. This submission of the respondents has not been refuted by the applicant. She has also not produced any document showing that at the relevant time she had disputed the promotion of the respondents 3 and 4 to selection grade while she herself remained as a TS Clerk. Thus since 1974 respondents 3 and 4 were placed in higher positions than that of the applicant which position was not contested by the applicant. Further, it is seen that in the Draft Seniority List of Lower Selection Grade (LSG) Clerks of Engineering Division of N.E.Circle, Telecom as on 1.7.1976 the names of respondent No.3 and 4 appear therein but the name of the applicant was not included. No protest or objection was raised by the

applicant against the said Draft Seniority List. The applicant cannot therefore be allowed now to unsettle the position even though if a decision is given in her favour, such decision would not affect the present seniority positions of respondents No.3 and 4 since the applicant had already retired from service. It is also seen that even in 1990 when the respondents did not make any response to her representation dated 22.8.1990 submitted by her against the aforesaid Draft Seniority List of 1990, the applicant did not approach this Tribunal for adjudication and determination of her seniority. The applicant was a TOA(G) Grade III, even when one of the private respondents in the present Original Application was promoted from TOA(G) Grade III to TCA(G) Grade IV in June 1992 the applicant did not show any concern about the situation. It was only when another of the private respondents was promoted to the Grade IV in December 1993 that the applicant raised her objection by means of her representation dated 10.1.1994. The main and ultimate relief sought by the applicant in the present application is that she be promoted to TOA(G) Grade IV with effect from 1.7.1992, namely, the date of promotion of her alleged junior with monetary benefit. These are in fact consequential benefits and such benefits could have perhaps been available to the applicant only if her seniority position is altered placing her above respondent No.3 and 4. We are however, unable to grant these reliefs to the applicant in this present application as we have already held as above to the effect that her seniority position cannot be allowed to be altered now in view of the fact that the applicant had slept over the issue of her seniority for too long.

In the light of the above we hereby dismiss the application. No order as to costs.


(D.N.BARUAH)
VICE CHAIRMAN


26.11.97
(G.L.SANGLIYINE)
ADMINISTRATIVE MEMBER