



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

O.A. 1024/2013

With

MA 370/2013

Orders Reserved on : 21st Nov., 2017

Date of orders : Nov., 2017

30.1.2018

CORAM

HON'BLE MRS. BIDISHA BANERJEE, MEMBER (J)

HON'BLE JAYA DAS GUPTA, MEMBER (A)

1. Shri Utpal Mondal, son of Shri Nirad Baran Mondal, aged about 39 years, working for gain as a Postal Assistant at Dainhat Sub Post Office and residing at Vill & PO – Karajgra Via Dainhat, Dist. – Burdwan, Pin – 713502.
2. Shri Swarup Dhar, son of Shri Shibdas Dhar aged about 35 years, working For gain as a Postal Assistant RPA Katwa, presently posted at Yogayog Bhawan, Kolkata – 12, and residing at Flat No. Y-A [2nd Floor], Bijay Complex, East Station Road, PO – Agarpara, PS – Khardah, Dist. – North 24 Parganas, Pin 700109.

.....applicant

By Advocate : Mr. J.R. Das.

Versus

1. Union of India, service through the Secretary to Govt. of India, Ministry of Communication & Information Technology, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110006.
2. The Director General of Posts, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110006.
3. The Chief Postmaster General, West Bengal Circle, Yoagayog Bhawan, C.R. Avenue, Kolkata – 700012.
4. The Postmaster General, Office of the C.P.M.G., South Bengal Region, Yogayog Bhawan, C.R. Avenue, Kolkata – 12.
5. The Director of Postal Services, South Bengal Region, Yogayog Bhawan, Kolkata – 12.
6. The Sr. Superintendent of Post Offices, Burdwan Division, Burdwan, Pin 713101.
7. Shri Ajoy Kumar Mukhopadhyay son of not known, SPM, Purbasthali Sub Post Office, Dist. Burdwan, Pin 713513.

..... Respondents.

By Advocates: Mr. S.K. Ghosh

None appeared for the private respondents despite several chances.

ORDER

Per Bidisha Banerjee, Member (J):- It appears the private respondent refused

to accept notice as it appears from envelop submitted by Advocate Shri J.R. Das.

This application has been filed by two applicants namely, [1] Shri Utpal Mondal,

and [2] Shri Swarup Dhar, seeking the

following reliefs :

"8[i] Leave may be granted to file the application jointly under Rule 4[5][a] of the Central Administrative Tribunal [Procedure] Rules, 1987 having common cause of action:

[ii] An order directing the respondents to award and implement seniority/notional seniority to the applicants herein from the date of original date of joining of 1995 PA Cadres following belonging to the same cadre with identical status in extension of the benefit of Hon'ble CAT, Principal Bench order since upheld by Hon'ble High Court at New Delhi.

[iii] An order directing the respondents for granting of increments, protection/fixation of pay at par with their juniors.

[iv] An order directing the respondents for inclusion of the applicants in the GPF scheme as also in the Pension Scheme of 1972 since joined w.e.f. 26.08.2003 much before 01.01.2004 in conformity to the direction of Hon'ble CAT, Principal Bench since upheld by Hon'ble High Court, New Delhi and also their juniors have already been allowed to be included into both the above schemes.

[v] Any order directing the respondents to place all the relevant records before the Hon'ble Bench for conscionable justice.

[vi] Any other order/orders, further order/orders as to this Hon'ble Bench seems fit and proper."

2. The facts germate for consideration of the matter are as under -

An open advertisement/notification was published by Postal Department on 04.08.1996 for filling up the vacancies of PA Cadre, against outsiders quota, for the year 1995, for different divisions under West Bengal Circle, out of which 33 vacancies were meant for Burdwan Division. The break-up being as follows -

OC - 16, SC - 08, OBC - 07, and ST -02.

The Typing Test, Computer and Aptitude Test and Interview were held on 13.10.1996, 26.11.1996 and 27.11.1996 respectively. On receipt of several complaints about irregularities in the selection process, the Director, Postal Services [DPS], South Bengal Region, Kolkata -12, conducted a thorough enquiry and found that while rejecting applications, the Senior Superintendent of Post Offices, Burdwan Division had not followed the prescribed procedure. The Director Postal Services by an order dated 10.02.1998 informed the Senior

Superintendent of Post Offices that the Post Master General, South Bengal Region cancelled the tests, and that a fresh 'X' Register would have to be prepared from the applications already received, and a 'Y' register, on the basis of 'X' register taking into consideration all the applications received. After scrutiny the candidates would be required to sit for the concerned test afresh. Pursuant to such directions, the selection process were started afresh.

As soon as the tests held on 13.10.1996, 26.11.1996 and 27.11.1996, were cancelled, six applicants, namely [1] Sri Moloy Kr. Rooj, [2] Sri Kuntal Bandyopadhyay, [3] Sri Kaushik Mukherjee, [4] Sri Subrata Roy, [5] Miss Katika Roy & [6] Sri Anupam Choudhury being aggrieved, filed an OA No.404/1998 before this Tribunal, Calcutta Bench praying for publication of result. To the said OA, an MA No.178/1999 was filed by the Department seeking permission to fill up the vacancies on the basis of fresh recruitment process as was subsequently ordered by the Director of Postal Services [DPS], South Bengal Region, Kolkata, keeping aside six vacancies. The MA was allowed, and a fresh test was held as per schedule as follows -

- [a] Type Test - 06.11.1999
- [b] Computer Test - 07.11.1999
- [c] Aptitude Test - 05.12.1999
- [d] Interview - 10.01.2000 to 13.01.2000.

On the basis of fresh tests, one merit list was prepared declaring 27 candidates as successful, keeping 6 vacancies unfilled. OA 404/1998 came to be decided on 07.04.2003 with a direction upon the respondents to publish the result of the six applicants therein against the direct recruitment quota for the year 1995, and in case they were found successful to be offered appointment and service benefits on the post w.e.f; the same date their immediate juniors were granted, within a period of two months from the date of communication of the order. It was found that all the six applicants had failed to come out successful. In the meantime,

WPCT No.465 of 2003 was preferred before the Hon'ble High Court at Calcutta assailing the order of this Tribunal. Since the six candidates came out unsuccessful, the PMG [SB]/SFB/Rectt/Burdwan prepared a fresh merit list on 22.08.2003 for recruitment against six unfilled vacancy of 1995. The following candidates were declared successful on 26.08.2003 -

- [1] Utpal Mondal;
- [2] Swarup Dhar;
- [3] Atanudeb Mondal;
- [4] Goutam Bez;
- [5] Swapan Kumar Maji and
- [6] Biswajit Ghorui.

The out of the said six, the first two were the present applicants

In their letter of appointment, it was stated that the candidates selected against the vacancies of 1995, shall rank senior to the candidates for vacancies of 1996. The said six candidates were sent for induction training and on completion of 75 days induction training and 15 days attachment training, they were made to join as PA. The present applicants namely, Utpal Mondal and Swarup Dhar who figured in the said list of six candidates, joined as PA on 29.05.2004.

3. The sum and substance of the grievance of the present applicants is that since their seniority had to be determined in terms of 1995, and since they figured above Shri Ajoy Kumar Mukhopadhyay in the document dated 18.08.2010 as contained in Annexure-A-6, in the circle gradation list of 1995[?]096 at Annexure-A-6, the depression of their seniority placing them below as junior to Shri Ajoy Kumar Mukhopadhyay, as contained in Annexure-A-8 collectively was wrong. In the said list, Shri Ajoy Kumar Mukhopadhyay figured at Sl. No. 239, whereas the applicants are at Sl. No. 289 and 290, whereas in the divisional gradation list of 01.07.2007, the applicants figured at Sl. No.191 and 192 above Ajoy Kumar Mukhopadhyay.

4. Learned counsel for the applicant would vociferously submit that since in

terms of their appointment order dated 26.08.2003, the candidates selected against the vacancy of 1995, would rank senior to the candidates selected for vacancies of 1996 at the circle level as well as divisional level, the applicants should retain their seniority of 1995 over and above Shri Ajoy Kr. Mukhopadhyay, who was inducted against the vacancy of 1996 and ought to be allowed notional seniority w.e.f. 1995-96.

5. Learned counsel for the applicants relied upon the decision rendered by Central Administrative Tribunal, Principal Bench, New Delhi in OA No.183/2009 on 2nd February, 2010, wherein it was decided that the applicants would be eligible for appointment to their post from the date other persons selected along with the applicants for appointment and the said period would count towards increments, pay fixation and notional seniority. Learned counsel would contend that the decision of the CAT, Principal Bench was upheld in WPS No. 5983/2010 on 03.02.2011 and thus would bind us and govern this case.

6. Per contra, learned counsel for the respondents would argue that the applicants being appointed from a later date, i.e. 29.05.2004, they could not claim seniority over and above the private respondent, Shri Ajoy Kumar Mukhopadhyay, since Shri Mukhopadhyay was inducted from an earlier date and the applicants could not claim notional seniority from an earlier date i.e. 1995 as they did not join the PA Cadre before 29.05.2004. Learned counsel would further submit that successful completion of training was sine qua non to such appointment. Learned counsel further hinted that their appointment and their seniority would not travel beyond the date of that appointment to an anterior date. Learned counsel would draw our attention to Annexures appended to the supplementary affidavit in support of his contention.

7. Learned counsels were heard and the materials on record were perused.

8. What emerged out of the pleadings was that although the said Shri Ajoy Kr.

Mukhopadhyay was granted appointment from an earlier date, i.e. 01.08.2000, the said order ^{as per} contained in Annexure-A-5 to the supplementary affidavit, clearly demonstrated that the appointment was made purely on temporary and provisional basis, liable to be terminated at any time without any notice and would not confer any right or claim upon the officials for regular absorption in the cadre. Therefore, the said Shri Ajoy Kr. Mukhopadhyay was provisionally appointed on 01.08.2000. Further, he was granted regular appointment against substantive post on and from 01.11.2004 whereas the applicants namely, Utpal Mondal and Swarup Dhar were inducted, although from a later date but were declared qualified and selected for appointment in Postal Assistant Cadre, vide order dated 26.08.2003 with no stipulation that the said appointment was temporary and provisional in nature. Therefore, rightly at the Divisional level the applicants were placed above Shri Ajoy Kumar Mukhopadhyay, whose substantive appointment fell from 01.11.2004 evident from the seniority list contained in Annexure-A-8, since their dates of appointment fell on 29.05.2004.

9. In terms of **Rule 3 and 4 of Swamy's Compilation on Seniority and Promotion**, General Principles for determination of Seniority in the Central Service is as follows -

"3. Subject to the provisions of Para. 4 below [and subject to the conditions that seniority of persons would be determined by the order indicated at the time of initial appointment and not according to the date of confirmation], permanent officers of each grade shall be ranked senior to persons who are officiating in that grade.

*4. **Direct Recruits.** - Notwithstanding the provisions of Para 3 above, the relative seniority of all direct recruits shall be determined by the order of merit in which they are selected for such appointment, on the recommendations of the UPSC or other selecting authority, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection.*

Provided that where persons recruited initially on temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority [would be determined by the order indicated at the time of initial appointment and not according

to the date of confirmation]"

10. In view of the foregoing discussions, we find as follows : -

- [i] The claim of the applicants for counting seniority, i.e. from 1995, a date prior to the date of notification and selection when they were not even borne in service, is unsustainable being not supported by any law, rules or authority;
- [ii] Their claim for assignment of seniority over and above Shri Ajoy Kumar Mukhopadhyay from 1995 is also unfounded. They were entitled to count their seniority either with reference to merit position in the selection list or w.e.f. 29.05.2004, the date of their entry and not before that;
- [iii] Accordingly, extension of benefits on par with Shri Ajoy Kumar Mukhopadhyay is also unfounded since their substantive appointment fell prior to that of Shri Ajoy Kumar Mukhopadhyay.
- [iv] In regard to applicability of old pension scheme of 1972, since their date of appointment fell after 01.01.2004, such claim is untenable.
- [v] Nevertheless, they may be entitled to appropriate assignment of seniority vis-a-vis Shri Ajoy Kumar Mukhopadhyay on the basis of the date of their substantive appointment, or merit position in the select list.


11. The applicants have filed an MA -330/2013 for condonation of delay in filing the Original Application. Since they deserve appropriate assignment of seniority, the MA is allowed and the delay, if any, is condoned.

12. In view of our findings as noted supra, and for the ends of justice, we dispose of this OA with direction upon the respondents to recast the seniority of the applicants vis-à-vis the private respondent, in accordance with rules of seniority, keeping in view the fact that the applicants were assigned their substantive entry from 29.05.2004 whereas the private respondent, Ajoy Kr. Mukhopadhyay was allowed substantive entry from a latter date 01.11.2004, and

with consequential benefits ^{as} per law..

13 Let appropriate orders be issued within three months from the date of communication of this order, if necessary by giving a hearing to the parties. No costs.

[Jaya Das Gupta]
Member (Admn.)
mps/-



[Bidisha Banerjee]
Member (Judicial)