

Chandra Prakash Chauhan

Vs

Union of India and Others

Civil Appeal No. 11654 of 1995

(G. B. Pattanaik, S. P. Kudukar JJ)

01.04.1998

### JUDGMENT

1. This appeal is directed against the order of the Central Administrative Tribunal, Allahabad Bench dated 3-12-1992 passed in OA No. 524 of 1991. Inter se seniority between the appellant and Respondent 4 in the rank of Senior Publicity Officer is the subject-matter of dispute. Pursuant to the advertisement issued, the appellant and Respondent 4 were selected for the post and inter se position in the merit list, the appellant was given higher position than Respondent 4. They were appointed to the post of Senior Publicity Inspector but the appointment letter itself contained the stipulation that the continuance on the post of Senior Publicity Inspector depends on passing the training as per principle. It is not disputed that after continuing in the post for five months, the appellant and Respondent 4 were sent to undergo the training and in the first part of the examination that was held, Respondent 4 was given the ranking 4 while the appellant was given the ranking 6. The inter se seniority however was determined by the competent authority showing the appellant to be senior to Respondent 4. This compelled Respondent 4 to file the application before the Tribunal. Respondent 4 took the stand that since both the appellant and Respondent 4 had undergone the training and in the training their ranking was altered giving Respondent 4 a higher rank than the appellant, the said Respondent 4 would be senior to the appellant in terms of para 303-A of the Railway Establishment Manual. The railway authorities on the other hand took the stand that the provisions of para 303-B would be attracted to the case in hand and therefore since the appellant was given a higher position in the merit list than Respondent 4 at the initial recruitment the appellant was declared senior. The Tribunal however on consideration of the relevant materials and on examining the provisions of the rules dealing with seniority came to the conclusion that para 303-B will have no application to the case in hand and on the other hand the case is governed by para 303-A and since after the training Respondent 4 was given a higher position than the appellant, Respondent 4 should be declared senior to the appellant. With this conclusion the application having been allowed, the present appeal has been preferred.

2. The learned counsel for the appellant contends that para 303-A of the Railway Establishment Manual will have no application inasmuch as both the appellant and Respondent 4 had been recruited to the post of Senior Publicity Inspector and they were required to undergo training thereafter. Alternatively it is argued that even if para 303-A applied then after the final examination, the name of the appellant was shown before Respondent 4 and therefore it should be deemed that the so-called ranking after the first part of the examination stood altered after the viva voce examination. In view of this position, this Court had passed an order on 3-11-1995 directing the railway authorities to indicate as to whether the ranking given to the respective employees after the first part of the examination stood altered in any manner after the second part of the examination was over. Pursuant to the said order, an affidavit has been filed by the Railway Administration being

sworn to by Deputy Chief Personnel Officer, North-Eastern Railway but nothing is clear from the same and it is copiously vague. In the aforesaid premises two questions arose for reconsideration :

1. Whether the inter se seniority in the case in hand is governed by para 303-A or para 303-B ?

Having examined rival contentions raised in this Court and the letter of appointment issued in favour of the appellant as well as Respondent 4 we are of the considered opinion that the inter se seniority between them has to be determined in accordance with para 303-A inasmuch as the continuance of these employees in the post were subject to undergoing and passing the training as per principle. In that view of the matter, the original seniority between them determined by the railway authority referring of para 303-B is wholly unsustainable and the Tribunal therefore rightly interfered with the same. Mrs. Amareswari, the learned Senior Counsel for the Railway Administration, also fairly stated that para 303-B will have no application.

3. The next question that arises for consideration is even after applying para 303-A whether the ranking given to the appellant and Respondent 4 after the first part of the examination stood altered in any manner. After the second part of the examination was over, if the ranking given in the first part of the examination has not been altered in any manner then Respondent 4 must be held to be senior to the appellant. But if such ranking has been altered in any manner after the second part of the examination and the appellant has been given a higher ranking than Respondent 4, then certainly the appellant would be senior to Respondent 4. As the affidavit filed by the Railway Administration is not clear on this aspect, we think it is appropriate to call upon the General Manager, Personnel, Gorakhpur, North-Eastern Railway to redetermine the inter se seniority on the basis of the relevant material and in the light of the observations made by us in this judgment. Needless to mention, the said General Manager would find out whether the inter se ranking between the appellant and Respondent 4 which was indicated after the first part of the examination stood in any way altered, after the second part of the examination and then pass appropriate orders thereon. This appeal is disposed of with the aforesaid direction. No order as to costs. The General Manager should pass appropriate orders within three months from the date of the receipt of the order.