
(1961) 01 OHC CK 0007

In the Orissa High Court

Case No : O.J.C. No's. 128, 157, 158 and 159 of 1960

Ch. Narasingha Murty and Others

APPELLANT

Vs

Director of Posts and Telegraphs

RESPONDENT

Date of Decision : 18-01-1961

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Citation : AIR 1962 Ori 20

Hon'ble Judges : R.L. Narasimham, C.J;S. Barman, J

Bench : Division Bench

Advocate : P.V.B. Rao, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—All these four O. J. Cs. were heard analogously and will be disposed of by one judgment.

2. The petitioners are all permanent telegraphists of the Telegraph branch of the Posts and Telegraphs Department, having been transferred to that branch from the Postal Branch where they had been formerly working for some years. After passing the necessary examinations, they were absorbed on permanent basis as telegraphists in the Telegraphs arm of the Posts and Telegraph, Dept. with effect from the 1st October 1958, but in fixing their seniority amongst the telegraphists in the new cadre the Director of Posts and Tele. graphs, Orissa Circle (opp. party)--in his communication No. Staff N/51 dated the 3rd November 1959 placed them below the former temporary telegraphists of the Telegraphs arm who were also confirmed on the same date as telegraphists.

The petitioners felt aggrieved by the aforesaid fixation of their seniority on the ground that they should have been shown as senior to the temporary telegraphists who were confirmed on the same date in view of their past longer service in the Postal Arm on a permanent basis. It was further alleged that the principles governing seniority amongst officials of the Postal Department

transferred from one arm to the other which have been laid down in Rule 38 of Chapter (II) at page 16 of the Posts and Telegraphs Manual, Volume IV, as subsequently explained in Annexure E which is a copy of communication received from the Director General Posts and Telegraphs, New Delhi, have not been followed.

3. In our opinion there has not been any contravention of Rule 38 of the aforesaid Manual, nor can it be said that the petitioners have any justiciable right to be enforced by this Court. Here the admitted fact is that the transfer of the petitioners from the Postal Arm to the Telegraph Arm of the Posts and Telegraphs Department was made at their own request and without mutual exchange, Rule 38 lays down:

"An official transferred to another cadre at his own request but without arranging for mutual exchange should take lowest place in that cadre. In either case of transfer, any special privilege to which an official may be entitled by virtue of his position in the cadre from which he takes transfer, will ordinarily be forfeited on his transfer to a new cadre."

There is a note to Rule 38 which is as follows:

"Transfer from one cadre to another, contemplated in this rule, means transfer of an official at his own request or by mutual exchange, to a separate cadre of officials of the same class and rank involving the deletion of his name from the gradation list of one unit and the inclusion of his name in the corresponding gradation list of another unit."

The aforesaid note makes it clear that the "transfer" contemplated is a permanent transfer from one arm to the other. Moreover the rule expressly says that where such transfer takes place at the request of any person, any special privileges to which he might have been entitled by virtue of his position in the old cadre or unit will certainly be forfeited, In view of this express provision the petitioners cannot as of right claim any special privileges so far as their seniority amongst the cadre of telegraphists in the new unit is concerned--merely because in the postal branch they had served on a permanent basis for a longer period.

4. Mr. P.V.B. Rao on behalf of the petitioners, however, relied on certain instructions contained in Annexure E which is a letter of the Director General of Posts and Telegraphs (No. SPB /69/21/52 dated the 12th April 1956 DG P and T) addressed to the Heads of Circles and contended that though the petitioners may be shown as immediately junior to the telegraphists who had been confirmed, prior to the date of their own confirmation, namely the 1st October, 1958, they should have been shown as senior to temporary telegraphists of that unit who were confirmed along with them on that date, viz. 1st October 1958. He relied on the following passages in the aforesaid letter:

"(1) Just as a permanent official on transfer at his own request from the cadre or circle to another, ranks junior to all permanent officials of the unit, a quasi

permanent official will, rank junior to all quasi permanent officials below all the permanent officials on the analogy of the orders issued in this office letter dated 31st January 1955.

2. The above orders will also apply to transfers from one service to another, or from one Circle to another and the transferee will occupy the lowest position in the Circle Gradation list as well as in the Unit gradation list below all the permanent quasi-permanent or temporary officials as the case may be, according to paragraph 2 of this letter dated the 19th January 1954." .

5. In my opinion, the aforesaid passages in the letter do not help the petitioners. They relate to fixation of seniority as between presorts confirmed on the same date on the one hand, and a group of persons holding similar posts substantively in the same cadre, prior to that date. They do not deal with fixation of seniority inter se amongst persons recruited from different units and confirmed on the same day in a particular unit. In view of the clear provisions contained in Rule 38 and the note given below it, the petitioners who admittedly come under the category of "officials transferred at their own request" from the postal arm to the telegraph arm of the Posts and Telegraph Department, cannot claim--as of right--any special privileges, for purposes of seniority, merely on the strength of their longer previous permanent service in the postal arm. The aforesaid rule says that ordinarily such privileges will be forfeited--thus giving discretion to the appointing authority while fixing seniority to take into consideration other factors also.

It does not appear from the counter affidavit filed by the Deputy Director of Posts and Telegraphs Orissa Circle, that this discretion was exercised either arbitrarily or capriciously, so as to justify our interference in a written application. On the other hand the decision seems to be based on the view that those persons who have worked for a longer period as telegraphists (though temporarily) should rank senior to those transferred at their own request from the postal arm--whose length of service as telegraphists was shorter. Admittedly, the period of service of the petitioners as telegraphists was shorter than that of those shown as their seniors, although both the groups of persons were confirmed as telegraphists on the same date, namely 1st of October, 1958.

6. We see therefore no reason to interfere with the order passed by the opposite party. The petitions are accordingly dismissed with costs. There shall be one consolidated hearing fee of Rs. 100/- to be apportioned equally amongst the four petitioners.

Barman, J.

7. I agree.