

W.P.C.T. 127 of 2024

**Union of India & Ors.
Vs.
Shri Soumitra Goutam & Ors.**

Mr. R.N. Bag, Sr. Adv.,
Mrs. Mary Datta,
Sk. Md. Wasim Akram

...for the Petitioners

Mr. Jagadish Ranjan Das

...for the Respondents

1. Heard the learned senior counsel for the petitioners as well as the learned counsel for the respondents.
2. The applicants before the Central Administrative Tribunal, Kolkata Bench (*hereinafter referred to as C.A.T.*) had participated in a suitability test for being promoted to the post of Senior Commercial Clerk. They were, at that point of time, working as Junior Commercial Booking Clerk.
3. The brief facts which are not in dispute are that the applicants were declared suitable for the promotion on 31.01.2005. It is also not in dispute that in the meantime the post of Senior Commercial Clerk was restructured with effect from 01.11.2003. As a result the sanctioned strength of Senior Commercial Clerks was reduced from 599 to 456. 97 existing Commercial

Clerks were thus rendered surplus for want of vacancy. At the same time, there were Assistant Guards and Telephone Operators who had also been rendered surplus. The present petitioners/respondents before the C.A.T. instead of appointing the applicants against the promoted post of Senior Commercial Clerk, appointed the staff who had been rendered surplus, against the vacancies as and when it became available in the period between 2006 to 2008. The said surplus staff, therefore, came to occupy the post of Senior Commercial Clerk and the petitioners in spite of having qualified the suitability test were not being appointed on the promoted post. Only when posts again became available in the year 2011, the applicants were appointed to the post of Senior Commercial Clerk.

4. It is under such circumstance that they approached the authority for redressal of their grievances by grant of seniority and other consequential benefits. The authority passed a reasoned order on 20th January, 2015 rejecting the applicants' claim. The applicants in the circumstance were compelled to approach the C.A.T. O.A. No. 01128 of 2015 filed by the petitioners was allowed by the C.A.T. The respondents/present petitioners had placed

reliance upon paragraph 313A of the Indian Railway Establishment Manual (*hereinafter referred to as I.R.E.M.*). Since the case of the respondents therein who are petitioners in the present proceedings hinges on the provisions contained in paragraph 313A, we consider it appropriate to reproduce the same, which reads as follows:

“313A: Assignment of seniority to redeployed surplus staff: The surplus employees are not entitled for benefit of the past service rendered in the previous unit/department for the purpose of their seniority in the new unit/department. Such employees are to be treated as fresh entrants in the matter of their seniority, promotions etc.

Note I: When two or more surplus employees of a particular grade in a unit/department are selected on different dates for absorption in a grade in another unit/department, their inter-se seniority in the latter unit/department will be same as in their provisions unit/department provided that –

(i) no direct recruit has been selected for appointment to that grade in between these dates; and

(ii) no promotee has been approved for appointment to that grade between these dates.

Note II: When two or more surplus employees of a particular grade in a

unit/department are simultaneously selected for redeployment in another unit/department in a grade, their inter-se seniority in the particular grade, on redeployment in the latter unit/department, would be the same as in their previous unit/department.”

5. Upon consideration of the submissions and paragraph 313A of the I.R.E.M., the C.A.T. was of the opinion that the issue in the present proceedings was a determination of *inter se* seniority between the staff who had been rendered surplus and the applicants, who had qualified the suitability test and were waiting for posting against the promoted post. The issue therefore, was determination of *inter se* seniority between these two different groups. Paragraph 313A of the I.R.E.M., however, deals with the assignment of seniority to redeployed “surplus staff”. The same did not deal with assignment of seniority, or determination of *inter se* seniority of two different groups as arose in the proceedings before the C.A.T.
6. We, on going through the paragraph 313A, find no infirmity in the opinion of the C.A.T. that the same was not applicable to the dispute which was pending consideration before the C.A.T. as regards the determination of seniority between the

persons who had qualified the suitability test and the surplus staff.

7. Having upheld the opinion of the C.A.T. in this regard, we advert to the facts which are not in dispute in the case that the applicants before the C.A.T. were duly qualified and had passed the suitability test for appointment to the promotional post on 31.01.2005.
8. Such being the facts and paragraph 313A of the I.R.E.M. being inapplicable in their present set of facts and circumstances, we find that there was no justification for ignoring the applicants who had duly qualified the suitability test and were kept waiting for being posted on the promoted post. By giving the applicant/respondents who emerged successful in the suitability test, a go by, the authorities proceeded to adjust the surplus staff from other groups and therefore, in order to mitigate the injustice being faced by the applicants, the C.A.T. vide its judgement dated 28.08.2023 passed in O.A. No. 01128 of 2015 considered it appropriate that they be given seniority with effect from 21.03.2006 i.e. the earliest date on which the surplus staff had been posted as Senior Commercial Clerk. The C.A.T. also directed that the applicants, therefore, should

be placed above the surplus staff in the matter of seniority.

9. The C.A.T. has also clarified that the promotion granted by virtue of this order will be notional and will only count towards determining seniority and pensionary benefits. Difference in pay for the period between the date the applicants are promoted by virtue of this order and the date of their actual assumption of charge as Sr. Commercial Clerk will not be paid to them.
10. It is nobody's case that the surplus staff who were promoted, superseding the petitioners' claim have assailed the order of the C.A.T.
11. The decision of the C.A.T., in the given facts and circumstances, in our opinion requires no interference and the Writ Petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)