

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 87 of 2021

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. T. Jacob, Member (A)

1. Sri Prabhata Bihari Mohapatra, aged about 58 years, S/o Late Kulamani Mohapatra, At-Qr. No. C/9/G, Rail Vihar, PS – Chandrasekharpur, Bhubaneswar – 751023, presently working as Asst. Executive Engineer (Con)/Works.BBS, Rail Sadan, At – Samantavihar, PS – Chandrasekharpur, Bhubaneswar – 751017, Dist – Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar – 751017.
2. Principal Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar – 751017.
3. Principal Chief Engineer, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar – 751017

.....Respondents.

For the applicant : Mr. K. C. Das, Advocate.

For the respondents: Mr. T. Rath, Advocate.

Heard & reserved on :19.02.2021

Order on :21.04.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *That the impugned speaking order No. ECoR/Pers/Gaz/CC/OA-328/20/PBM Dtd. 23.12.2020*

passed by GM, East Coast Railway, Respondent No. 1 under Annexure – 10 rejecting applicant's prayer for granting proforma seniority/promotion may be quashed.

(ii) That the Respondents Railway authorities may be directed to grant proforma seniority/promotion to the applicant in Group B AEN Post with effect from his due date in the year 1998 like similar situated person keeping in view of the fact and ground of this case as well as in view of decision of Apex Court in Union of India –vs- Debendra Kumar Pant & others reported in (2009) 14 SCC 546 within time frame.

(iii) That the respondents may be further directed to provide all consequential service benefits by granting proforma seniority/promotion w.e.f. 1998 to the applicant.

(iv) And pass such other and further orders as this Hon'ble Tribunal may deem fit and appropriate in the fact and circumstances of the case.

2. The case of the applicants in brief as inter alia averred in the OA is that the applicant initially in the year 1997-98 was rejected for promotion to Group B Asst. Engineer due to defective colour vision. After the order of Hon'ble High Court dated 19.04.2007 in WP (C) No. 8731 of 2004 where it was directed to the respondents to appoint the applicant in any Gr. B Post prospectively where there is no bar in deficiency in vision, the applicant was promoted to Group B AEN post on 18.07.2008. The applicant thereafter submitted repeated representation to the respondents for proforma seniority/promotion to AEN Group B post and in the last representation dated 18.06.2020 he gave example of one Ashwini Kumar Behera who was given proforma seniority/promotion pursuant to order dated 01.10.2019 of Hon'ble High Court in WP (C) No. 13315/2018, but the respondent No.

1 rejected his prayer vide order dated 23.12.2020 (Annexure A/10) differentiating the applicant's case with Ashwini Kumar Behera. Hence this OA.

3. The respondents didn't filed any counter in this case and argued at the time of hearing that Hon'ble High Court in its order dated 19.04.2007 in WP (C) No. 8731 of 2004 had directed that "if any promotion is given to the opposite party in accordance with aforesaid direction, such promotion will be a prospective one and not retrospective." The respondents further submitted that the judgment of Hon'ble Apex Court in Union of India vs Debendra Kumar Pant & others as relied upon by the applicant is not applicable since Hon'ble Supreme Court has clarified the matter subsequently.
4. Learned counsel for the applicant relied on some citations including the following:
 - a) Hon'ble Supreme Court in Union of India vs Debendra Kumar Pant & others (2009) 14 SCC 546.
 - b) Hon'ble Supreme Court in Union of India vs Sanjay Kumar Jain.
 - c) Hon'ble High Court of Orissa in WP (C) No. 13315 of 2018.
5. Heard learned counsel for both the sides and have carefully gone through materials on record and citations relied upon by them.
6. Hon'ble High Court in its order dated 19.04.2007 in WP (C) No. 8731 of 2004 had held that:

"Considering the aforesaid stand of the railway authorities, we modify the order of the Tribunal to the extent that instead of according promotion to the opposite party to any AEN Group B post, the opposite party's case may be considered for promotion to any Group B post in which the opposite party's deficiency in vision may not be a bar. Such consideration of the opposite party's case for promotion in the light of the observation made above should be made by the Railway authorities as early as possible, preferably within a period of three months from the date of service of the order upon the Railway

authorities. If any promotion is given to the opposite party in accordance with aforesaid direction, such promotion will be a prospective one and not retrospective.

With the aforesaid direction and observation the order of the Tribunal is modified. Interim order is vacated.

XXXXXXX"

7. In view of the above order passed by the Hon'ble High Court, this Tribunal cannot give any direction for retrospective benefit to the applicant.
8. Accordingly the OA is dismissed but in the circumstances without any order to cost.

(T. JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(CSK)