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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.353 of 1987

Date of decision : June 22, 1989.

Shri Sunil Kumar Biswas, aged about 43 years,
son of late Krishnapada Biswas, Quarters No.426/C.
Retang Colony, At Jatni, P.O. Jatni, Dist. Puri.

.... Applicant

Versus

1. Union of India represented by the General Manager, S.E. Railway Zone,
At:-Garden Reach, P.O. Calcutta-43,
Dist-Calcutta(West Bengal)
2. Divisional Railway Manager(Personnel),
At Khurda Road, P.O. Jatni, Dist. Puri
3. Divisional Personnel Officer,
S.E. Railway Khurda Road, P.O. Jatni,
Dist. Puri
4. Sri D.Y. Chenulu, At/P.O./Town/Munsifi-Berhampur, Dist. Ganjam
5. Shri A.C. Mohanty, Chief D.T.I.,
S.E. Railway Khurda Road,
At/P.O. Munsifi-Jatni, Dist. Puri.

.... Respondents

For the applicant M/s Bijayananda Mohanty,
Puranjan Ray,
Akhil Mohapatra, Advocates.

For the respondents Mr. Ashok Mohanty,
Standing Counsel (Railways)

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C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN
AND

THE HON'BLE MR. K.P. ACHARYA, MEMBER(JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporters or not? Yes.
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P. ACHARYA, MEMBER(J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the promotion and appointment of Respondents 4 & 5 and to pass appropriate orders to the effect that the entire procedure of promotion and appointment of Respondents 4 & 5 is illegal and to declare that the applicant should have been promoted with effect from 15.12.1977.

2. Shortly stated, the case of the applicant is that he had joined the Railway service as an Assistant Station Master on 5.9.1966 and was confirmed in the said post on 1.6.1968. The applicant was promoted as Assistant Station Master Grade B in the scale of pay of Rs.425-640/- and on 1.4.1977 two vacancies arose in the post of Senior D.T.I./T.I. Grade II. According to the 40 point communal roster, one such post should have been filled up from the general category and the other from the reserved quota of Scheduled Caste. The applicant having belonged to the category of Scheduled Caste, he should have been given promotion at the relevant time stated above. Instead, one Shri C.K. Rao was given promotion though he could not join the post because a departmental proceeding ended against him and a penalty was imposed. However, this post was filled up in the year 1978 by one D.Y. Chenulu, then working as Junior D.T.I./T.I. Grade III and this promotion was given to Shri D.Y. Chenulu on 11.5.1978 by dereserving the post in the year 1978. After the post was upgraded on 1.1.1979, the applicant's claim was not considered and Respondent No.5 was promoted to the said post on officiating basis with effect from 18.12.1978, and the services of respondent No.5 Shri Mohanty was regularised on 2.3.1979 and the suitability test was held on 12.9.1980. On 19.1.1981, the applicant was promoted to the post of Senior D.T.I. on ad hoc basis (reserved category) though he was qualified to be promoted with effect from 19.9.1980. Being aggrieved by this order, the applicant filed an application under Article 226 of the Constitution before the Hon'ble High Court of Orissa praying therein to command the opp. parties to give effect to the promotion of the applicant from 19.9.1980. This formed subject matter of O.J.C.No.269 of 1982 and renumbered as Transferred Application No.277 of 1986 which was received by this Bench on transfer under section 29 of the Administrative Tribunals Act, 1985. This Bench heard the case on merits and by judgment dated 28.1.1987 this Bench

held that no illegality had been committed by the appropriate authority and therefore, the said application was dismissed because there was no merit in the case. After dismissal of the transferred application, the present original application has been filed with the aforesaid prayer and in between representations were made by the applicant which were turned down.

3. In their counter, the respondents maintained that this case is liable to be dismissed because principles of resjudicata, especially principles of constructive resjudicata would apply in full force to this case and even on facts the respondents disputed the case of the applicant and maintained in their counter that even on questions of fact, the application is liable to be dismissed.

4. We have heard Mr. Bijayananda Mohanty, learned counsel for the applicant and Mr. Ashok Mohanty, learned Standing Counsel appearing for the Railway Administration at some length. While replying to the vehement arguments advanced by Mr. Ashok Mohanty, it was contended with equal vehemence by Mr. Bijayananda Mohanty that provisions contained under section 11 of the Code of Civil Procedure have absolutely no application to the facts of the present case as the Bench is not governed by intricacies provided in the Code of Civil Procedure except the matters which form subject matter of Section 27 of the Administrative Tribunals Act, 1985, and the provisions relating to review under section 22(3) (f) of the said Act. Before we dispose of this contention advanced by learned counsel appearing for both sides, it would be worthwhile to state the case of the applicant put forward in Transferred Application No.277 of 1986. In the said case, the petitioner stated that he belonged to the Scheduled Caste and on 5.9.1966 the petitioner entered into Railway Service as an Assistant Station Master and in the year 1974 the petitioner was promoted to the post of Assistant Station Master, Grade B. Some time around 1977, two posts of Senior Divisional Transport Inspectors fell vacant out of which one was reserved for members of the Backward Class and the other was to go to the incumbent of general category. On 19.1.1981 the applicant was promoted to officiate on ad hoc basis in the post of Senior Divisional Transport Inspector, Grade I and further grievance of the petitioner in the said case was that though he had qualified himself for promotion to the post of Senior Divisional Transport Inspector, since 19.9.1980, yet such promotion having been denied to him with effect from 19.9.1980, his grievance is legitimate and necessary

redress should be given to him. After hearing arguments advanced

in the said case, we said that the petitioner's case to be given promotion with effect from 19.9.1980 deserve no merit and since the case was devoid of merit, it was liable to be dismissed and hence we dismissed the prayer of the petitioner. Now the applicant has come up with a fresh original application maintaining certain facts which did not find place in the Transferred Application No.277 of 1986. It was contended by Mr. Ashok Mohanty, learned Standing counsel for the Railway Administration that certain new facts having come up in this case and strong reliance having been placed by the applicant on the new facts - it runs contrary to the case put forward in T.A.277 of 1986 and therefore, constructive resjudicata strictly applies to the case of the present one and on that count the present case should be dismissed in limine. We have already stated the contention of learned counsel appearing for the applicant that the provisions contained in the Code of Civil Procedure especially section 11 has no application to the matters to be decided by this Bench in regard to the case of an applicant in his application under section 19 of the Administrative Tribunals Act. Conceding for the sake of argument that the contention of learned counsel for the applicant is acceptable, yet without least hesitation in our mind we would say that the general law would certainly apply and that anew type of case running contrary to the facts of the original case cannot be entertained. Mr. Mohanty, learned counsel for the applicant submitted with equal vehemence that the case having not been properly placed before the Bench so far as the T.A.No.277 of 1986 is concerned, the Bench should take a sympathetic view on the members of the down trodden community and the present application should be allowed in favour of the applicant. Be it down trodden or not, nobody on earth can claim exception to the provisions contained in a particular law in force. We may have our sympathies for the people of the down trodden community but we are slave of the law. Without expressing any opinion as to whether a new case has been put forward or not because of the order which we propose to pass in this case, it was ultimately submitted by Mr. Mohanty, learned counsel for the applicant when he was called upon to convince us as to whether an original application under section 19 of the Act would lie in view of the specific provision contained under section 22(3)(f) of the Administrative Tribunals Act, 1985 that an application for review would lie if there is an error apparent on the face of the record, Mr. Mohanty, learned counsel for

the applicant further prayed that at least leave should be granted to the applicant to file a review application. In this connection, reliance was placed by Mr. Mohanty, learned counsel for the applicant on a judgment of the Central Administrative Tribunal, Bangalore Bench reported in 1(1987) ATLT 508. This is a Full Bench judgment and Hon'ble Mr. Justice K. Madhava Reddy, Chairman of the Tribunal speaking for the Bench observed that the final order or judgment of the Tribunal may be set aside only (emphasis is ours) by way of a petition for review of the earlier judgment or by seeking leave to file an appeal by special leave before the Supreme Court and by no other means. It was further held that a person feeling himself aggrieved by any final order or judgment of the Central Administrative Tribunal is not entitled to file an original application under section 19 of the Act to set aside the earlier judgment of the Tribunal, but may for the redressal of his grievance file a petition for review under Clause(f) of Sub-section(3) of Section 22 read with Sub-section(1) of Section 22 of the Act. If such a petition is filed, the Tribunal will entertain the review petition and consider it and make such orders thereon as it may deem fit in the circumstances of that case. Since it was contended by Mr. Bijayananda Mohanty, learned counsel for the applicant that there are errors apparent on the face of the record, in the judgment, relying on the observations of the Full Bench stated above, it may be said that a review application would lie and not an original application. Ofcourse, Mr. Ashok Mohanty, learned Standing Counsel appearing for the Railway Administration also opposed this contention of learned counsel for the applicant stating that even if review application is provided in the statute to be filed yet the applicant being indolent, it is barred by limitation and no leave should be granted to the applicant to file a review application. We have given our anxious consideration to the arguments advanced at the Bar on this aspect and for the ends of justice, we would grant leave to the applicant to file a review application, if so advised within three months from today and since the applicant was prosecuting this case in good faith we do hereby condone the delay occurring in this case.

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5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

1. agree
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Member(Judicial)

B.R. PATEL, VICE-CHAIRMAN,

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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
June 22, 1989/Sarangi.

