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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH :CUTTACK.

Original Application No. 274 of 1988.

Date of decision : September 22, 1989.

Sri Subhas Chandra Dutta, son of late Dibakar Dutta, aged about 38 years, now working as Bill Issuer, Rly.Catering Department, Khurda Road, P.O.Jatni, Dist.Puri.

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Applicant.

Versus

1. Union of India, represented by the General Manager (Garden Reach), S.E.Rly, Calcutta-43.
2. The Chief Personnel Officer, S.E.Rly, Garden Reach, Calcutta-43.

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Respondents.

For the applicant ... M/s.C.V.Murty,  
C.M.K.Murty,  
S.K.Rath, Advocates.

For the respondents ... Mr.L.Mohapatra,  
Standing Counsel (Railways)

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C O R A M :

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

A N D

THE HON'BLE MR.N.SENGUPTA, 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 ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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JUDGMENT

N. SENGUPTA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the reliefs sought for are for fixation of pay of the applicant in the revised scales of pay with effect from 1.1.1986, and to grant him consequential benefits; and the second prayer is for regularisation of his service records and to consider his case for promotion when his juniors were considered for such promotions and grant him the consequential service benefits.

2. The facts are that the applicant was initially appointed as a Bearer under the South Eastern Railway in 1971 and posted at Adra. Subsequently, he was transferred to different stations and in June, 1982 he was promoted to the rank of Bill Issuer. His services as Bill Issuer were regularised with effect from 27.3.1985. To this extent there has been no dispute and the respondents admit these facts. It is the case of the applicant that as his date of birth and the document in support of it, could not be found, his service records could not be properly prepared or regularised. The respondents have further taken the plea that the applicant gave two different dates of birth for which the service records could not be prepared and the applicant has really no genuine ground for making a grievance. After the filing of the counter, the applicant filed a copy of the school leaving certificate given by Chorhita Choreswar High School showing the date of birth of the applicant to be 2.1.1947. The applicant has further averred that some of his juniors have in the meantime been promoted as Clerks but his case was not considered. In

*Alka Gupta  
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reply to this it has been stated in the counter of the respondents that a general notice inviting applications for appearing at the test for appointment of Clerks was issued but as the applicant did not file any application, his case for promotion to the rank of Clerk could not be considered.

3. The questions which really fall for consideration are that whether was there any justifiable ground, ~~or~~ that ground still exists, in not enabling the Department to prepare the service records of the applicant. Mr. Mohapatra, learned Standing Counsel for the Railway Administration, does not dispute the fact of the applicant having filed a copy of the School leaving certificate in which the date of birth of the applicant has been mentioned to be 2.1.1947. In the counter, there is no indication as to what different dates, if any, of birth the applicant gave. Therefore, the present copy of the School Leaving Certificate showing the date of birth of the applicant to be 2.1.1947 has to be accepted as correct. So, the service records of the applicant can now be regularised and reconstructed.

4. The next question for consideration is whether did the applicant fail to make an application so that his case was not taken up for consideration for promotion or appointment to the rank of Clerks. In order to deprive the applicant of the opportunity of being considered for promotion it must not only be alleged but there must be materials to infer that inspite of a general notice calling upon the employees to appear at the test for appointment as clerks, the applicant

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did not make any application or in other words <sup>if</sup> the applicant having had knowledge of it failed to apply. There is no material to show that infact the applicant knew that he was required to make an application to sit at any test so as to qualify himself for being appointed as clerk. Therefore, the ground urged on behalf of the respondents for not considering the case of the applicant does not appear to be ~~proper~~ ~~quite some~~. However, the fact remains that the applicant did not apply nor sit at any test and further that for a promotion to the rank of clerks, the Bill Issuers were to appear at a written test. Therefore, in our opinion, it would be proper to afford an opportunity to the applicant to appear at the required test and if he ~~is~~ succeeds, to consider his case for promotion with effect from the date his immediate juniors were promoted.

5. It is submitted by Mr. Murty that due to loss of the service records of the applicant he has not been allowed pay in the revised scale of pay. We direct that his pay be fixed in the revised scales of pay with effect from 1.1.1986 and the arrears be paid to him within four months hence.

6. This application stands allowed. But there would be no order as to costs.

B.R. PATEL, VICE-CHAIRMAN,

I agree.



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

*Abdul* 22.9.89  
Member (Judicial)

*B.R.P.* 22.9.89  
Vice-Chairman