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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.5 of 1988.

Date of decision : July 27, 1988.

Shri Prasanta Kumar Rath
son of Shri Rabindra Chandra Rath
C/o Shri Banamali Satapathy,
At-Ramachandrapur, P.O.Jatni,
District- Puri.

...

Applicant.

Versus

1. Union of India, represented through the Secretary, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
3. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
4. Divisional Railway Manager, Khurda Road, (S.E.Railway) At-Khurda Road, P.O.Jatni, District-Puri.
5. Divisional Personnel Officer, South Eastern Railway, Khurda Road, At-Khurda Road, P.O. Jatni, District-Puri.

...

Respondents

For the applicant : Mr.D.S.Misra, Advocate.

For the respondents : Mr.R.C.Rath, Standing Counsel
(Railways)

C O R A M :

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

A N D

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

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

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to the competent authority to give an appointment to the applicant as an Engine cleaner.

2. Shortly stated, the case of the applicant is that his father, Shri Rabindra Chandra Rath was serving under the South Eastern Railway as Commercial Inspector and it is said that the applicant's father had retired on 31.12.1984. The applicant applied to the competent authority for giving him an appointment as an Engine Cleaner, on aforesaid grounds. Since no such appointment has yet been issued, the applicant has come up with the present application with the above mentioned prayer.

3. In their counter, the respondents maintained that the applicant had been given a post vide Annexure-R/2 and the applicant did not accept the appointment to the said post and therefore, he has no further right to lay ~~down~~ a claim on the aforesaid ground.

4. In this matter we have heard Mr.D.S.Misra, learned counsel for the applicant and learned Standing Counsel for the Railway Administration, Mr.R.C.Rath at some length. True it is that the applicant had been given an appointment as contained in Annexure-R/2. But Mr.Misra submitted that the applicant had prayed for appointment as an Engine Cleaner and such post not having been given to him the applicant did not accept the offer. We cannot approve this action on the part of the applicant. A person who seeks for an appointment on compassionate ground has no authority to choose a particular

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post. However, keeping in view the matters mentioned in Annexure-3 containing copy of letter No. P/R/LW/CI.IV/Sibs. dated 21st September, 1976 issued from the Office of the Divisional Superintendent, Khurda Road and also keeping in view the matters mentioned in Annexure-R/1 which is a reproduction of letter No. IPO/KUR/ST/ EA dated 12.8.1974 issued from the Office of the Divisional Superintendent, Khurda Road we would say that the competent authority may reconsider the matter and give the applicant an appointment to any post, on compassionate ground, subject to the condition that the applicant is found to be eligible and suitable by the competent authority.

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

leg. assy 27.7.88
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 27, 1988/S. Sarangi.

Recd. 27.7.88
Vice-Chairman

SECTION XIA

SUPREME COURT OF INDIA

D.NO. 582/94/XIA

Dated : 8th July, 1995

From:

Vinod Kumar, B.A., B.G.L.,
Assistant Registrar.

To

The Registrar
Central Administrative Tribunal
Cuttack Bench ~~xx~~ at Cuttack.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 945/95
 (Petition under Article 133 of the Constitution of India for
 Special Leave to Appeal to the Supreme Court from the
 Order dated the 25.11.1993 of the ~~XXXXXX~~
Central Admn. Tribunal ~~xx~~ Cuttack Bench at Cuttack
 in Misc. Application No. 59/93 in O.A. No. 5/1988)

Union of India & Ors.

... Petitioner(s)

Versus

Prasanta Kumar Rath

... Respondent(s)

Sir,

I am to inform you that the Petition above-mentioned
 for Special Leave to Appeal to this Court was filed on behalf
 of the Petitioner above-named from the Order above-noted and
 that the same was listed before the Court on the 1st January
 1995 when the Court was pleased to pass the following Order:-

" Delay condoned.

The direction given by the Tribunal is only
 to re-consider the matter in the facts and circumstances
 of the present case. Such a direction does not require
 any interference. The Special Leave Petition is dismissed."

KD (51)
ASSISTANT REGISTRAR

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Misc. Application No.59 of 1993.
Arising out of O.A.No.5 of 1988.

Date of decision : November 25, 1993.

Prasanta Kumar Rath ...

Applicant.

versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ?
2. Whether it be referred to all the Benches of the Central Administrative Tribunals or not ?

(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

(K. P. ACHARYA)
VICE-CHAIRMAN

25 NOV 93

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Misc. Application No. 59 of 1993.
Arising out of O.A.5 of 1988.

Date of Decision : November 25, 1993.

Prasanta Kumar Rath ... Applicant.
versus
Union of India and others ... Respondents.
For the applicant ... Mr. D. S. Misra, Advocate.
For the respondents ... Mr. R. C. Rath,
Standing Counsel (Railways)

C O R A M:

THE HON'BLE MR. K. P. ACHARYA, VICE-CHAIRMAN,

A N D

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

JUDGMENT

K.P. ACHARYA, V.C., In this miscellaneous application, the applicant, Shri Prasanta Kumar Rath prays for a direction to the respondents to appoint the applicant in a suitable post to which the applicant would be found fit in compliance with the order passed on 27.7.1988 in connection with O.A.No.5 of 1988.

2. Shorn of unnecessary details it would suffice to say that the applicant's father, Shri Rabindra Chandra Rath while serving as Complaint Inspector under the South Eastern Railway, did not join the strike which had taken place in the year 1974. The applicant claims an appointment under the scheme having come into force for giving

appointment ~~of~~ to the legal representatives of such Railway employees under the loyal quota. In our judgment we held that the circulars issued by the Railway Board had fullest application to the case of the applicant, Prasanta Kumar Rath and therefore, if he is found to be eligible and suitable by the competent authority, an appointment should be given to Shri Rath commensurate with his qualification. This judgment not having been implemented, the applicant, Shri Rath has come up with the present miscellaneous application with the aforesaid prayer.

3. We have heard Mr. D. S. Misra, learned counsel for the applicant and Mr. R. C. Rath, learned Standing Counsel (Railways). Mr. Rath contended that the judgment has not been implemented as yet because there was a direction by this Bench that in case the applicant is found to be eligible, his case should be considered for appointment. On a perusal of the provisions contained in the scheme though it has been mentioned that the loyal worker would either get ^{advance} one/ increment or one of his legal representatives should be given appointment, one advance increment having been given to the applicant's father the competent authority found the applicant to be ineligible and therefore, the judgment has not been implemented. To substantiate that an advance increment was given to the applicant's father, Shri Rabindra Chandra Rath, Mr. R. C. Rath, learned Standing Counsel has filed the service book of the applicant's father namely,

✓ Shri Rabindra Chandra Rath in which we have found an

entry which runs thus :

" He was a loyal worker during the illegal
strike of May, 1974.

Sd. Illegible."

Thereafter there is another endorsement to the following effect :

" Pay increased due to D.I.V.I.N.C.vide
O/B.No.P/Strike/Advance increment Pt/74.
31.7.74, pay increased. "

From the above quoted matters stated in the service book we have absolutely no iota of doubt in our mind to say that one advance increment had been given to the applicant's father.

Mr.D.S.Misra submitted that the facts stated in para 6(A) of the original application have not been denied in paragraph 4 of the counter. In such circumstances, we find that there has been an error apparent on the face of record. Even though this is not a review application yet we have treated this misc. application as a review application and we do hereby review our own order to the effect that the applicant was rightly found to be ineligible due to the above circumstances, we further find that the applicant's case was favourably considered and he was given the post of TTE Porter but he did not join. In our judgment passed in O.A.5 of 1988 we did not appreciate this conduct on the part of the applicant. No person has a right to choose a post especially on compassionate grounds. Though we were of this opinion yet in view of the changed circumstances and in view of the fact that appointment

had once been given to the applicant we would commend to the respondents to extend the same compassionate view over the applicant and give him an appointment commensurate with his educational qualification. We would further reiterate that the applicant has no right to choose a particular post which completely lies within the discretion of the employer. We hope and trust no unreasonable delay will occur in the present case.

4. This, this misc. application is accordingly disposed of leaving the parties to bear their own costs.

..... 15th Nov 93
.....
MEMBER (ADM.) 25 NOV 93

Leg. and Dr. P.
25/11/93
VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 25, 1993/Sarangi.