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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO: 180 OF 1989.

Date of decision : 19th November, 1990.

Krushna Chandra Mohapatra : Applicant

Versus

Union of India and others : Respondents

For the applicant : Mr. Biswajit Mohanty,  
Advocate

For the Respondents : Mr. Bijan Pal,

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)

1. Whether reporters of local papers may be allowed to see the judgment ?
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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N.SENGUPTA, MEMBER (J), Briefly stated the case of the applicant is that he was working as Station Master of Dhenkanal Railway Station. In 1982 a Criminal case for offences punishable under Section 5 (i) (c), & (d) was filed against him and ultimately in 1988 he was acquitted. In the promotional channel, the next post above Station Master is Station Superintendent. There was a restructuring of cadres and persons junior to him (the applicant) such as K.M. Sinha, G.K. Murty, I.B. Mazumdar and S.R. Rao, were promoted as Station Superintendents in December, 1983 but were allowed to have their pay fixed with effect from 1.8.1982 in the scale prescribed for the promotional grade. Though he made representations, he was not promoted when his chance for promotion came. He retired on Superannuation on 30.4.1985 and is being paid pension on the basis of the scale of pay for the post of Station Master prior to restructuring, the D.C.R.G. has not been paid. The applicant has prayed for a direction to promote him to the grade of Station Superintendent with effect from 7.12.1983, the date when his juniors were promoted, to direct the respondents to fix his pay in scale of Rs. 700/- to 900/- and to pay him arrears of salary, gratuity and pension accordingly.

2. The respondents in their counter have not disputed any of those above factual allegations of the

*Mr. Sengupta*  
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applicant except stating that the applicant on his acquittal in the Criminal case was notionally promoted from the date his juniors were promoted and his pay has been fixed accordingly and orders passed for payment of D.C.R.G. and pension on the basis of the pay notionally fixed in the promotional scale but ~~not~~ arrears could be paid as the applicant never performed the duties of the promotional post.

3. We have heard Mr. B. Mohanty learned Counsel for the applicant and Mr. B. Pal for the Respondents and perused the papers. The respondents have filed Annexure R/4 to show that the pension previously sanctioned to have been revised and increased on the fixation of the pay of applicant in the higher scale attached to the promotional post and order was also passed for a higher amount as D.C.R.G. The order in R/4 was passed after filing of the application, thus most of the reliefs prayed for by the applicant have in the meantime been granted by the respondents. Thus, it would be seen that the only question <sup>- that -</sup> remains for consideration is as to whether the applicant is entitled to back wages in the scale of pay for the promotional post.

4. Admittedly the applicant was not promoted till he retired on superannuation, the order of his promotion was passed after his retirement, hence there can be no doubt about the applicant <sup>- not -</sup> to have actually

M. S. Rao  
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worked in the promotional post. Mr. Mohanty for the applicant has urged that the applicant had always been ready and willing to shoulder higher responsibilities of the promotional post but the respondents did not pass the requisite order in time. On the other hand it has been contended on behalf of the respondents that so long as the Criminal case was pending no order of promotion could be passed in view of Railway Board's Circular dated 22.11.71 vide Annexure-R/5 and further that unless a person actually holds the promotional post, he cannot draw salary of that post. Annexure-R/5 provides that during the pendency of a prosecution for a Criminal offence, a person should not be promoted, it being a circular of Railway Board amounts to a Government order and is to hold the field in the absence of any other rule, so there is much force in the contention of the learned Counsel for the respondents. It can also be said that the respondents had no hand over the period of pendency of the Criminal case and they took steps for fixation of pay of the applicant within a reasonable time.

5. In view of what has been stated above, the applicant is not entitled to the salary attached to the promotional post of Station Superintendent and the other reliefs asked for by him having been given by the Respondents during the pendency of this application, at present the applicant is not entitled to any relief.

Mr. Sanyal  
19/11/70

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6. The case is accordingly disposed of without costs.

*K. Mohanty* 19.11.90  
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VICE-CHAIRMAN



*M. S. Gupta* 19.11.90  
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MEMBER (JUDICIAL)

Central Administrative Tribunal,  
Cuttack Bench/K.Mohanty.