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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.64 of 1989.

Date of decision : December 19, 1989.

E.K.S.Nair, son of late E.R.K.Nair, P.W.I,  
S.E.Railway, Cuttack, At-Gr.No.F/3,  
Railway Colony, At/P.O./Dist.Cuttack.

... Applicant.

Versus

1. Union of India, through the General  
Manager, S.E.Railway, Garden Reach,  
Calcutta-43.
2. Divisional Railway Manager, S.E.Railway,  
At-Khurda Road, P.O.Jatni, Dist-Puri.
3. Senior Divisional Engineer,  
S.E.Railway, At-Khurda Road,  
P.O.Jatni, Dist.Puri.

... Respondents.

For the applicant ... Mr.G.A.R.Dora, Advocate.

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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J U D G M E N T

N.SENGUPTA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the reliefs prayed for are for quashing the order of appointment of Shri B.C. Kanji Lal as Chief Permanent Way Inspector (C.P.W.I) at Annexure-A/3, to quash the applicant's transfer and appointment as Safety Counsellor at Bhubaneswar (copy of which is at Annexure-A/4), to direct the respondents to allow the applicant to continue as C.P.W.I. in regular manner and further directions to the respondents to pay to the applicant the salary in the scale of pay for the C.P.W.I. with effect from 7.5.1986.

2. The facts alleged by the applicant are that he was initially appointed as Permanent Way Inspector Grade I at Cuttack. During his posting at Cuttack as Grade I, Permanent Way Inspector, the post of Chief Permanent Way Inspector fell vacant on the then incumbent Shri J.K. Sen vacating the post. Thereafter, he was promoted on ad hoc basis in the year 1986 and was posted as the C.P.W.I., Cuttack. Copy of the order of such appointment is Annexure-1 to the petition. This order stipulated a condition that even though he (the applicant) would be functioning as the C.P.W.I., he would get salary in the scale of pay of P.W.I. Grade I. The applicant continued to hold that post and while he was discharging the duties of the C.P.W.I., an order of his transfer to Bhubaneswar as Safety Counsellor which is in the grade of P.W.I. Grade I was made and in his place one Shri B.C. Kanji Lal, then a Grade II P.W.I was asked to officiate as C.P.W.I., Cuttack. Against these orders, he made representations.

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Subsequently, he was asked to appear at a suitability test for the post of C.P.W.I., he appeared and was found suitable. Thereafter, his appointment to officiate in that post was regularised by an order, copy of which is at Annexure-6 dt. 1.2.1989. In the meantime, the transfer order of the applicant to Bhubaneswar as Safety Counsellor has practically been cancelled by the Department as another person has been posted to that post and as another person ( Shri B.C.Kanji Lal) has in the mean time been transferred to Dhenkanal and therefore, the prayers(a), (b) and, as already the order of regular appointment of the applicant on officiating basis has been passed, the prayer(c) have become infructuous.

3. Though the respondents in their counter disputed most of the facts alleged by the applicant, yet after the filing of a rejoinder and with its annexures at present the bone of their contention is about the entitlement of the applicant to draw salary in the scale attached to the post of C.P.W.I. from the date he assumed the charge of that post till his regular promotion under Annexure-A/6.

4. We have heard Mr.G.A.R.Dora, learned counsel for the applicant and Mr.L.Mohapatra, learned Standing Counsel for the Railway Administration. It has become unnecessary on our part to dialo~~de~~ much in view of a recent decision of the Supreme Court, in the case of Smt.P.Grover v. State of Haryana reported in 1983(2) SLR 734. The facts of that case bear some resemblance to the facts of the present case. In that case, the appellant before Their Lordships of the Supreme Court was promoted as

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District Education Officer with effect from July, 1976. In her appointment order it was mentioned that she was not entitled to the pay of that promotional post but she was to draw salary in the scale of pay attached to the post from which she was promoted on an acting basis. In the instant case, in Annexure-A/1 similar condition was incorporated and that is;

" Shri E.K.S.Nair, PWI/Gr.I(IR)/CTC in scale Rs.700-900/(RS) is directed to take over charges from Shri J.K.Sen till a regular Ch.PWI is posted at CTC. Shri Nair will draw his salary in Scale Rs.700-900 (RS) as PWI/Gr.I. "

In the case of P.Grover the Supreme Court considered the contention of the State of Haryana which was based on a rule made by that Government that when there was an express condition for an acting appointment, one was not entitled to higher scale of pay and this contention of State of Haryana was negatived. In paragraph 2 of their judgment the Supreme Court held that Smt. Grover was entitled to be paid the salary of the District Education Officer from the date she was promoted to the post until she retired from service, she had retired from service by the time the case came up before the Supreme Court for consideration. That being so, we have no difficulty in granting prayer(d) of the application and directing the respondents to pay the salary of Chief Permanent Way Inspector to the applicant with effect from the date of initial appointment till regularisation vide Annexure-A/1.

5. This application is accordingly disposed of leaving

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the parties to bear their own costs.

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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



*B.R. Patel*  
.....19.12.89  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
December 19, 1989/Saranghi.