

(9) (8)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 152 of 1990

Date of Decision: 6.11.1992

Murali Srichandan

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.D.S.Mishra
S.Behera,
Advocates

For the respondents

Mr.L.Mohapatra,
Standing Counsel
(Rly.Administration)

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C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR.K.J.RAMAN, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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(10) (B)

JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays for a direction to the opposite parties to hold a trade test of Diesel Engine Driver and after assessing the merit of the petitioner, ~~and~~ to give him promotion with retrospective effect from the date on which his juniors were promoted. Shorn of unnecessary details, it will suffice ~~from~~^{for} the present purpose to state that the petitioner joined as a Khalashi under the South Eastern Railway in the year 1965. In course of time he was put to different posts and ultimately he occupied the post of a Diesel Engine Driver Grade-III and is now functioning as Diesel Engine Driver Grade-II. The grievance of the petitioner is that his juniors though promoted, his case was overlooked and the petitioner has also pleaded malafide against the opposite parties. Hence this application with the aforesaid prayer.

2. In their counter the opposite parties maintain that the petitioner was put to a trade test. He did not turn out successful and therefore the competent authority rightly, did not promote him to the post in question. Hence the case being devoid of merit is liable to be dismissed.

3. We have heard Mr. D. S. Mishra, learned counsel for the petitioner and Mr. L. Mohapatra, learned Standing Counsel.

4. Mr. D. S. Mishra, learned counsel for the petitioner vehemently urged before us that out of malafide motives, the opposite parties have not given the service benefits due to the petitioner by giving him promotion to the post of a Diesel Engine Driver Gr. II. While pleading malafide

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the only ground taken by Mr. Mishra is that previously certain cases were filed by the petitioner before this Bench laying his grievances for which the authorities were annoyed with him and to ventilate their grudge, they deprived the petitioner of his due promotion. Hence the supersession of the petitioner should be quashed and the petitioner should be deemed to have been appointed/promoted to the post of Diesel Engine Driver Grade-II with effect from the date on which his juniors were promoted.

5. On the other hand Mr. L. Mohapatra, on the basis of the law laid down by the Hon'ble Supreme Court in the case of E. P. Royappa v. s. State of Tamil Nadu and others reported in A. I. R. 1974 ^{S. C. Contended} 555 that malafide must always to be proved ^{we} to ^{the} hilt. Mr. Mohapatra further contended that mere filing of certain cases to ventilate one's grievances does not necessarily mean that the opposite parties would have ^{here} made a grudge. This is an unreasonable apprehension on the part of the petitioner. Mr. Mohapatra furthermore submitted that conceding for the sake of argument that it is a reasonable apprehension, then the case of malafide cannot be deemed to have been proved to ^{the hilt} be ~~guilt~~ because apprehension however much reasonable may be, it does not take the place of proof. Therefore the contention of Mr. Mishra, learned counsel for the petitioner is devoid of merit.

6. We have given our anxious consideration to the argument advanced at the Bar. We are in complete agreement ^{lex} with the submission made by Mr. Mohapatra, learned Standing

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that
Standing Counsel/on this account one cannot jump into
a conclusion that there was any malafide motive on the
part of the concerned authorities.

7. Next question arises as to whether the prayer of
the petitioner should be allowed. The admitted position
is that the petitioner did not pass the trade test. This
is mandatory. In the absence of the petitioner having
passed the test, we do not deem it fit and proper to
allow the request of the petitioner to give him promotion
with retrospective effect. Therefore, we find no merit
in this application which stands dismissed leaving the
parties to bear their own costs.

[Signature]

MEMBER (ADMINISTRATIVE)

[Signature]
6-XI-92
VICE-CHAIRMAN



Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 6/11/1992/ B.K.Sahoo