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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.366 of 1990

Cuttack, dated the 4th October, 1994.

V.R.K.K.Nair ...

Applicant.

Versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *no*

7.541.1
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

[Signature]
(D.P.HIREMATH)
VICE-CHAIRMAN.

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CORAM:

THE HON' BLR MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN

A N D

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

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V.R.K.K.Nair, aged about 46 years,
son of late R.Nair, at present working as
Electrical Foreman(Power), Carriage Repair
Workshop, South Eastern Railway, Mancheswar,
Bhubaneswar-5, District-Puri.

... Applicant.

By Advocates .. M/s. Deepak Misra,
R.N. Naik, A. Deo,
B.S. Tripathy, P.P. Panda.

Versus

1. Union of India, represented by the
General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Chief Personnel Officer (M & EL), South
Eastern Railway, Garden Reach, Calcutta-43.
3. Chief Workshop Manager, Carriage Repair
Workshop, South Eastern Railway, Mancheswar,
Bhubaneswar, Dist. Puri.
4. Chief Electrical Engineer,
South Eastern Railway, Garden Reach,
Calcutta-43.

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Respondents.

By Advocate ... Mr. L. Mohapatra
Standing Counsel (Railways).

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O R D E R

D.P.HIREMATH, V.C., Heard both the learned counsel.

2. The applicant who is working as an Electrical

Foreman(Power), Carriage Repair Workshop, South Eastern Railway, Mancheswar has prayed for regularisation of his services from 18.9.1984 in the cadre of Electrical Foreman'A', to grant applicant the seniority in the cadre of Electrical Foreman with effect from 18.9.1984 from which date he started functioning as such. He was appointed as a Lineman in the Office of the DEE(TRT), KGP, South Eastern Railway, Kharagpur from 20.6.1967 and in the year 1976 he was selected for Intermediate Apprentice/ Supervision in the Electrical Department. Thereafter, he was absorbed after training as Electrical Chargeman'B' in the pay scale stated in the petition. Having stated in the application different capacities in which he worked he proceeds to state that he was asked to look after both the Construction and power Maintenance activities at Mancheswar by the office order dated 19.2.1986. Referring to a corrigendum dated 20.11.1984 he states that his promotion to the present cadre became effective from 18.9.1984. This was by the order dated 20.11.1984. Though he was regularised in the post of Electrical'A' from 15.5.1987, he was not called for the selection for the purpose of holding the post and therefore he made a communication with the Chief Personnel Officer (M & EL) to enable him to appear in the test.

The Chief Workshop Manager recommended the case of the applicant to appear in the supplementary selection wherein he mentioned categorically that the applicant had been working on adhoc basis as Electrical Foreman with effect

from 18.9.1984 and that his name should be incorporated. In spite of such recommendation and in spite of the fact that the applicant is a senior person, ^{for the} ~~in~~ examination which was held in the first week of October, 1990, he was not called for the test. The applicant thus has prayed for regularisation of his services with effect from 18.9.1984 itself.

3. The respondents have inter alia contended that the applicant was working as Electrical Foreman from 18.9.1984 against the workcharged post and on abolition of the Construction cadre, had been adjusted against the Revenue cadre of Mancheswar Electrical Branch with effect from 1.1.1990 and therefore, his status from 18.9.1984 till 31.12.1989 cannot be counted towards his seniority. Though he has been absorbed conditionally in the Revenue cadre with effect from 1.1.1990, his services can be utilised in the post provided he is selected in the selection test which would be conducted in future. They also state that persons who are senior to the applicant had appeared in the selection test because they were senior and had been called to take the test. The applicant being junior his turn did not come and as such he was not called for selection. Though the ^{results of} ~~the~~ selection for Electrical Foreman for general service were published on 31.1.1991, the applicant rendered services on adhoc basis against the temporary posts of the Project estimate till 31.12.1989 and this period of service cannot be reckoned for the purpose of seniority. He is also not entitled to appear

in the selection test. They further stated that in usual course selection test will be held for the post of Electrical Foreman and if the applicant's turn comes he would be allowed to appear at the selection test.

Thus, it is the principal contention of the respondents that this promotion with effect from 1.1.1990 was subject to the condition that he should pass in the selection test. Annexure-A has been produced by the respondents which reads to the following effect :


" The following staff of Electrical Branch whose pay and allowances are drawn in construction cadre against estimate NO.914/W/85/Elect. are hereby transferred to work in revenue cadre against the existing vacancies and taking into consideration recent sanction for Electrical (General) group service posts by AGM. This is with effect from 1.1.90."

The name of the applicant appears at serial No.1, having been fitted against one vacant post of SS and allowed to continue as ASS/EF(Adhoc.). This order does not in any way state that his posting in the Revenue cadre was subject to his passing any test. We pointed out to the learned counsel appearing for the respondents to indicate if there is any material to the effect that unless the applicant appears at the selection test, he would not get regular promotion. No such material was available and the very order posting him in the present cadre does not make it subject to his passing any test. On their own showing the respondents have very much stated that he was absorbed ~~in~~ conditionally in the Revenue cadre with effect from 1.1.1990. But there is absolutely nothing to show that this absorption was conditional though he was working


right from 18.9.1984 in the same cadre. It was therefore practically not ^{understandable} ~~reasonable~~ why the applicant should be denied his regularisation in the present cadre from 18.9.1984 itself when we are not made known that unless he passed in the selection test he cannot be considered for that post. If at all it was the sine qua non² to pass any such selection test ^{for being} ~~to be~~ considered for the Revenue cadre, there was no justification for retaining the applicant ^{by absorbing} ~~to absorb~~ him in the said cadre, with effect from 1.1.1990. Admittedly when he has been working with effect from 18.9.1984 ^{should be} and there ~~was~~ no impediment for him to be considered from 18.9.1984 itself. ^{from} ~~A~~ mere contention in the counter that this absorption was conditional and does not in any way help for being considered for regularisation of his service with effect from 18.9.1984. In our view, therefore, the application is to be allowed with a direction that the services of the applicant shall be regularised with effect from 18.9.1984 and accordingly we direct that the services of the applicant be regularised with effect from 18.9.1984 and all consequential service benefits shall be given to him, ^{and} ~~his~~ seniority list, ^{showing his name} in the promotional cadre shall also be prepared within 60 days from the date of receipt of a copy of this order. Make available a copy of this order to the counsel for the applicant as well as respondents.

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4. Accordingly, the Original Application stands
allowed.No costs.


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(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

04 OCT 94


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(D. P. HIREMATH)
VICE-CHAIRMAN.

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