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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 461 OF 1991  
Cuttack, this the 3rd day of April, 1997

Sri R.K.Rao and another .... Applicants

Vrs.

Union of India and others .... Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes.
- 2) Whether it be circulated to all the Benches of the Yes.  
Central Administrative Tribunal or not?

*Tom*  
(K.M. AGARWAL)  
CHAIRMAN

*Somnath Som*  
(S.SOM)  
VICE-CHAIRMAN  
8/4/97

VS  
16

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 461 OF 1991  
Cuttack, this the 3rd day of April, 1997

CORAM:

HONOURABLE SRI JUSTICE K.M.AGARWAL, CHAIRMAN  
AND  
HONOURABLE SRI S.SOM, VICE-CHAIRMAN

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1. Sri R.K.Rao,  
Section Controller,  
Office of the Controller, Khurda Road Division,  
S.E.Railway, At/P.O-Jatni, Dist.Puri
2. Sri V.S.Rao,  
Section Controller,  
Office of the Controller, Khurda Road  
Division, S.E.Railway,  
At/P.O-Jatni, District-Puri        ....        Applicants

-versus-

1. Union of India, represented by the  
General Manager, S.E.Railway,  
Garden Reach, Calcutta.
2. The Divisional Railway Manager,  
S.E.Railway, Khurda Road Division,  
At/P.O: Jatni, Dist.Puri.
3. The Divisional Personnel Officer,  
S.E.Railway, Khurda Road Division,  
At/PO: Jatni, Dist.Puri.
4. Mr.J.B.Das, Deputy Chief Controller,  
Office of the Divisional Railway Manager,  
Khurda Road Division,  
S.E.Railway, At/P.O-Jatni, Dist.Puri.
5. Sri K.N.Sahu, Section Controller,  
Office of the Divisional Railway Manager,  
Khurda Road Division, S.E.Railway,  
At/P.O: Jatni, Dist.Puri.
6. Sri A.Ramesh Kumar, Section Controller,  
Office of the Divisional Railway Manager,  
Khurda Road Division, S.E.Railway,  
At/P.O: Jatni, Dist.Puri        ...        Respondents.

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Advocates for applicants -	M/s C.M.K.Murty & S.Kr.Rath.
Advocates for respondents -	Mr.R.C.Rath (For Respondents 1 to 3)
	Mr.Biswajit Mohanty (For Respondents 4 to 6)
	...

ORDER (ORAL)

HON'BLE SRI JUSTICE K.M.AGARWAL, CHAIRMAN

In this petition under Section 19 of the Administrative Tribunals Act, 1985, the applicants complain of non-consideration of their names for promotion to the post of Deputy Controller.

2. It is not in dispute that the applicants had earlier filed O.A.No.88 of 1989 for more or less similar reliefs, which was dismissed on merits by judgment dated 31.10.1990. A review petition for reviewing the said judgment in O.A.No.88 of 1989 was registered as R.A.No.15 of 1991 and dismissed on merits on 2.4.1997. This petition, therefore, appears to be barred by principle of res judicata, but the learned counsel for the applicants submitted that the respondent nos.5 and 6 in this petition were not parties to the earlier petition. They were junior to them and therefore, they were entitled to be considered for the next higher post by giving them seniority over the respondent nos.5 and 6 in this petition.

3. As would appear from the document filed as Annexure-R/2, dated 13.7.1989, the respondent nos.5 and 6 were direct recruits to the post of Section Controller. The applicants were promoted as Section Controller with effect from 2.6.1988 on ad hoc basis and therefore, in the light

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of the judgment of this Tribunal in O.A.No.88 of 1989, they cannot be treated to be senior to the respondent nos.5 and 6 by treating them to have been appointed on 2.6.1988, i.e., prior to the date of appointment of the respondent nos.5 and 6 to the said post. As would be seen from the document, Annexure-R/1 dated 17.10.1989, the two posts reserved for S.C./S.T. candidates were dereserved by that order and thereafter against the vacancies so created, the applicants were given regular promotion to the post of Section Controller with effect from 13.11.1989, i.e., subsequent to the date of direct recruitment of the respondent nos.5 and 6 to the said post and, therefore, we are of the view that the applicants' claim of seniority over the respondent nos.5 and 6 is misconceived and accordingly liable to be rejected.

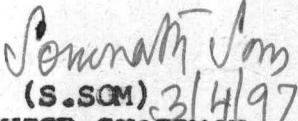
4. It was next submitted that by the order dated 2.6.1988 (Annexure-1), two persons junior to the applicants were given regular appointment to the post of Section Controller whereas the applicants were given ad hoc appointment to the post of Section Controller. Firstly, this fact was considered and if not considered, could be urged by the applicants in their earlier O.A.No.88 of 1989 and therefore, they cannot be allowed to re-agitate the point. Secondly, as would appear from the document filed as Annexure-R4/1, merit list was prepared on the basis of written examination and viva-voce of all eligible candidates. The applicants were not found qualified for the post whereas the two persons said to be junior to the applicant were found qualified after considering and comparing their interse merit-cum-seniority and, therefore, if the two persons junior to the applicants were given regular appointments against the

post of Section Controller on the basis of their eligibility determined pursuant to the test, the applicants cannot be allowed to challenge the same when they were not found so eligible pursuant to the same test conducted by the respondent nos. 1 to 3.

5. For the foregoing reasons, we find no merit in this petition and accordingly it is hereby dismissed, but without any order as to costs.



(K.M. AGARWAL)  
CHAIRMAN

  
(S.SGM) 3/4/97  
VICE-CHAIRMAN

Nayak, PS