

8

15-

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 175 OF 1992.

Cuttack this the 5th day of March, 1998.

SHRI HRUDAYANANDA RATH.

...

APPLICANT.

-Versus-

UNION OF INDIA & 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  
Central Administrative Tribunal or not? *No*

*Somnath Som*  
( SOMNATH SOM )  
VICE- CHAIRMAN

*S.K. Agarwal*  
( S.K. AGARWAL ) 5/3/98  
MEMBER ( JUDICIAL )

9

16

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 175 OF 1992.

Cuttack this the 5th day of March, 1998.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. S.K. AGARWAL, MEMBER(JUDICIAL)

....

Shri Hrudayananda Rath, aged about 57 years,  
Son of late Dr. E.Rath, At-Kanika Road,  
(Near Sun Clinic), Po-Tulsipur, Dist.Cuttack.

.... APPLICANT.

By legal Practitioner :- Mr. A.K.Nanda, Advocate.

-Versus-

1. Union of India represented through the  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta-43.
2. Chief Personnel Officer(Engineering),  
Garden Reach, Calcutta-43.
3. Chief Personnel Officer(Gazetted),  
Garden Reach, Calcutta-43.
4. Principal Chief Engineer(Construction),  
Garden Reach, Calcutta-43.
5. Joint Director, Establishment(Gaz.Prom.),  
Railway Board, Railway Bhawan, New Delhi.
6. Chief Engineer (Construction),  
South Eastern Railway, Cuttack,  
At/Po/Dist.Cuttack.
7. District Engineer(Construction),  
Headquarter, South Eastern Railway,  
Cuttack.
8. T.T.Isac, District Engineer, (Construction),  
Garden Reach, Calcutta-43, West Bengal.

.... RESPONDENTS.

*Sundar*  
5/3/98

By legal Practitioner :- M/s. B.Pal, O.N. Ghosh, Senior  
Standing Counsel (Railways).

.....

O R D E R

MR. S.K. AGARWAL, MEMBER(JUDICIAL):-

This is an application, under section 19 of the Administrative Tribunals Act, 1985.

2. In brief, the facts of this case, as stated by the applicant, are that the applicant is a Diploma Holder in Civil Engineering and was recruited by the Respondents to the Post of Assistant Inspector of Works ( in short A.I.O.W.) in the year 1957 vide appointment letter at Annexure-1. It is stated by the applicant, that although the applicant was given appointment in Works cadre, but he was actually entrusted with the execution work in Bridge cadre. While serving so, the applicant was promoted to the rank of Inspector and was posted as Bridge Inspector (BR) vide order dated 3.10.1963 .The applicant was, thereafter, transferred to different construction projects of the Opposite Parties, but his services, were practically retained for utilising his services in Bridge Works. The applicant made several representations against the wrong counting his services in works cadre but vide order dated 14.2.1991, respondent no2. , rejected the prayer of the applicant on the ground

*S.K. Agarwal*  
5/3/98

that he was initially appointed as A.I.O.W. It is further submitted that Respondent No.2 erroneously promoted Shri P.C.Cherron, T.T.Isac, S.K.Sarkar, S.C.Roy and Sukumar Das, who were originally appointed in works cadre but subsequently brought to Bridge Cadre and regularised there with all benefits of promotion. It is stated that although, he started his career with the Opposite Parties in Bridge cadre, his seniority has been illegally ignored by the Opposite Parties by giving false facts and unsustainable reasons. On receipt of letter dated 14.2.1991, the petitioner submitted a further representation giving the detailed statement of facts as to how the Opposite Party No.3 erroneously overlooked his entitlements and seniority in Bridge Cadre. On receipt of such representation, Respondent No.4 immediately, forwarded the same to the Respondent No.3 for examination and thereafter, the Respondent No.5 recommended the applicant's case for seniority in Bridge Cadre to Respondent No.3 vide DO Letter NO. E(G.P.)91/2/14, dated 23.1.1991. But Respondent No.3, in an arbitrary and illegal manner, has not taken into consideration the case of the applicant to maintain and regularise the services of the applicant in Bridge Cadre and to give seniority and promotion with effect from the dates his juniors i.e. OP No.8 was given such benefits.

11

18

*[Signature]*  
5/3/98

3. Counter was filed by the Respondents. In the Counter, the Respondents have denied the averments made by the applicant, and stated that it is the administrative discretion to utilise the services of the applicant to a particular job/post i.e. either in the Works Section or Bridge Works. The applicant was utilised against a temporary post created in connection with the Bridge Review Works due to exigencies of service. It was stated that the reply to the representation of the applicant, has already been given on 14.2.1991. It is further stated that the applicant filed an application bearing O.A. No. 286/87 before this Tribunal with the prayer to give him proper position in the seniority list in the cadre of Inspector of Works accepting his service in the post or for giving weightage to his post in the cadre. The said Original application No. 286/87 was decided by this Tribunal vide its judgment dated 15.7.92 dismissing the Original Application with the findings that the application has no merit. Subsequently, the applicant, has filed this O.A. before this Tribunal for the same benefits on the ground that the staff of the Bridge Cadre got their promotions earlier than the staff of the Works cadre. Therefore, the applicant is also entitled to such promotion. It is stated that once the applicant

*[Signature]*  
5/3/98

has accepted the seniority in the purported Works Cadre and in view of the judgment of this Tribunal in O.A. No. 236/87, this Original Application, has no merit and is barred under the principle of constructive res-judicata. It is further stated in the counter that persons who have been referred in para-4.6 of the application, they were selected for the post of Bridge Inspector by the Zonal Railway Authority in response to the circular of the District Engineer, Headquarters' Office, S.E. Railway, Cuttack. It is further averred that taking into account the applicant's seniority in the Works cadre, a combined seniority list of Engineering Subordinates in Civil Engineering Department for promotion to the post of Assistant Engineer, Group B against 75% vacancies were made in terms of the Railway Boards' letter No.E(GP)/ 88/2/46, dated 22.12.1988 and at the end, it was submitted that since the applicant's earlier application has been dismissed by this Tribunal on merits and representation of the applicant dated 22.10.90 has been replied through the Railway Board and subsequent representation dated 25.5.91 has also been replied, therefore, this application is not maintainable looking to the facts and circumstances of the case and as such, the applicant is not entitled to any relief sought for by him.

*Amal*  
5/3/58

4. We have heard learned Senior Standing Counsel for the Railways Mr. B.Pal and perused the records.

6. Neither the applicant, nor his counsel was present on the date of hearing. Counsel for the applicant, was also not present on so many occasions earlier also. Therefore, the matter was heard and it was directed on 19.1.1998 that if the learned counsel for the applicant, wants to submit any written submission, he may submit the same by 27.1.1998. But he did not do so.

7. Learned Senior Standing Counsel appearing on behalf of the respondents has argued that the applicant has already filed Original Application No.286/37 praying for giving him proper position in the seniority list in the cadre of Inspector of Works accepting his service in the post and this Tribunal vide its judgment dated 15.7.1992 dismissed the said original application finding the application without any merit and subsequent to that O.A., the applicant, has filed the present Original application claiming the same benefits on the ground that staff of purported ~~Bridge Cadre~~ got their promotion earlier than the staff of works Cadre and the purported Permanent Way Cadre. Therefore, in view of the judgment in OA No.287/87, this application has no merit and is barred by the principle of constructive res-judicata as defined under section 11 of the Civil Procedure

5/3/98

Code.

8. We have given out thoughtful consideration to the submissions of the learned Senior Standing Counsel appearing on behalf of the Respondents. The prayer of the applicant in OA No 287/87 was to quash the seniority list at Annexure-5 and to direct the Respondent No.2 to place the petitioner's position in the seniority list above Shri V.S.N.Raju and Shri P.L.V.Rao and below Shri Balaram Mazumdar with all consequential benefits .But the said O.A. No.287/87 was dismissed as there was no merit in the said Original Application. Now the same applicant, again filed the present O.A. No. 175/92 with the prayer to direct the respondents to maintain and regularise his service in the Bridge Cadre and to give seniority and promotions with effect from the dates his junior i.e. Opposite Party No.8 was given promotion. The representations filed by the applicant on 22.10.90 and 25.5.1991 have already been disposed of by the Respondents and the result of the representations have also been communicated to the Petitioner.

*[Signature]*  
5/3/98


9. On the perusal of the counter and Annexure-4, it appears that the applicant was initially appointed as A.I.O.W. in the Works Cadre. The other staff, referred to by the applicant, in his Original Application, were initially



appointed in Bridge Cadre. The avenues of promotion of Bridge Cadre and Works Cadre are separate. Therefore, accordingly, the staff of the Bridge Cadre got their promotions earlier than that of the staff of the Works Cadre, and permanent Way cadre. On perusal of Annexure-R/1, it also reveals that a combined seniority list of Engineering Subordinate in Civil Engineering Department for promotion to the post of Assistant Engineer, Group B against 75% vacancies were made in terms of the Railway Board's letter No.E(GP)/88/2/46, dated 22.12.1988. It is not disputed that the applicant was in the Works Cadre. As O.A. No.287/87 filed by the applicant, has already been decided by this Tribunal, therefore, on the basis of the similar facts and circumstances the present O.A. is not maintainable in view of the principle of constructive res-judicata.

10. We therefore, reject this Original application leaving the parties to bear their own costs.

  
(SOMNATH SOM)  
VICE-CHAIRMAN

  
( S.K. AGARWAL )  
MEMBER (JUDICIAL)

KNM/CM