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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 210 OF 1992
Cuttack this the 18th day of August, 1999

Gobinda @ Gobinda Patra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to 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
18.8.99

18.8.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO.210 OF 1992
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Govinda @ Govinda Patra, aged about
47 years, son of Budhia @ Late Budhia Patra
at present working as Mason-Grade-III,
Carriage Repair Workshop, S.E.Railway
At/Po: Mancheswar, District: Puri

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Applicant

By the Advocates : M/s.R.N.Naik
A.Deo
B.S.Tripathy

-Versus-

1. Union of India represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta
2. Chief Personnel Officer South Eastern Railway, Garden Reach Calcutta
3. Chief Workshop Manager, Carriage Repair Workshop, S.E.Railway At/Po: Mancheswar, District: Puri
4. Mahendra Palei, Grade-II Mason
5. Yudhisthir Mallik, Grade-II Mason, Sl. Nos. 4 and 5 are both working in the Carriage Repair Workshop, S.E.Railway Mancheswar, District : Puri

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Respondents

By the Advocates : M/s.B.Pal
O.N.Ghosh
(Res. 1 and 2)

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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application filed on 1st May, 1992, claiming seniority in the post of Mason Grade-III with effect from 1.5.1985 and for quashing promotions of Res.4 and 5 to the post of Mason Gr.II and for direction to Res.1 to 3 to give promotion to the applicant as Gr.II Mason with effect from 1.1.1991, it is the case of the applicant that he joined as Khalasi on 24.2.1968 in the S.E.Railway and subsequently transferred to Railway Carriage Repair Workshop at Mancheswar under Res.3. He was promoted to the Skilled Grade-III Mason with effect from 1.5.1985 on adhoc basis after successfully completion of necessary trade test, vide Annexure-2. However, in the seniority-list (Annexure-3) of Grade III Masons published on 12.9.1991, it has been shown that he was promoted to that Grade with effect from 1.1.1991 and his seniority would count from that date. Res. 4 and 5, who are junior to the applicant and joined/appointed in Gr. III Mason subsequent to the applicant were promoted to Gr.II with effect from 1.1.1991 ignoring the entitlement of the applicant for promotion to Grade II Mason. The applicant submitted a representation on 5.10.1991 agitating his grievance, but without any response. This in brief is the case made out in the application.

2. Res. 4 and 5 though noticed, neither entered appearance nor contested.

3. Res. 1 to 3 in their counter have not in general disputed the facts. However, their version is that when the new Carriage Repair Workshop of S.E.Railway was established at Mancheswar, for management of the

Workshop, staff from different Units of the Railways were brought on transfer. Initially a Joint Procedure Order (Annexure-R/1) was published by the Chief personnel Officer in letter dated 22.12.1980 laying down policy for filling up of vacancies by indicating guidelines in regard to status of those staff. It has been made clear that a cut off date would be announced by the Administration subsequently. Thereafter in letter dated 9.11.1987 (Annexure-R/2) a cut off date was fixed as 1.1.1988 from which date this Mancheswar Workshop was taken as an independent Unit of the S.E.Railway havings its own seniority.

4. Prior to 1987, employees brought on transfer from other Units of the S.E.Railway though subjected to trade test were given promotions on adhoc basis with an understanding that final seniority list would be considered only after this Workshop becomes a fulfledged Unit under S.E.Railway. This was indicated in the orders of promotions. In terms of the instructions contained in Chief Personnel Officer's letter under Annexure-R/2, all the staff were given options as to whether they would continue at Mancheswar Workshop as per the guidelines or would go back to their parent Units. Most of the staff gave options and went back to their parent Units. The applicant did not opt to go back and continued in the Workshop. Thus he subjected himself to the formation of new cadre of this Workshop and as such is to be guided by policy decision under Annexures-R/1 and R/2.

5. After this Workshop became a fulfledged Unit of the S.E.Railway, seniority of categories under different Trades were prepared and published on the basis of the

substantive status in their parent Units and their services were regularised in the new seniority Unit with effect from 1.1.1988. The status of officiating/adhoc promotion, though mentioned in the provisional seniority list was not recognised for the purpose of granting seniority to any of the employees as there was no regular seniority list prior to 1.1.1988. After preparation of provisional seniority of the staff they were given liberty to opportunity to represent and point out mistakes, if any, for preparation of final seniority list. Applicant, however, did not represent and made no grievance about it. Hence his provisional seniority was accepted to be final.

6. Revision or appeal by the applicant after lapse of three years in the year 1991 was not maintainable. Reliance has been placed on the decision of the Tribunal in respect of 18 months Rule, wherein it has been laid down that Railway has right to give promotion on adhoc measure and as such promotion would not confer any right on the promotee.

7. Name of Res.4 is not available in their records. As regards Yudhisthir Mallick(Res.5) though joined Railways on 1.5.1970, subsequent to the applicant, but joined as Casual T.Y. Mason, he was promoted to Mason Gr.III on 6.1.1986 not on adhoc basis and as such he was regularised as Skilled Mason Gr.III with effect from 6.1.1986 and accordingly is senior to the applicant.

8. This in substance is the counter of the departmental respondents.

9. We have heard Shri A.Deo, learned counsel for

the applicant so also Shri B.Pal, learned senior counsel appearing for the Railway Administration. Also perused the records.

10. Annexure-2, contents of which have not been denied would clearly establish that the applicant was given promotion as Mason Gr.III on 1.5.1985 on completion of a Trade test. Question arises as to why his seniority as Mason Gr.III would not be counted from 1.5.1985. On this point, during hearing, our attention was invited to a common judgment of this Tribunal delivered in Original Application Nos. 271/89, 388/89 and 431/89 dealing with very same point in regard to seniority of the staff of this newly created Mancheswar Workshop. The then Division Bench, while deciding those cases clearly held that promotion made in the Workshop though on adhoc basis after necessary trade test were regular promotions and accordingly gave necessary direction to the department to prepare the seniority list gradewise as on 1.1.1988. The Department unsuccessfully challenged this judgment before the Hon'ble Supreme Court in S.L.P. no.11695-97/92. Even recently this Bench also disposed of O.A.191/92 on 29.6.1999 agreeing with this view of the earlier Bench. Thus, there is no hesitation for us to hold that since the applicant successfully completed the trade test before his adhoc promotion to Mason Gr.III on 1.5.1985, his seniority as Mason Gr.III has to be taken into account from 1.5.1985. We are aware that the Department raised a point of limitation in this connection. Even there is any delay, the same has to be overlooked because of the decision of the Hon'ble Supreme Court in the case of K.C.Sharma reported in 1998(1) SLJ 54 that the

applications filed by similarly placed persons should not be rejected for bar of limitation.

11. Then comes the question of seniority of the applicant vis-a-vis Res.4 and 5. Res.4, Mahendra Palei, according to counter of the Department is not on their records. Hence, the applicant's prayer as against this respondent is redundant. It is not clear from the application how the applicant was senior to Res.5, Yudhisthir Mallik as Gr.III Mason, because under Annexure-3, provisional seniority list of Khalasis published on 31.12.1987, his name nowhere appears while the name of the applicant is shown under Sl. 23. In other words, by that date Res.5 was no longer in the cadre of Khalasi. In fact Annexure-R/3 is clear that Res.5 entered railway service as Casual T.Y.Mason and got promotion in the Workshop as Mason Gr.III on 6.1.1986, but not on adhoc basis and as such he was regularised as Mason Gr.III with effect from that date. As we already held that the applicant too is entitled to be regularised with effect from the date of his adhoc promotion, i.e. 1.5.1985, he would be naturally senior to Res.5 as Mason Gr.III, but this does not mean that promotion of Res.5 as Mason Gr.II will necessarily have to be quashed, because, such promotion necessitates successful completion of required trade test. There is no averment in the application that the applicant was trade tested for promotion to Gr.II Mason either prior or along with Res.5. Hence prayer for quashing promotions of Res.4 and 5 to the post of Mason Gr.II must fail. So far as promotion of the applicant to the cadre of Gr.II is concerned, it

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is clear from Annexure-R/3 that he is already in the cadre of Mason Gr.II.

12. In the result we direct Respondents 1 to 3 to count seniority of the applicant as Mason Gr.III with effect from 1.5.1985 and treat him as senior to Res.5 in that Grade and give him consequential benefits. Prayer for quashing promotions of Res. 4 and 5 fails.

The Application is allowed in part, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

18.8.99

B.K.SAHOO

18.8.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)