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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.355 OF 1992

Cuttack, this the 30th day of March, 1998

Raghunath Panda

Applicant

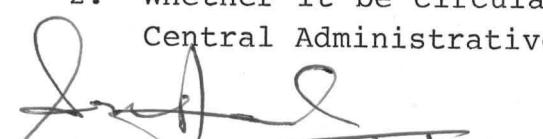
Vrs.

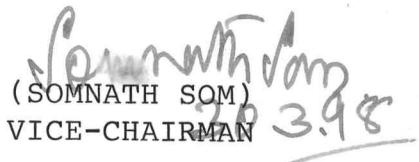
Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes,

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO


(S.K.AGRAWAL) 30/3/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 30/3/98
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

.....

Raghunath Panda,
aged about 36 years
son of Naba Kishore Panda,
Village & P.O-Ada,
Dist.Balasore,PIN-756 134,
at present working as A.S.M.,
Paradeep Railway Station,
South Eastern Railway,
At/PO-Paradeep,Dist.Cuttack Applicant

By the Advocates - M/s R.B.Mohapatra
&
N.J.Singh.

Vrs.

1. Union of India,
represented by the General Manager,
South Eastern Railway,
Garden Reach, Calcutta-43,
West Bengal.
2. Divisional Railway Manager, Khurda Division,
At-Khurda Road,
PO-Jatni,Dist.Puri.
3. Divisional Personnel Officer,
Khurda Division,
South Eastern Railway,
At-Khurda Road, P.O-Jatni,Dist.Puri.
4. Divisional Railway Manager,
Waltair Division, Visakhapatnam,
P.O/Dist.Visakhapatna (AP)
5. Divisional Personnel Officer,
Waltair Division,
At/PO/Dist. Visakhapatnam (AP)
6. Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta-43 (West Bengal)
7. Senior Divisional Operating Superintendent,
Waltair Division, At/PO-Visakhapatnam(A.P)

*Submitted
30.3.98*

8. Senior Divisional Operating Superintendent, Khurda Division, Khurda Road, Dist. Puri.
9. Ananta Charan Lenka, Station Master, Kenduapara Railway Station, P.O-Kenduapara, Dist. Balasore ... Respondents.

By the Advocate - Mr. B. Pal

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to regularise his seniority as Station Master and his scale of pay as Rs.1400-2300/- and accordingly the service and financial benefits should be paid to him.

2. The facts of this case, according to the applicant, are that the applicant was appointed as Assistant Station Master after becoming successful in the examination conducted by the Railway Service Commission. On 11.7.1982 he was appointed as Assistant Station Master and posted as such at Silakzhory Railway Station under Waltair Division. In May 1983 the applicant made a representation to the Divisional Railway Manager, Waltair Division, for his transfer to Khurda Road Division on the ground of his illness as well as his family problems. He sent representations from time to time. Copies of these are at Annexures A/1, A/2, A/3 and A/4. The applicant states that his

*Somnath Som
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case was listed for inter-Divisional transfer and his name was in the priority register against serial no.4, but his case was not considered. Rather the case of one Ananta Charan Lenka (respondent no.9), ^{had} also wanted inter-divisional transfer and who had applied much later than the applicant, was allowed by the departmental authorities. Thereby the applicant lost his seniority over respondent no.9 for no fault of his. Ultimately, vide order dated 15.9.1988 at Annexure-A/5, his transfer from Waltair Division to Khurda Road Division was allowed in the post of Assistant Station Master in the scale of pay of Rs.1200-2040/- The transfer order was subject to certain conditions which have been mentioned in the order itself. This inter alia provided that the petitioner would rank junior most to all permanent officiating and temporary Assistant Station Masters in the scale of pay of Rs.1200-2040/- on being transferred to Khurda Road Division as per this order. Before he could be relieved in order dated 21.9.1988 at Annexure-A/6, the applicant who was still then working as ad hoc Station Master was appointed as Station Master on regular basis on his passing the suitability test. The post of Station Master was in the scale of pay of Rs.1400-2300/- Even though his

*Somnath Jha
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inter-Divisional transfer order was issued on 15.9.1988 he was not transferred. Ultimately the Divisional Railway Manager issued a letter to the applicant on 8.11.1988 when he was working as Station Master, MRBL Station under Waltair Division, requiring him to submit a written declaration in connection with his inter-Divisional transfer. The applicant's case is that in the declaration submitted by him, he specifically mentioned that he was prepared to accept bottom seniority in the category of Station Master in the Khurda Road Division. His point was that had he been transferred while he was Assistant Station Master on his own request, then he would have accepted bottom seniority in the cadre of Assistant Station Masters. But his request was unjustly ignored while the request of respondent no.9 was allowed and in the meantime, the applicant was promoted to the post of Station Master on regular basis and as such, on his reversion, his pay should not have been fixed in the scale of pay of Assistant Station Master. He ultimately came to Khurda Road Division and on 4.2.1991 the Divisional Railway Manager (P), Khurda Road Division, issued an order posting the applicant at Paradeep Railway Station against an existing vacancy of Assistant Station

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Master. In that order it was mentioned that the applicant has been reverted from the post of Station Master to the post of Assistant Station Master as per his own declaration dated 24.11.1988. The applicant's case is that such reversion is illegal. He made several representations, but without any result. That is why he has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the representations of the applicant, vide Annexures A/2 and A/3 have not been received by them. The respondents have also denied that the applicant's name in the Priority Register for inter-Divisional transfer was against serial no.4. They have also stated that the representation of Ananta Charan Lenka (respondent no.9) was received in the year 1983, much prior to the receipt of the representation of the applicant and respondent no.9 was transferred only in the year 1985 and subsequently, the application for inter-Divisional transfer from the petitioner was received. The respondents have also stated that inter-Divisional transfer is not a matter of right and the applicant cannot claim seniority on the ground that his transfer was delayed which fact is also denied by the respondents. The respondents have stated that the applicant has given a declaration as per order at

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Annexure-A/5 that he would rank juniormost to all the permanent officiating and temporary Assistant Station Masters in the scale of pay of Rs.1200-2040/- in the new seniority unit at the Khurda Road Division. A xerox copy of his declaration is at Annexure-R/1. The respondents have stated that the applicant while giving his declaration was aware of the implication of giving such a declaration and now he is estopped from going back on the declaration and asking for the scale of pay and post of Station Master. It is further submitted that inter-Divisional transfer is allowed only at the grade in which direct recruitment is made. It is not allowed in the intermediate grades for protecting the promotional prospects of the lower grades and as such, the question of applicant's inter-Divisional transfer as Station Master does not arise. In view of the above, the respondents have opposed the prayers of the applicant.

4. This O.A. was heard analogously along with O.A.No.495 of 1996. We have heard Shri R.B.Mohapatra, the learned lawyer for the applicant and Shri B.Pal, the learned counsel appearing on behalf of the respondents and have also perused the records.

The learned lawyer for the applicant urged the same

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grounds which have been put forth by him in O.A.No. 495/96. His first point is that the case of the applicant is covered by the decision of the Tribunal in O.A.No. 241/94 in the case of Shri S.N.Bhokta who came on inter-Divisional transfer and joined the lower grade on his own request, but in his case the Tribunal allowed him the higher scale of pay going by a decision of the Hyderabad Bench.

5. The first aspect of the matter is whether the applicant is entitled to the scale of pay of Station Master at Rs.1400-2300/- and the post of Station Master on his transfer to Khurda Road Division. The respondents have pointed out that inter-Divisional transfer in the post of Station Master in the scale of pay of Rs.1400-2300/- is not permitted under the Rules as it is an intermediate grade and there is no element of direct recruitment in that grade. It is also noted that the applicant in his declaration has specifically mentioned that he is willing to be reverted to the grade of Rs.1200-2040/- to go on transfer to Khurda Road Division. In view of this, it is clear that the applicant is not entitled to the scale of pay of Rs.1400-2300/- and the post of Station Master on his

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joining at Khurda Road Division. This prayer of the applicant is, therefore, held to be without any merit and is rejected.

6. The second aspect of the matter is the stage at which his pay was fixed in the scale of pay of Rs.1200-2040/-. The applicant and the respondents have not indicated as to what was his actual pay in the scale of pay of Rs.1400-2300/- when he got reverted. But as he was regularly promoted to the post of Station Master only on 21.9.1988 vide Annexure-A/6, it is reasonable to presume that his actual pay was within the scale of pay of Rs.1200-2040/-. According to Establishment Serial No.50 of 1995 when a Government servant holding a higher post substantively on regular basis seeks transfer from a higher post to a lower post, when the pay drawn in the higher post is less than or equal to maximum of the scale of pay of the lower post, his substantive pay is to be protected. This amendment came into force in 1995 whereas the applicant's transfer took place in 1992. As such prima facie it would seem to appear that the applicant cannot avail of the benefit of this amendment. But this is actually not so because even prior to this amendment, it was provided that if the pay drawn by the transferred official in the original seniority unit in

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the higher grade to which he was promoted on regular basis is higher than or equal to the maximum of scale of pay of the lower post to which he was brought in the new seniority unit, then he would get the maximum of the scale of pay of the lower post. In other words, had the pay of the applicant as Station Master in the Waltair Division been equal to or higher than Rs.2040/-, then he would be entitled to have his pay fixed at the level of Rs.2040/- in the scale of pay of Rs.1200-2040/-. From this, it would logically follow that in case his pay in the higher scale of pay of Rs.1400-2300/- was at a level which is in between in the scale of pay of Rs.1200-2040/-, then his pay drawn in the higher scale of pay of Rs.1400-2300/- should be protected while fixing his pay in the lower pay scale of Rs.1200-2040/-. As earlier noted, there has been no pleading of either side in this case as to what pay the applicant was drawing as Station Master to which post he was promoted on regular basis in Waltair Division and at what level his pay was fixed in the scale of pay of Rs.1200-2040/- at Khurda Road Division. In view of this, we order that in case the applicant was getting a pay in the scale of Rs.1400-2300/- in Waltair Division,

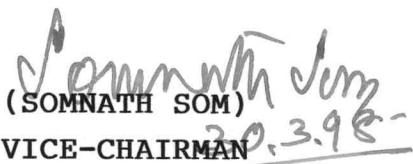
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which is within the range of Rs.1200-2040/- prior to his transfer to Khurda Road Division, then while fixing his pay in the scale of Rs.1200-2040/- at Khurda Road Division, the pay drawn by him in the Waltair Division should be protected. This exercise should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order and the arrears, if any, should be paid to him within 30 (thirty) days thereafter.

7. In the result, therefore, the application is allowed in part, but, under the circumstances, without any order as to costs.



(S.K.AGRAWAL) 30/3/98
MEMBER (JUDICIAL)



(SOMNATH SOM) 30.3.98
VICE-CHAIRMAN

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