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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 399 OF 1992.

Cuttack, this the 26th day of July, 1999.

Bhikari Charan Behera & Others. Applicants.

- 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.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.7.99

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 399 OF 1992.
Cuttack, this the 26th day of July, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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1. Shri Bhikari Charan Behera, aged about 43 years, S/o. late Bhima Charan Behera, Vill. Khapuripada, PS. Bhandaripokhari, Dist. Balasore.
2. Durga Charan Prusty, aged about 43 years, S/o. Athani Prusty, At. Nadhara, Ps. Motanga, Dist. Dhenkanal.
3. Godabarispahad Singh, aged about 43 years, S/o. Prahallad Pahad Singh, At. Kantabania, PO. Gadasanpat, PS. Kanas, Dist. Puri.

.... APPLICANTS.

By legal Practitioner: M/s. A. K. Mohapatra, K. N. Parida, S. Sahoo, M. Mishra, Advocates.

- VERSUS -

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. The Divisional Railway Manager, SE Railway, Khurda Road Division, Jatni, Dist. Khurda.
3. The Chief Engineer (Construction) SE Rly., Cuttack, At/Po/Dist. Cuttack.
4. The Deputy Chief Engineer (Construction), SE Railway, Cuttack, At/Po/Dist. Cuttack.
5. The District Engineer, Regardering, SE Rly., Cuttack, At/Po/Dist. Cuttack.
6. The Assistant Personnel Officer (Construction), S. E. Railway, Cuttack, At/Po/Dist. Cuttack.
7. Sri Parama Saha, S/o. Damani Saha,
8. Sri N. Manyan Nadar, S/o. P. Kunji.
9. Sri Budhia Swain, S/o. Uchhab Swain,
10. Sri Narayan Barik, S/o. Sukuta Barik.

S. J. M

11. Sri Purna Mishra, S/o. Pravakar Mishra,
12. Sri Balaram Das, S/o. Bipra Chandra Das,
13. Sri Srihari, S/o. Charan,
14. Sri C. Rajan, S/o. Padmanarayan,
15. Sk. Serali, S/o. Sk. Jerali,
16. Sridhar, S/o. Chakradhar,

Respondents 7 to 16 are of DSK, Regardering,
SE Railway, Cuttack, At/Po/Dist. Cuttack.

.... RESPONDENTS.

By legal practitioner: Mr. Bijay Pal, & Mr. O. N. Ghosh,
Senior Counsel (Railways).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, three applicants, who have been permitted to pursue this application jointly have prayed for a direction to the Departmental Respondents to regularise the applicants in the regular establishment and to fix their seniority above Respondents 6 to 11. The second prayer of the applicants is that promotion of the persons who are juniors to applicants, may be declared illegal and Departmental Respondents may be directed to give promotion to applicants in order of their seniority.

S. Som.

2. The case of Applicants are that they were originally appointed as Khalasis from 5-12-1972 under the Respondents 3 to 6. They continued as such, from 5-12-1972 to 23-2-1974 without any break. Even though, they were appointed as Khalasis,

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they were attached to the office, in view of their efficiency. Applicants were promoted and posted as Storeman, which is a semi-skilled post with higher pay and they continued as such from 24-2-1974 to 23-12-1980 without any break. On 24-12-1980, they were promoted as Skilled Mistry and continued as such with higher pay from 24-12-1980 to 22-11-1982. without affording them any opportunity, Respondents 3 to 6, arbitrarily redesignated applicants as Serang from 22-11-1982 in Office Order No. 106, of 1982 and applicants have been continuing as Serang from 22-11-1982 till date. Applicants have stated that even though, they have worked continuous for 19 years, their services have not been regularised. It is further stated that no seniority list of applicants as well as other co-workers have been maintained and promotional benefits have been allowed arbitrarily following a policy of pick and choose. It is further stated that though applicants have been shown as Serang, they actually did the clerical work relating to stores. They have filed representation on 4-7-1991 and 25-3-1992 but without any result. It is further stated that even though applicants are senior, Respondents 1 to 6 have ignored the case of applicants and have given promotion to Respondents 11 & 12 to the Grade II in order dated 4-5-1992. In the context of the above facts, applicants have come up with the prayers referred to earlier.

J. J. K.M.

3. Departmental Respondents, have filed counter on 22-7-1993. On 1-3-1999, when the matter was taken up for hearing, it was noticed that there are typographical errors in

the counter and one of the Annexures referred to in the counter, has not been annexed nor copy thereof has been served on the learned counsel for applicants. In view of the above, learned Senior Counsel appearing for Respondents, wanted one week time to file correct copy of counter with all Annexures after serving copy on the other side. This was allowed and corrected copy of counter has been filed.

4. Respondents, in their counter have stated that applicants 1 and 2 were employed originally as daily rated casual Khalasis w.e.f. 5-12-1972 and applicant No. 3 was appointed as Casual Khalasi from 4-8-1972. They were engaged in the Store Department for issue and staking of Railway materials. Some posts of semi-skilled Storeman were created due to exigencies of work and applicants were given promotion to the posts of semi-skilled Storeman w.e.f. 24-2-1974. Again due to exigencies of work, some posts of Skilled Gr.III (Mistry) were created and applicants 1 and 3 were promoted to Skilled Grade III (Mistry) w.e.f. 24-12-1980. Applicants were working under the Construction organisation and when the need for work was over, some posts of Skilled Grade-III (Mistry) ceased to exist. Therefore, these posts were surrendered and applicants became surplus. Instead of reverting them, they were engaged as Serangon their prayer and with their full consent and they continued to be employed in the same scale of pay and grade. Departmental Respondents have further stated that applicants, have since been absorbed in regular cadre of Railways in Gr.D posts against sanctioned strength of PCR posts w.e.f. 1.4.1984 in office order dated 16.7.92 (Annexure-R/1). Their names find place at Sl. Nos. 151, 145

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and 95 respectively for applicants 1, 2 and 3. They have been given protection of pay and grade but their appointment in the regular cadre of Railways starts from their date of absorption in such posts and the date of absorption of each of them are shown in order at Annexure-R/1. Departmental Respondents have stated that till 16.7.1992, the date of the order at Annexure-R/1, applicants have no legitimate claim for absorption in regular cadre of Railways as they worked as Casual Khalasis. Casual Labourers can not be given promotion but persons who are employed as Casual Labourers are given a protection of their emoluments by granting definite scale of pay to them. It is further stated that in accordance with the orders of the Honourable Supreme Court of India, regarding absorption of Casual Labourers in regular establishment, Respondents are maintaining a list of Casual Labourers, according to the number of days, they have put in as Casual Labourer and as and when there is vacancy in the regular cadre of Railways, the Casual Labourers in accordance with their seniority in the above list i.e. length of their employment are screened to test the suitability and they are appointed to the regular cadre. Thus, only senior-most persons, according to the vacancies available in the regular cadre, are appointed. Departmental Respondents have also stated that this seniority list is maintained category-wise. A copy of seniority list has been attached as at Annexure-R/2 so far as the relevant parts dealing with applicants and Private Respondents are concerned. Respondents have stated that the seniority list was notified amongst the staff and they were advised to submit representa-

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tion in writing, if they have any grievance about their seniority within fifteen days from the date of publication of the list. But no representations were received from applicants during the period or thereafter and seniority list has been treated as final so far as applicants are concerned. Departmental Respondents have further stated that Private Respondents 11 and 12 belong to a different seniority group and as such, they were absorbed in the regular cadre earlier than applicants because in that seniority group, there was no other persons senior to Respondents 11 and 12. It is further stated that Respondents 11 and 12 are in category of skilled Storeman, whereas applicants were employed as Skilled Serang and these two are different seniority units. Departmental Respondents have stated that applicants being Junior in their category, they could only be absorbed in the regular cadre w.e.f. 16-7-1992 and not earlier. As regards promotion of persons who are junior to applicants, Departmental Respondents have pointed out that those persons are of other seniority unit and therefore, they can not be taken to be junior to Applicants. They are being promoted strictly on the basis of their seniority in that seniority unit. On the above grounds, Respondents have opposed the prayers of applicants.

5. We have heard Mr. A. K. Mohapatra, learned counsel for Applicants and Mr. Bijoy Pal, learned Senior Counsel appearing for the Departmental Respondents. Private Respondents were issued with notice but they did not appear nor did they file any counter.

6. Before going to different prayers made by applicants, it has to be noted that applicants have stated that without giving them any opportunity, they were absorbed as Serang

w.e.f. 22-11-1982. Departmental Respondents, on the other hand have averred that as applicants were working as casual labourers in the construction organisation, with the completion of work, posts were abolished and applicants became surplus. Thereafter, they prayed for getting absorption as Serangs and with their full consent, they were absorbed as Serangs. This averments in the counter has not been denied by Applicants and must therefore be accepted by us. The second aspect of the matter is regarding seniority. Departmental Respondents have stated that they had circulated the seniority list and called for objection within fifteen days but no objections were filed by these applicants and therefore, the seniority list has become final. This submission has also gone unchallenged by applicants and must be accepted. We have also gone through the relevant portions of the seniority list which is at Annexure - R/1 and we find that this seniority list has been maintained category-wise. For example even amongst Serangs themselves, there is a list of Serangs (highly skilled Gr.II) and Mistry (Serangs' skilled). Applicants name find place in the seniority list of Serangs skilled. Similarly, there are separate Seniority list for Head Serangs/Skilled, Gr.I, Serangs Highly skilled Gr.II, Mistry, Highly skilled Gr.II and various other categories. In their own category of Mistry/Serang, Skilled, applicant No. 3 has been shown as seniormost against Sl. No. 162 and applicants 1 and 2 have been shown against Sl. Nos. 166 and 165. Applicants not having represented against the seniority list, they can not raise any question on the seniority, in this O.A. Having said the above, it is necessary to go by the prayers made by the

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Applicants in this Original Application. Their first prayer is for a direction to regularise their services in the regular establishment. This has already been done in order dated 16-7-1992, at Annexure-R/1. Applicants have been absorbed in the regular establishment against Permanent Construction Reserved Posts. This prayer has therefore, become infructuous. Respondents have stated that applicants have been absorbed strictly in order of their seniority. Respondents have, however, wrongly stated that their seniority in the regular establishment will be counted from 16.7.1992 i.e. from the date of the order. But going through this order, at Annexure-R/1, we find that Col. No.5 of the order indicates the date of absorption in PCR posts and for the three applicants, the date of absorption in regular establishment is 1.4.1984. Therefore, their seniority in the regular establishment would be counted from 1.4.84 and not from 16.7.1992 i.e. the date of issue of the order. Respondents have submitted that while absorbing them in the regular establishment, pay protections have been given not to applicants, and therefore, it is necessary to pass any order with regard to allowing financial benefits to them on their absorption, in regular establishment. With regard to other prayers of applicants regarding giving them promotion and for quashing promotions of their juniors, Respondents have stated in their counter that amongst the private Respondents, Respondents 11 and 12 have been promoted to Skilled Storeman because they were seniormost in that seniority unit and applicants being another seniority list/unit, can not claim promotion to next higher posts from the date private respondents 11 and 12 have been given promotion. This contention, is, therefore

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held to be without any merit and is rejected. The third prayer is regarding correct fixation of seniority which we have already dealt with.

7. In the result, while rejecting this original Application for having become infructuous, we direct, the Departmental Respondents that applicants seniority in the regular establishment should be counted from the deemed date of their absorption in the Permanent Construction Reserved posts as mentioned in order at Annexure-R/1. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.

Somnath Som
26/7/99