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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 479 OF 1992
Cuttack this the 29th day of July, 1999
Done,

K.C.Nayak & others

Applicants

-Versus-

Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or nor ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.6.99

29.6.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)



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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.479 OF 1992
Cuttack this the 29th day of July, 1999
Done,

CORAM:

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

...

1. Kanhu Charan Nayak,
S/o. Kanduri Charan Nayak
(TLF Gr.II)
2. K.Kodanda Dora,
S/o. J.Ramamurty Dora
(TLF Gr.II)
3. R.Panigrahi,
S/o. Ramakrushna Panigrahi
(TLF Gr.II)

All are working in the office of the Chief
Workshop Manager, Carriage Repair Workshop,
S.E.Railway, Mancheswar, PO Bhubaneswar-5,
Dist:Puri

By the Advocates: ... Applicants
-Versus- M/s.G.A.R.Dora
V.Narasingh

1. Union of India through
the General Manager,
S.E.Railway, Garden Reach,
Calcutta-43
2. Chief Workshop Manager,
Carriage Repair Workshop, S.E.Railway,
Mancheswar, PO: Bhubaneswar-5, Dist:Puri
3. K.L. Jena
4. T.K.Debta
5. N.C.Sethy

(Respondents 3 to 5 all are working as
Electrician-cum-Fitter Gr.I, Office of the
Chief Workshop Manager, Carriage Repair
Workshop, S.E.Railway, Mancheswar, PO:
Bhubaneswar,
District : Puri)

By the Advocates: ... Respondents
Mr.Ashok Mohanty
(Res.1 and 2)
Mr.B.K.Routy
(Res.3 to 5)



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ORDER

MR.G.NARASIMHAM, MEMBER(J): In this application filed on 10.9.1992, three employees serving in the Office of Chief Workshop Manager, S.E.Railway, Mancheswar, prayer has been made for quashing Gr.I promotion ~~ordered~~ to Res. 3 to 5 by order dated 9.4.1992 under Annexure-A/3 and for direction on the Department-respondents 1 and 2 to promote the applicants from the date Respondents 3 to 5 were promoted to Gr.I with consequential benefits.

The three applicants, vi., Kanhu Charan Nayak, J.Kodanda Dora and R.Panigrahi are Gr.II employees. Applicant No.1, Kanhu Charan Nayak joined as Khalasi-Helper on 26.4.1984 in the Workshop. He was promoted to Gr.III (TLF) on adhoc basis on 31.8.1984. Applicant No.2, J.Kodanda Dora joined in the Workshop as Helper on 21.12.1984 and was promoted to Gr.III(TLF) on adhoc basis on 17.5.1985. Applicant No.3, R.Panigrahi joined in the Workshop as Khalasi-Helper on 27.4.1985 and was promoted to Grade. III(TLF) on adhoc basis on 15.7.1987. It is claimed by the applicants that they have passed the test held on 22.8.1985 for the purpose of regularisation. It is their further case that on 22.8.1987 they appeared at the Gr.II test for regularisation. However, the authorities in letter dated 27.4.1988 cancelled all the suitability and trace test, upto 31.12.1987. In the seniority list (neither dated nor enclosed) positions occupied by the applicants after promotion were not communicated. Accordingly the applicants with many other preferred Original Application No.180/88 for quashing cancellation order and for



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direction to treat the applicant as a regular staff in Mancheswar in Gr.II posts with consequential benefits. By judgment dated 6.4.1990 (Annexure-R/2) this Tribunal held that the cancellation of the test already held was not tenable in law and that applicants must be given the benefits of their promotion according to availability of posts in the Grades to which they have been promoted, which of course would be subject to the seniority of any other person who may join subsequently and so officiating previously in a higher Grade. Thereafter Res.3 to 5 have been promoted to Gr.I by order dated 9.4.1992(Annexure-A/3). The applicants represented on 30.4.1992 protesting promotion of Res.3 to 5(Annexure-A/4), but without any success.

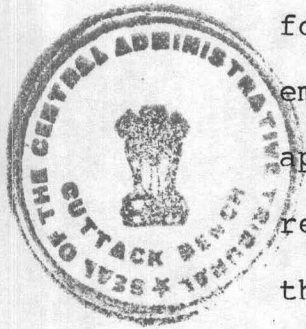
These are the facts in brief as mentioned in the Original Application under Section 19 of the Administrative Tribunals Act, 1985.

These facts by themselves are not at all clear as to the respective seniority of applicants vis-a-vis Res. 3 to 5. In other words there is no mention in the pleading that Res.3 to 5 are juniors to the applicants in Gr.II, barring a sentence in para-5(2) that Res.3 to 5 joined Grade III posts long after the ^{applicants} judgment, without mention of date.

2. The Department respondents in their counter dated 4.2.1993 take the stand that Res. 3 to 5 are direct recruits to Skilled Grade-III Artisans in the Scale of Rs.950-1150/-, where as the applicants were recruited to the post of Khalasis-Helpers. Thus Res.3 to 5 were appointed to Grade-III on 6.9.1984, 11.191984 and

24.9.1984, respectively and as such seniors to the applicants in the substantive rank of Skilled Grade III Artisans. It is the further case of the Department that pursuant to judgment in Original Application No.180/88, a combined seniority list was published on 3.5.1991 and applicants were shown in the correct seniority position in the said seniority list (Annexure-1).


At this stage, we may observe that this counter has been filed without any Index as required under the rules and no such seniority list as marked as Annexure-1 has been annexed nor any document in this regard has been annexed to the counter. This was even pointed out by the applicants in their rejoinder filed on 7.4.1993. In that rejoinder it has been mentioned that this seniority list dated 3.5.1991 has been annexed as Annexure-A/7, but a perusal of Annexure-A/7 to rejoinder, shows that it consists of only two sheets, the first sheet being forwarding memo and the second consisting of list of 13 employees and out of these 13 employees only names of applicant Nos. 1 and 3 find place. However, in the relevant portion of the counter, it has been mentioned that in this seniority list dated 3.5.1991, names of Res.3 to 5 find place at Sl.21, 28 and 70 respectively as Skilled Artisans of the Electrical Department in grade Rs.950-1150/-, whereas name of applicant No.2 is placed under Sl. No.163 of the said seniority list. Applicant Nos. 1 and 3, according to Department, are placed under Sl. 7 and 1 of the seniority list of Khalasis-Helpers in the scale of Rs.800-1150/-. On the basis of these averments, the Department claim that Res.3 to 5 are



seniors to the applicant. These specific averments shine the counter in regard to position of Res.3 to 5 in the seniority list have not been specifically denied by the applicants in the rejoinder.

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Thereafter the applicants preferred Misc.Application No.237/92 in April, 1993(immediately after filing of rejoinder) praying for amendment of the pleadings to include another prayer for issuing direction to Department to show the applicants' position in the seniority list as regular Skilled Gr.III with effect from 31.8.1984, 15.7.1985 and 15.7.1985 respectively, by avering that applicant No.1, viz., K.C.Naik was promoted to Skilled Gr.III on adhoc basis on 31.8.1984 and other two applicants on 15.7.1985 and that they passed the regularisation test held on 20.10.1986 and as such, as per the decision of the Apex Court and the Principal Bench, regularisation should relate back to the dates of adhoc promotion. This prayer for amendment was allowed on 17.5.1993 and consolidated petition was ordered to be filed. But no such consolidated application showing amendment has been filed and formed part of the record. Hence the amendment allowed needs to be ignored.



However, at the time of arguments Shri G.A.R.Dora, learned counsel for the applicants confined his prayer only to the following points: as indicated in order dated 9.11.1998, i.e. the date of hearing.

- a) In the seniority list to be prepared by the Departmental authorities, the dates of promotion of the applicants to Skilled Gr.III, as per the dates indicated by the departmental respondents themselves in the counter should be indicated.
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b) The Department having themselves admitted in the counter that for promotion to Gr.II, a Trade test was held on 20.10.1986, and result of the same has not been published. This Tribunal in O.A. 179/88 had directed the authorities to publish the result and that in pursuance of this order, result of the test held on 20.10.1986 should be published and the position of the three applicants and Res.3 to 5 in Grade III should be determined on the basis of the result of the test.

3. Respondents 3 to 5, though not participated in the hearing of the case, have filed counter claiming their seniority over the applicants.

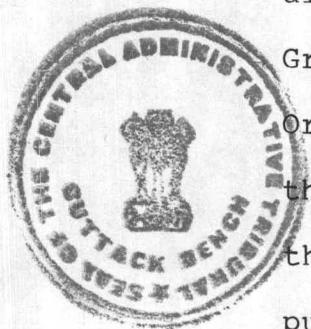
4. We have heard Shri G.A.R.Dora, learned counsel for the applicants and Shri Ashok Mohanty, learned senior counsel appearing for the Department-respondents. Also perused the records, ~~So~~ also the records of O.A.Nos.179/88 and 180/88.

Narration of the facts as above would give indication that the applicants have given a go bye to their original relief prayed ~~for~~ in the application under Section 19 of the A.T.Act and introduced new reliefs through oral submissions at the time of regular hearing which is not permissible under law. Even the original relief and the oral reliefs pressed at the time of hearing cannot be simultaneously considered in view of bar under Rule-10 of the C.A.T.(Procedure) Rules, 1987 in regard to **Plural Remedies**, because the oral reliefs mentioned at the time of hearing are nowhere consequential to the main reliefs under Section 19 of the A.T.Act. Further ^{on} / perusal of records of O.A.179/88 (reference made by the learned counsel for the applicant during hearing) it appears that facts of that case do not ^{at} / all find mentioned either in the ^{present} O.A. or in



the application for amendment or in the counter. ^{Even} We do not come across any mention of date 20.10.1986 with regard to holding of Trade test and the direction of the judgment to publish the ^{result} ~~result~~ of that test. More over, question of holding and publishing of that Trade test would not arise in O.A.179/88 as it deals with the controversy centring around seniority of Junior Clerks on promotion to cadre of Sr.Clerks and that in the clerical cadre no trade ^{test} as such is conducted. Hence, this oral submission can safely be ignored.

5. The main relief in the Original Application is for quashing promotions of Res.3 to 5 under Annexure-A/3 dated 9.4.1992 to Gr.I and consequently for issue of direction on the Department to promote the applicants to Gr.I from that date. We have already mentioned that Original Application is conspicuously silent as to how the applicants are senior in Gr.II to Res.3 to 5 and in their respective positions in the seniority list, if any, published. It is only in the counter there has been a mention of seniority list dated 3.5.1991 which has not even been annexed to the counter. Nonetheless, the applicants in the rejoinder admit publication of that seniority list dated 3.5.1991, but without any mention as to the respective positions of Res.3 to 5 vis-a-vis applicants. Even though in the counter it has been specifically averred that Res.3 to 5 are seniors to the applicants as per the list and on the basis their seniority they were given promotion to Gr.I in the posts available. Hence unless there is a prayer to quash the seniority list, question of quashing promotion of Res.3 to 5 does not at all arise. Admittedly there no such prayer



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in the Original Application. This seniority list was published on 3.5.1991. It is not the case of the applicants that they represented to the department protesting this seniority list and claimed their seniority over Res. 3 to 5. It is only after Res.3 to 5 were given promotion, they represented on 30.4.1992 under Annexure-A/4 challenging their promotions. In other words, it is clear that after the publication of seniority list dated 3.5.1991, the applicants have not made any representation for correction of the said seniority list claiming their seniority over Res.3 to 5. Thus the applicants having not approached the Tribunal for quashing the seniority list dated 3.5.1991 within one year of its publication, their prayer in this application filed on 10.10.1992 simply for quashing promotion of Res.3 to 5, indirectly claiming seniority over Res.3 to 5 is not maintainable.

6. In the result, the application is without any merit and the same is dismissed, but without any order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
29.6.99
 B.K.SAHOO



29.6.99
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)