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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.38 OF 1992

Cuttack, this the 18th day of September, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI A.K.MISRA, MEMBER(JUDICIAL)

....

Shri Baikuntha Nath Jena,
aged about 56 years,
son of K.C.Jena,
At-Sarasada,
PO-Sidhewarpur, P.S-Govindpur,
District-Cuttack

Applicant.

Advocates for applicant -

M/s R.N.Naik,
A.Deo, B.S.Tripathy
P.Panda.

Vrs.

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Divisional Superintendent, South Eastrn Railway, Khurda Road, Dist.Puri.
3. Divisional Personnel Officer, South Eastern Railway, KhurdaRoad, Dist.Puri.
4. Divisional Mechanical Engineer, South Eastern Railway, Khurda Road, Dist.Puri.
5. Loco Shed, South Eastern Railway, Bhadrak, At/PO-Charampa, Dist.Balasore.
6. Shri K.Ch. Ranasingh

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7. N.Appa Rao
8. P.N.Rao
9. K.V.Rao
10. S.S.Narayana

Sls. 6 to 10 are working as Passenger Driver (Driver Grade-A),

Office of the District Mechanical Engineer,
South Eastern Railway, Khurda Road,
Dist. Puri.

11. Shri L.Sethi-II,
at present working as Passenger Driver
(Driver Grade-A), Office of the
Loco Shed, Bhadrak, P.O-Charampa, District-Balasore
...Respondents

Advocate for respondents -

Shri R.Ch.Rath
(For Respts.1 to 4)

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 quashing the order dated 13.1.1992 (Annexure-1) in which adhoc arrangements have been made provisionally allowing five Goods Drivers and one Senior Goods Driver to work as Passenger Drivers at Khurda Road and Bhadrak. There is also a prayer to regularise the applicant in the post of Driver Grade-A and not to revert him from his present post and to pay him salary as per entitlement on the basis of his working as officiating Driver Grade-A from 30.7.1991.

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2. Before dealing with the facts of this case, it is seen that in order dated 17.8.1992 direction was issued to the respondents, after hearing the learned counsels for both sides, to pay the emoluments to the applicant as per his

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entitlement and therefore, this part of the prayer of the applicant has already been allowed. It further appears from the order dated 15.10.1992 that on 14.8.1992 the applicant has already been promoted to the post of Driver Grade-A. The applicant's grievance in MA No.428/92 was that the departmental authorities were insisting upon the applicant to appear at a test scheduled to be held on 16.10.1992. It was contended by the learned lawyer for the applicant that the applicant had already passed the test. The Tribunal noted that this was a disputed question of fact and in consideration of that a direction was issued that the applicant might appear at the test scheduled to be held on 16.10.1992, but his result should not be declared until further orders. It was also noted that in case the applicant did not appear at the test on 16.10.1992, then the same would be at his own risk. Before going into the prayers of the applicant, the facts of this case can be briefly stated.

3. Shorn of unnecessary details, the applicant's case is that he joined the Railways as a Shed Khalasi on 12.6.1956 and in the year 1979 he was given the post of Driver, Grade-C. On 30.7.1981 he was allowed to work as officiating Driver, Grade-A, but no order to that effect was communicated to him, and according to the applicant, he was working as Driver, Grade-A till the date of filing of the application. The applicant's grievance is that in order dated

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13.1.1992 (Annexure-1) certain other persons who, according to the applicant, are junior to him have been allowed to work as Passenger Drivers, i.e. Driver, Grade-A, ignoring his case. Because of the above, he has come up with the prayer for quashing Annexure-1 and for regularising him in the post of Driver, Grade-A on promotional basis.

4. Respondents in their counter have traversed a wide ground. It is only necessary to note the submission of the respondents that one M. Maheswar Rao, Passenger Driver (Driver, Grade-A) at Bhadrak, took voluntary retirement with effect from 30.7.1991. As it was an unforeseen vacancy, it was not possible for the respondents to fill up the vacancy in time. At that time, the applicant was the seniormost Goods Driver available at Bhadrak and in the interest of passenger link service, the applicant was utilised from 30.7.1991 temporarily as Passenger Driver. For this work, he has been given higher rate of running allowance from 30.7.1991 to 20.1.1992. His working as a Passenger Driver was not on promotion and not even on an adhoc arrangement. Prior to this, in 1988, the applicant along with others was promoted as Driver, Grade-A, i.e. Passenger Driver, on ad hoc basis and posted to Khurda Road, but the applicant did not accept the ad hoc promotion. A notice was issued by the Railway Administration directing the applicant and others who were given ad hoc promotion along with him to join their new postings within seven days and they were told that otherwise

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they would be debarred for promotion for one year and their juniors would be promoted. In compliance of the said notice, the applicant along with others submitted that they must be retained at Bhadrak. As the applicant did not join his promotional posting on ad hoc basis, some of his juniors were promoted on ad hoc basis vide Annexure-1. From Annexure-R/4 it is seen that the applicant was given ad hoc promotion to the post of Passenger Driver in order dated 25.8.1988 along with others. Out of eleven persons, five including the applicant did not join in spite of passage of more than one year. Thereafter on 19.10.1989, vide Annexure-R/5, a notice was issued asking them to join within seven days and it was made clear that they would be debarred for promotion for one year if they did not join. As they did not join, the respondents had no/ ^{other} alternative but to promote their juniors in order at Annexure-1.

5. We have heard the learned lawyer for the applicant and the learned counsel appearing on behalf of the respondents and have also perused the records.

6. As the applicant himself had earlier refused his ad hoc promotion, the respondents have rightly promoted his juniors on ad hoc basis in the interest of running the passenger trains and such arrangement made by the respondents cannot be found fault with and therefore, this prayer of the applicant is held to be without any merit and is rejected.

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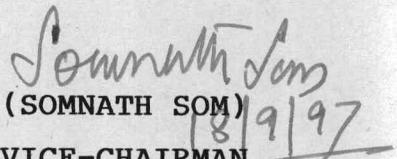
7. As we have already noted that the respondents have already been ordered to pay the applicant his dues as per entitlement for his work as Passenger Driver, and this part of the prayer has already been allowed. In the meantime, the applicant has been promoted to the post of Passenger Driver with effect from 14.8.1992. He was also directed to appear at the test. Learned counsels for both sides were unable to indicate, at the time of hearing, if the applicant did appear at the test. It is noted that in the meantime he has already retired from service. The applicant was directed in order dated 15.10.1992 to appear at the test and it was indicated that if the applicant did not appear at the test, then it would be at his own risk. It was, however, ordered that the applicant's result in such test should not be declared. In view of the above discussion, we feel that the O.A. can be disposed of with a direction to the respondents to declare the result of the applicant, in case he had appeared at the test, and work out his entitlements, if any, on the basis of his performance in the test. In case he did not take the test, then he must suffer the consequence of his non-appearance in the test. It is so ordered. The applicant having already been promoted to the post of Passenger Driver, it is not necessary to issue any direction with regard to his promotion to the post of Passenger Driver.

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8. In the result, the application is disposed of in terms of the direction given in paragraph 7 of this order. There shall be no order as to costs.


(A.K.MISRA)

MEMBER (JUDICIAL)


(SOMNATH SOM)
18/9/97
VICE-CHAIRMAN

AN/PS