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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.588 OF 1992  
Cuttack this the 3rd day of January, 2000

R.Satyanarayana & Others

Applicants

-Versus

Union of India & Others

Respondents

FOR ISNTRUCTIONS

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

*3.1.2000*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)



CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.588 OF 1992  
Cuttack this the 3rd day of January, 2000

CORAM:

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

...

1. R.Satyanarayana S/o. R.Veraswamy, Station Master, Baruva Railway Station, S.E.Rly., PO: Baruva, Dist: Srikakulam (A.P.)
2. R.Apparao, S/o. Late R.V.Rao, Station Master, Summaselli Rly. Station, S.E.Rly., At/Po: Kasibugga, Dist: Srikakulam(AP)
3. K.Raghavendra Rao, S/o. Late K.Ramulu, Station Master, S.E.Rly. At/Po: Tapanga Rly.Station, Tapanga, Dist: Puri
4. B.Suryanarayana, S/o Late B.Rajenna, Station Master, S.E.Rly, Baruva Rly. Station, PO: Baruva, Dist: Srikakulam(AP)
5. C.H.Joginaidu, S/o. Late Papi Naidu, Station Master, S.E.RLy, Malatipatpur Rly. Station, At/Po: Malatipatpur, Dist: Puri
6. B.N.Sahu, S/o. Chakrapani Sahu, Station Master, S.E.Rly, Chatrapur Rly. Station, At/Po: Chatraur, Dist: Ganjam
7. g.d.mohapatra, S/o. Late Artatrana Mohapatra, Station Master, S.E.Rly, Malatipatpur Rly. Station, At/Po: Malatipatpur, Dist: Puri

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Applicants

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

-Versus-

1. Union of India through the General Manager, S.E.RLy, Garden Reach, Calcutta-43
2. Divisional Railway Manager, S.E.Rly, At: Khurda Road, PO: Jatni, Dist: Puri
3. V.S.N.Murty, Movement Inspector, C/o. Station Superintendent, S.E.Railway, Paradeep Railway Station, At/PO: Paradeep Port, Dist:Cuttack
4. R.Gurunath Rao, Station Master, C/o. Chief D.T.I., S.E.Railway, At: Khurda Road, PO: Jatni, Dist: Puri




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5. G.Bhanu Murty, Station Master, C/o. Station Superintendent, At/SE Railway Palasa, PO: Kasibuga, Dist:Srikakulam (AP)
  6. D.Nageswar Rao, Station Master, C/o. Station Superintendent, At/ Tapang Railway Station, PO: Narayangarh, Dist: Puri
  7. Trilochan Tripathy, Station Master, C/o. Chief D.T.I., S.E.Railway, At: Khurda Road, PO: Jatni, Dist: Puri
  8. Y.Jagannath Rao, Station Master (LR), S.E.Railway, At/Po: Rambha (R.S.), Dist:Ganjam

... Respondents

By the Advocates : Mrs.R.Sikdar,  
Addl.Standing Counsel  
(Railways)

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ORDER



MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicants, who are senior to Res. 3 to 8 as Assistant Station Master, Gr.III, while praying for quashing promotions of Res.3 to 8 as Station Masters under Annexure-A/5 wanted direction to be issued to Res.1 to 2 to promote them to the cadre of Station Master in the said scale as per judgment dated 23.8.1990 of this Tribunal in Original Application No.35/88(Annexure-A/2). Original Application 35/88 was filed by some of the Station Masters, who were admittedly senior to Res.3 to 8 by impleading them as party-respondents in that case for quashing their promotions to the cadre of Station Master. This prayer was not allowed by the then Division Bench of this Tribunal. After going through the judgment, we are not inclined to accede to this prayer of the applicants for quashing promotions of Res.3 to 8 to the cadre of Station Master.

2. Earlier appointments to Assistant Station Master,

Gr.II were being made on promotion of Assistant Station Master Gr.III on non-selection basis. However, appointment to the post of Asst.Station Master Gr.I was also being <sup>made</sup> on promotion basis. On 9.12.1983 there was restructuring of the cadre of A.S.M. and the Station Masters by which 70% of the posts in the cadre of A.S.M. Gr.III were upgraded to A.S.M. II. In order of seniority in A.S.M. Gr.III applicants and many others including Res. 3 to 8 coming within the zone of 70% were deemed to be A.S.M. Gr.II and drew the pay attached to that grade with effect from 9.12.1983. However, in accordance with the guidelines issued under Establishment Sl. 39/87, published on 23.2.1987, these posts have become declared as non-selection posts and merged in the scale of Rs.1400-2300/-. A selection was conducted in April, 1987 and was finalised in December, 1987. In that selection Res.3 to 8 being successful were selected to the post of A.S.M., but the applicants in this case as well as six applicants in O.A.35/88 though senior to Res. 3 to 8 could not be promoted as they failed in the selection. Thereafter O.A.35/88 was filed with an averment that the promotional posts should have been filled up on non-selection basis in view of the guidelines issued under Establishment Sl. No.39/87. Pursuant to the judgment delivered in that Original Application those applicants were promoted to that Grade from the date their juniors were promoted even though failed in the selection.

These facts are not in controversy.

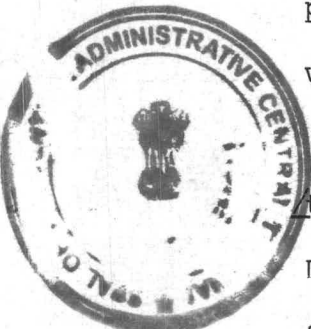
3. In the present application the applicants, who are admittedly senior to Res.3 to 8 basing on the judgment



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of this Tribunal in O.A.35/88 claimed their promotions from the date their juniors were promoted.

Respondents 3 to 8 have not entered appearance.

A. The Departmental respondents in their counter aver that by 1.1.1986, 17 vacancies which were basically selection posts arose. Accordingly 51 A.S.Ms were called for written test on 19.4.1987 and after due selection 17 candidates were selected vide Office Order dated 16.12.1987. In the meanwhile, Establishment Serial Number 39/87<sup>as</sup> published on 23.2.1987 changed these posts from selection post to non-selection one. Since the vacancies occurred prior to 1.1.1986, i.e., much prior to publication of this Establishment Sl. those vacancies were filled up on selection basis.



In the rejoinder the applicants submitted that by the time promotion orders of Res.3 to 8 were issued in December, 1987, Establishment Serial 39/87 dated 23.2.1987 had already come into existence. Hence promotion against the vacancies should have been on non-selection basis. Even otherwise, an interpretation of the guideline would reveal that unoperated portion of the panel of the selection, if any, existing on 23.2.1987 to be treated as lapsed.


g. We have heard Shri G.A.R.Dora, learned counsel for the applicants and Mrs.R.Sikdar, learned Addl.Standing Counsel appearing for the departmental respondents. Also perused the records, so also the record of O.A.35/88.

h. There is no dispute that the present applicants and the applicants in O.A.35/88 could not qualify in the written test held in April, 1987 and consequently promotion orders were issued in December, 1987. It is

also not in dispute that by the time Establishment Serial 39/87 was published, the selection process was not completed. It is worthwhile to quote the relevant portion of Establishment Serial 39/87 under annexure-A/1.

"Para - 3, Clause-III of this Establishment Sl. clearly lays down that where the selection post is now classified as non-selection post, unoperated portion of the panels as existing on the crucial dates will be treated as lapsed and accordingly, after the crucial dates of the vacancies in the particular Grade will be filled up through a process of non-selection irrespective of when the vacancies arose".

After quoting this portion of the guideline, the then Division Bench of this Tribunal in Original Application No.35/88 observed as follows :



"...there can be not any doubt that even though the vacancy might have arisen prior to the issue of Annexure-A/3, yet for filling up the posts the revised procedure as indicated in that Annexure-A/3 was to be allowed. From the enclosure to Annexure-A/3 it will be found that the posts of A.S.M. Grade-I and Station Master Grade III which were previously selection post were made non-selection. Admittedly the selection test held by the Railway Administration were in April and August, 1987 and the result was published in December, 1987, dates subsequent to both 25.9.1986 and 23.2.1987, when the process for promoting the A.S.Ms commenced after 23.2.1987 and by then the posts of A.S.M. Grade I and Station Master Grade III became non-selection posts holding a selection test was improper".

We also endorse the same view of the then Division Bench and hold that holding the selection test was improper.

6. Question then arises whether the applicants, who could have also approached this Tribunal earlier, can ~~recur~~ <sup>raise</sup> the very same issue after the expiry of statutory period of limitation provided under the Administrative Tribunals Act. It should not, however, be forgotten that the applicants are similarly placed as that of the applicants, who got the benefit in O.A.35/88. It has been



held by the Apex Court in the case of K.C.Sharma vs. Union of India & Ors. reported in 1998(1) SLJ 54 that applications filed by similarly placed persons should not be rejected for bar of limitation. Moreover, applicants after the pronouncement of the judgment in O.A.35/88 and after promotions of the applicants therein pursuant to the directions of the Tribunal in that judgment represented to the Department to derive the same benefits as that of the applicants in the said O.A. <sup>denied</sup> ~~were~~ conferred. When this was ultimately not heeded, they approached this Tribunal. Hence, on the ground of limitation, though not raised by the respondents, we are not inclined to reject this application.

7. In view of the discussions held above, we direct the departmental respondents to consider the cases of the applicants for promotion on the basis of non-selection from the date their juniors were promoted to that Grade, provided there were no adverse entries against them by December, 1987 and on their promotion they would be entitled to consequential service benefits.

In the result, the application is allowed, but there shall be no order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

B.K.SAHOO



*3.1.2000*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)