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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 177 OF 1993  
Cuttack, this the 31st day of August 1999

Sri Nidhi Das                      .....                      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

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(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 31.8.99

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ORIGINAL APPLICATION NO. 177 OF 1993  
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CORAM:

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

.....

Sri Nidhi Das, son of M.Das, aged about 49 years; At-Uradha,  
P.O-Adespur, District-Cuttack. ... Applicant

Advocates for applicant- M/s B.S.Tripathy  
K.P.Mishra  
S.C.Dash  
P.Mohapatra  
R.B.Patnaik  
B.K.Sahoo.

vrs.

1. Union of India, represented through the General Manager, East Railway, Gardenrich, Calcutta-700 043.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-700 043.
3. Chief Works Manager, Carriage Repair Workshop, Mancheswar, Bhubaneswar.... Respondents

Advocates for respondents - M/s R.Pal  
O.N.Ghosh.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S Som

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order at Annexure-3. It is necessary to note at this stage that Annexure-3 is not an order but a revised gradation list. The second prayer is to count applicant's seniority from the date of his ad hoc promotion to the post of Chargeman Grade-B on 16.11.1984.

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2. The applicant's case is that when Carriage Repair Workshop (CRW), Mancheswar, was established in 1980 the Railway authorities adopted a policy for filling up of the posts by getting staff from other Railway units. In 1984 the applicant was transferred and posted in CRW, Mancheswar, keeping his lien in his parent organisation. The policy adopted by the Railways known as Joint Procedure Order (JPO) is at Annexure-1. The applicant was initially appointed as highly skilled Grade-I in 1984 and was promoted to Chargeman Grade-B on ad hoc basis on 16.11.1984. CRW, Mancheswar, was declared a permanent organisation with effect from 1.1.1988 and the cadre for the staff working at CRW, Mancheswar, was constituted. After the organisation in Mancheswar was made permanent with effect from 1.1.1988 a trade test was conducted for promotee Chargemen Grade-B and after the applicant passed the said test, he was appointed in order dated 4.1.1989 as Chargeman, Grade-B. Being aggrieved by the order at Annexure-2 the applicant submitted several representations before Chief Workshop Manager but without any result. Thereafter gradation list dated 8.3.1993 was circulated showing the name of the applicant against serial no.15 in the seniority list of Chargemen Grade-B in which it was mentioned against column 7 that his seniority would count from 1.1.1988. The applicant filed another representation at Annexure-4 but without any result and that is why he has come up in this petition with the prayers referred to earlier.

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3. The respondents in their counter have stated that the applicant was originally working in Chakradharpur Division. After CRW, Mancheswar, was established, he came on transfer to CRW, Mancheswar, in

1984. The staff from other units were brought over in accordance with the policy indicated in the JPO which is at Annexure-R/1. It is stated that in the JPO dated 22.12.1980 it was clearly indicated that later on a date would be notified as the cut off date from which date the staff at Mancheswar would be constituted into separate cadre. Till such time these staff working at CRW would continue to keep their lien in their parent organisations and their ad hoc promotions in Mancheswar would not confer on them any right to claim seniority over their seniors. Later 1.1.1988 was declared as the cut off date and the employees were given option either to remain at CRW or to go back to their parent organisations. Most of the staff availed of the opportunity to stay at Mancheswar. As such seniority lists of all categories of staff were prepared taking into account their substantive status in their parent organisations as on 1.1.1988. For this purpose substantive status of all the employees in their parent organisations as on 1.1.1988 was obtained. After publication of the seniority lists all the staff were given opportunity to represent within a period of thirty days. The respondents have stated that the applicant reported at Mancheswar on 27.3.1984 as Fitter Grade-I in the scale of Rs.380-560/-. He was given promotion to the post of Chargeman Grade-B in the scale of Rs.1400-2300/- with effect from 16.11.1984 in order dated 27.11.1984 which is at Annexure-R/5. In the order itself it was mentioned that the ad hoc promotion would not confer on him any right to claim seniority. The applicant has been regularised as Chargeman Grade-B with effect from 1.1.1988 in terms of the order dated 4.1.1989 at Annexure-R/6. It is further submitted that a provisional seniority list of Chargeman Grade-B was published on 6.2.1990 which is

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at Annexure-R/7. In this the applicant's name has been shown against serial no.13. On 8.3.1993 a revised seniority list of Chargemen Grade-B has been published as per Annexure-R/8 in which the applicant's name has been shown against Serial No.15. This seniority list has been challenged in this application. In the meantime basing on his seniority, the selection for the post of Chargeman Grade-B in the scale of Rs.1600-2660/- has been conducted. The applicant has appeared and qualified to be regularised as Chargeman Grade-A to which post he has been promoted on ad hoc basis with effect from 29.12.1988. The result of the test is at Annexure-R/8. The respondents have stated that the seniority of the applicant in the cadre of Chargeman Grade-B has been rightly fixed taking his position as on 1.1.1988 when the cadre at CRW was formed and if the seniority is changed now that will upset the seniority of the whole lot of other persons. On the above grounds, the respondents have opposed the prayer of the applicant.

4. This matter came up for hearing on 29.7.1999 from the Warning List notified earlier. When the matter was called the learned counsels for the petitioner were absent nor was any request made on their behalf seeking adjournment. As in this 1993 matter pleadings had been completed long ago it was not possible to drag on the matter indefinitely. We have therefore heard Shri B.Pal, the learned Senior Counsel for the respondents and have perused the records. The learned counsel for the petitioner was allowed time to file written note of submissions by 6.8.1999 but no such written note of argument has been filed.

5. It is admitted between the parties that the applicant came on transfer to CRW, Mancheswar, on 27.3.1984 as Fitter Grade-I. According to the JPO, he was maintaining his lien in his parent organisation at Chakradharpur. The JPO specifically provided about

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declaration of a cut off date with effect from which the cadre in the CRW, Mancheswar would be constituted. Prior to 1.1.1988 therefore the applicant carried his lien and his substantive status in his parent organisation. He was given promotion to the post of Chargeman, Grade-B with effect from 16.11.1984 in order dated 27.11.1984. This promotion was on ad hoc basis and it was indicated that he would have no claim for seniority on the basis of this ad hoc promotion. The applicant has prayed that his seniority in the rank of Chargeman Grade-B should count from 16.11.1984. In several other similar cases decided earlier by this Bench, a view has been taken that where such ad hoc appointment has been given by observing all departmental rules and instructions, the appointment should be taken as regular even though in the order of appointment it has been mentioned that the appointment is ad hoc. Put in other words, in case such ad hoc appointment has been given after conducting the test in which the applicant has qualified, then such ad hoc appointment must be taken as regular. The order of ad hoc promotion of the applicant with effect from 16.11.1984 to the post of Chargeman Grade-B is at Annexure-R/5. This order does not indicate that this promotion was given to the applicant after he cleared the trade test. The applicant has also mentioned in paragraph 4.3 (page 3) of the Application that after the organisation was made permanent with effect from 1.1.1988 a trade test was conducted. It further appears from Annexure-R/6 that the applicant was declared suitable in the test held on 23.12.1988 of which the result was published in order dated 4.1.1989. From this it is clear that prior to his ad hoc appointment to the post of Chargeman Grade-B with effect from 16.11.1984 he did not qualify in the trade test for the above post. Accordingly, in terms of the orders in similar cases passed by this

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Bench, the applicant cannot be treated to have been regularly appointed to the post of Chargeman, Grade-B with effect from 16.11.1984. The respondents are therefore right in taking his regular appointment as Chargeman Grade-B with effect from 1.1.1988. It is also to be noted that the applicant has come up with this prayer for changing his seniority long after the seniority list was circulated and the persons were given thirty days to file representation. But as we have held on merits that the applicant has no case for treating his promotion as Chargeman Grade-B regular with effect from 16.11.1984, it is not necessary to go into the aspect of limitation any further.

6. In the result, therefore, we hold that the applicant has not been able to make out a case for the relief claimed by him in this Original Application which is accordingly rejected but without any order as to costs.

  
(G. NARASIMHAM)

MEMBER (JUDICIAL)

  
(SOMNATH SOM)

31.8.99  
VICE-CHAIRMAN