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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.242 OF 1993
Cuttack, this the 19th day of March, 1999

Shri Chaitanya Charan Parida 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.

↑
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19.3.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.242 OF 1993

Cuttack, this the 19th day of March, 1999

CORAM:

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

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Shri Chaitanya Charan Parida,
aged about 38 years, son of late Purnananda Parida,
at present working as Office Superintendent,
Office of Chief Project Manager,
South Eastern Railway, Cuttack
Railway Station, Cuttack Applicant

Advocates for applicant - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo.

Vrs.

1. Union of India, represented through
the General Manager, South Eastern Railway,
Garden Reach, Calcutta-43,
West Bengal.

2. Chief Personnel Officer,
South Eastern Railway, Garden Reach,
Calcutta-43, West Bengal.

3. Chief Administrative Officer,
South Eastern Railway,
Garden Reach, Calcutta-43,
West Bengal.

4. Chief Project Manager,
South Eastern Railway, Cuttack Railway Station,
Cuttack.

5. Chief Project Manager,
South Eastern Railway,
Bhubaneswar Railway Station,
Bhubaneswar, District-Khurda.

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6. Deputy Financial Advisor-Chief Accounts Officer,
South Eastern Railway, Cuttack Railway Station,
Cuttack Respondents

Advocate for respondents - Mr.B.Pal.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 5.5.1993 at Annexure-5 reverting the applicant from the post of Office Superintendent, Grade-II to the post of Head Clerk with immediate effect. There is also a prayer for a direction to the departmental respondents to allow the applicant to continue in the post of Office Superintendent, Grade II, with all service benefits. The third prayer is for a direction to the departmental respondents to release the arrear salary of the applicant in the post of Head Clerk from 8.8.1986 to 9.3.1989 within a stipulated period.

2. Facts of this case, according to the applicant, are that he was selected by Railway Service Commission in October 1981 and was posted as Junior Clerk at Garden Reach in Construction Organisation. He was transferred from Garden Reach to the office of Chief Project Manager, South Eastern Railway, Cuttack, and was promoted to the post of Senior Clerk with effect from 1.4.1986 and to the post of Head Clerk from 10.3.1989. According to the applicant, the post of Office Superintendent Grade-II is a promotional post from the post of Head Clerk, and for promotion to the post of Office Superintendent, Grade-II, the requirement is that the incumbent in the post of Head Clerk must have completed two years of service. As the applicant was the only person who

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had completed two years of service in the post of Head Clerk, he was given promotion to the post of Office Superintendent Grade II on officiating basis with effect from 7.4.1992 in the order of the same date at Annexure-1. The applicant also states that earlier he had worked as Head Clerk from 8.8.1986 to 9.3.1989 and he was given promotion on regular basis to the post of Head Clerk from 10.3.1989. But he was not given the salary of Head Clerk from 8.8.1986 to 9.3.1989 though this was sanctioned in the order dated 25.1.1990 at Annexure-2. In pursuance of Annexure-2, a Bill was prepared but this was objected to by F.A. & C.A.O. in his letter dated 5.5.1990 (Annexure-3). The Chief Engineer, Construction, wrote a D.O. letter to Senior Accounts Officer for giving the applicant the pay of Head Clerk for the period from 8.8.1986 to 9.3.1989. This letter is at Annexure-4. But the amount has not yet been paid. It is further submitted by the applicant that one Kunamani Subudhi joined the office of Chief Project Manager, S.E.Railway, Cuttack, in March 1988 on transfer from the office of Divisional Railway Manager. Similarly, one Smt. Bidyut Prava Kar joined in 1990 as Senior Clerk on transfer from the office of Divisional Railway Manager, Chakradharpur. The applicant states that even though these two employees joined the office of respondent no.4 in March 1988 and August 1990 respectively, they could not be given promotion to the post of Office Superintendent, Grade-II on 7.4.1992 when the applicant was promoted because they did not have two years experience in the post of Head Clerk and the applicant was the only person who had two years ^{and} experience was thus eligible. In view of this, the applicant has stated that he is entitled to officiate in the post of Office Superintendent, Grade II, but respondent no.4 has illegally passed the impugned order dated 5.5.1993 at Annexure-5 reverting the applicant to the post of Head Clerk. That is how the applicant has come up in this

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petition with the prayers referred to earlier.

3. By way of interim relief, the applicant had prayed that the operation of the order dated 5.5.1993 reverting the applicant from the post of Office Superintendent, Grade-II, to the post of Head Clerk should be stayed. On the date of admission of this petition on 10.5.1993 the order at Annexure-5 was stayed as an interim measure. This interim order has continued for the last five years. The learned counsel for the respondents filed MA No.319/98 in May 1998 for vacating the interim order dated 10.5.1993. As the pleadings have been completed in the meantime, the learned Senior Counsel appearing for the respondents submitted on 27.5.1998 that the M.A. may lie over and the O.A. may be taken up for final disposal and the MA may also be disposed of at that time. Accordingly, the interim order has continued till today.

4. The respondents in their counter have pointed out that the regular railway establishment which is known as Open Line establishment is quite distinct and different from Construction Wing of the Railways. Construction Wing did not have permanent cadre as such Wing has to be wound up after construction of railway line or other construction undertaken by this Unit. But in view of the fact that construction under the Indian Railways has become a regular feature, the Railway Board in their order dated 24.12.1973 addressed to General Managers of all Indian Railways, stated that so far as non-gazetted posts are concerned, some posts have to be kept as construction reserve. The relevant circular stated that the Railway Board have decided that 40% of the temporary non-gazetted posts in each grade in the Construction Department should be sanctioned permanently as a construction reserve from 1.4.1973. The Construction Reserve will cover projects including those on Open Line in respect of works costing

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more than Rs.4 Lakh. In accordance with this circular, 40% of the temporary non-gazetted posts in each grade in Construction Wing were made permanent and termed as Construction Reserve from 1.4.1973. Chief Personnel Officer, South Eastern Railway, in his letter dated 13.10.1987 stated that these Permanent Construction Reserve (PCR) posts were introduced to enable the Construction Organisations to confirm the locally recruited staff against such posts who are otherwise not considered permanent staff and would be liable for retrenchment. It was also indicated that PCR posts do not constitute a cadre and these posts are created and operated for confirming and providing a status of permanency to the Construction Wing staff. The manpower requirement of Construction Wing is also met by drafting personnel from Open Line cadre on deputation. Thus the Construction Wing is a mixture of personnel having lien in Open Line cadre, persons recruited in the Construction Wing, and locally recruited persons in the Construction Wing and confirmed against PCR posts. This also includes those who were transferred from other Construction Organisation and confirmed against PCR posts and personnel from open line serving in Construction Organisation. For the career advancement of all these categories of staff, one integrated seniority had to be maintained and promotional policy was evolved. Chief Personnel Officer, S.E.Railway, in his circular dated 17.3.1989 covered the problem regarding integration of seniority of personnel working in independent Construction Organisations like Chief Engineer (Construction), Garden Reach; Chief Engineer (Construction), Bilaspur; Chief Electrical Engineer (Construction), Garden Reach; and Chief Administrative Officer(S&C), Waltair, etc., and these later on included the office of Chief Project Manager, S.E.Railway, Cuttack

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(respondent no.4). In this circular it was mentioned that Construction Units draw personnel from different sources and retain them depending upon the level of construction activity. These include (1) personnel having lien in Open Line cadre including direct recruits by Railway Recruitment Board allotted to Construction; (2) personnel confirmed against the Construction Reserve posts created in Construction Organisation which include staff having lien in Open Line but opted specifically for severing their lien in Open Line to enable them to be confirmed against the Construction Reserve posts; and (3) casual staff recruited by Construction Organisation locally and continuing as such who have attained or are awaiting their turn for attaining temporary status as per policy of the Railway Board. In view of the multiplicity of sources from which staff came to the Construction Units, a policy had to be decided about promotion in the Construction Wing and regulating promotions on the integrated seniority. The circular dated 17.3.1989 laid down the policy as quoted below:

The seniority of the personnel who have lien in Open Line cadre including directly recruited RRB candidates (for whom lien is to be maintained subsequently) will be reckoned on the length of non-fortuitous service in the cadre in which they have lien in the present unit. However, persons having lien in the same seniority unit of the parent Open Line cadre will maintain their interse seniority position."

The circulars dated 24.12.1973, 13.10.1987 and 17.3.1989 are at Annexures R/1, R/2 and R/3 respectively. The respondents have stated that Smt. Kunamani Subudhi and Smt. Bidyut Prava Kar were also contestants for the post of Office Superintendent Grade II in the office of respondent no.4. Smt. Kunamani Subudhi and the applicant were both recruited by Railway Recruitment Board and had their

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permanent lien in Open Line. But while the applicant was recruited on 14.10.1981, Smt.Kunamani Subudhi was recruited by Railway Recruitment Board on 24.10.1977. Smt.Bidyut Prava Kar was appointed against Loyal Employees' quota on 27.12.1974 and was regularised in Open Line in letter dated 23.6.1977. The respondents have stated that even though the petitioner was initially appointed in the office of Chief Engineer (Construction) at Garden Reasch, the lien of the applicant was maintained in Khurda Road Division. Copy of the order dated 26.9.1986 maintaining the applicant's lien in Open Line in Khurda Road Division is at Annexure-R/5. Letters of appointment of Smt.Kunamani Subudhi and Smt.Bidyut Prava Kar are at Annexures R/6 and R/7. Smt.Bidyut Prava Kar was issued appointment order on 8.12.1974 and Smt.Kunamani Subudhi was recruited in order dated 17.10.1977. Though Smt.Subudhi was initially appointed under the Eastern Railway along with her lien she came to the Open Line of South Eastern Railway on mutual transfer to Khurda Road Division on 4.6.1978 and her seniority in the post of Junior Office Clerk was reckoned from the date of her initial appointment, i.e. 24.10.1977. According to the policy decision dated 17.3.1989 integrated seniority list of ministerial staff was maintained. The compiled seniority list was drawn up as on 1.1.1992. In this seniority list Smt.Bidyut Prava Kar and Smt.Kunamani Subudhi were shown as Senior Clerks as they had been promoted to the post of Senior Clerk on regular measure on 3.8.1983 and 2.1.1984 respectively. In this list the applicant was shown as Junior Clerk because by 1.1.1992 the applicant had not been promoted to the post of Senior Clerk. He was regularly promoted to the post of Senior Clerk on 4.11.1992. Smt.Bidyut Prava Kar was regularised in

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the post of Head Clerk with effect from 4.11.1992. Smt.Bidyut Prava Kar and Smt.Kunamani Subudhi having lien in Open Line like the applicant were transferred to Construction Wing in August 1990 and March 1988 after they were promoted to the post of Senior Clerk. At that point of time the applicant was still continuing as Junior Clerk. He got ad hoc promotion to the post of Senior Clerk from 1.4.1986 and got regular promotion to the post of Senior Clerk on 13.11.1992. The applicant got ad hoc officiating promotion to the post of Head Clerk from 10.3.1989. When the matter stood as such, a vacancy arose in the post of Office Superintendent Grade II and the applicant was temporarily promoted on ad hoc basis to officiate in that post in the order dated 7.4.1992. Subsequently in order dated 21.7.1992 the applicant was reverted to the post of Head Clerk with immediate effect. This office order dated 21.7.1992 was kept in abeyance vide office order dated 24.7.1992 and the applicant was allowed to continue as Office Superintendent Grade II. In the meantime in order dated 4.12.1992 Smt.Bidyut Prava Kar was promoted to the post of Head Clerk on regular basis with effect from 4.11.1992. Smt.Kunamani Subudhi filed appeal stating that she was entitled to be promoted to the post of Office Superintendent Grade II. This was examined and it was found that Smt.Bidyut Prava Kar and Smt.Kunamani Subudhi were much senior to the applicant as they were appointed in 1974 and 1977. Accordingly, amongst the three the applicant was the juniormost. He had also not got regular promotion to the post of Head Clerk. Therefore, in the impugned order at Annexure-5 the applicant was rightly reverted from the post of Office Superintendent Grade II to the post of Head Clerk as he had no right to continue on ad hoc basis while his

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seniors were available. The respondents have also stated that for the period from 8.8.1986 to 9.3.1989 the applicant is not entitled to get the pay of Head Clerk because no office order was issued giving him ad hoc appointment for this period. In view of the above, the respondents have opposed the prayers of the applicant.

5. The applicant in his rejoinder has stated that he has been reverted at the instance of S.E.Railway Men's Union demanding reversion of the applicant on the ground that the applicant is junior to Smt.K.Subudhi and the authorities without checking the seniority list have passed the impugned order at Annexure-5. The applicant has stated that he joined at Cuttack in the office of respondent no.4 much earlier than Smt.K.Subudhi and was promoted to the post of Head Clerk in 1986 and as such he is senior to Smt.K.Subudhi and Smt. B.P.Kar. As regards the respondents' averment that the applicant while working as Head Clerk on ad hoc basis cannot claim another ad hoc promotion to the next higher post of Office Superintendent, Grade II. The applicant has given examples of several other persons who have got upto three ad hoc promotions from one grade to the other and on the above grounds, the applicant has reiterated his prayers in the O.A.

6. We have heard Shri A.Deo, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner wanted time till 9.3.1999 for filing written note of submission, but no such written note of submission has been filed.

7. From the order at Annexure-1 filed by the applicant it is clear that promotion of the applicant

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to the post of Office Superintendent Grade II was purely on ad hoc basis. In the note below this order it was mentioned specifically that the promotion is ordered purely on ad hoc measure and shall be subject to termination "by a senior employee as and when such person is available or becomes eligible for promotion." It was also noted that ad hoc promotion of the applicant will not confer on the applicant any claim to continue superseding his seniors, if any. It was further noted that cases of his seniors, if any, who are found eligible to get promotion will be considered in future and he will be replaced by his senior. As the applicant has got appointment to the post of Office Superintendent Grade II purely on ad hoc basis, he has no right to continue in that post. There are large number of decisions that an ad hoc appointee has no right to continue in the post to which he was promoted on ad hoc basis. Moreover, in this case he was given ad hoc appointment even though two of his seniors were available in that office. In this petition the applicant has not challenged the seniority of Smt.K.Subudhi and Smt.B.P.Kar who were Senior Clerks in the seniority list showing the position as on 1.1.1992 when the applicant was only a Junior Clerk. The initial date of appointment of the applicant as Junior Clerk is also much later than the initial dates of appointment of Smt.K.Subudhi and Smt.B.P.Kar. In view of this, it is clear that the applicant is junior to Smt.K.Subudhi and Smt.B.P.Kar. Therefore, the respondents have done the right thing by reverting the applicant to the post of Head Clerk which he was also holding on ad hoc basis. The impugned order at Annexure-5 has, therefore, been passed strictly in terms of the original order of promotion at Annexure-1 and the order at Annexure-5 cannot be questioned. The applicant

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has stated that for promotion from the post of Head Clerk to the post of Office Superintendent, Grade II, two years service as Head Clerk is necessary and the applicant alone had that two years of service as Head Clerk. This is also not factually correct because the applicant was working as Head Clerk on ad hoc basis and while working as ad hoc Head Clerk he cannot get another ad hoc promotion to the post of Office Superintendent Grade II. Moreover, his period of work as Head Clerk on ad hoc basis cannot be taken into account for the purpose of consideration of his promotion even on ad hoc basis to the post of Office Superintendent Grade II. The applicant has stated that several other persons have been given such ad hoc promotion from one grade to another even when they were working on ad hoc basis in the lower grade. This fact has been mentioned by the applicant in his rejoinder and the respondents did not have any opportunity to contest this fact and therefore, this cannot be taken into account. In any case illegal multiple ad hoc promotions in cases of other persons will not justify such ~~such~~ illegal promotion given to the applicant to the post of Office Superintendent Grade II. In view of the above, we hold that the order at Annexure-5 has been rightly issued by the respondents and the prayer of the applicant for quashing the order at Annexure-5 is held to be without any merit and is hereby rejected.

8. The second prayer of the applicant is for getting his salary as Head Clerk for the period from 8.8.1986 to 9.3.1989. He has stated that a Bill was prepared, but the Bill was objected to by F.A. & C.A.O. in his letter dated 5.5.1990 at Annexure-3. Against the order dated 5.5.1990 the applicant has come up only in 1993 and therefore, this prayer is barred by limitation. The

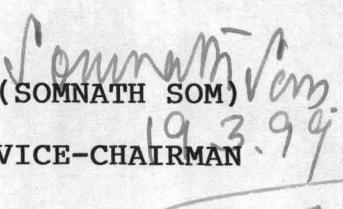
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applicant has pointed out that Chief Engineer (Construction) took up his case in his letter at Annexure-4, but this letter does not indicate the date of the letter nor has the applicant mentioned the date of this letter in his O.A. Moreover, on merits also we find that this claim is not sustainable. F.A. &C.A.O. has pointed out that when a person is given ad hoc appointment, there has to be a specific office order giving him ad hoc appointment to the post. In this case the applicant was given ad hoc appointment to the post of Head Clerk from 10.3.1989 and he has come up claiming the pay of Head Clerk from 8.8.1986 to 9.3.1989. Obviously, in the absence of an order giving him ad hoc appointment for the period from 8.8.1986 to 9.3.1989, he cannot claim that he has worked as Head Clerk on ad hoc basis in that post. Therefore, the applicant cannot get salary of the post of Head Clerk for the above period. This prayer is also held to be without any merit and is rejected.

9. In the result, therefore, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. Accordingly, the Original Application is dismissed but, under the circumstances, without any order as to costs. The stay order issued in order dated 10.5.1993 also stands vacated.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN