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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 291 OF 1993  
Cuttack, this the 3rd day of September, 1999

Ananta Charan Behera .... 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*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*3.9.99*

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CUTTACK BENCH, CUTTACK.

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**CORAM:**

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

.....

Ananta Charan Behera,  
Ticket No.15313, son of  
late Biswanban Behera,  
Wireman Grade-III,  
Electrical, CRW, SE Railway,  
Mancheswar, District-Khurda .... Applicant

Advocate for applicant - Mr.S.C.Samantray

Vrs.

1. Union of India, represented by the General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Workshop Electrical Engineer, C.R.W., S.E.Railway, Mancheswar, District-Puri.
3. Chief Workshop Manager, Carriage Repair workshop, SE Railway, Mancheswar, District-Khurda.
4. M.M.Mallick, Electrician-cum-Wireman Grade-II, C.R.W., S.E.Railway, Mancheswar, District-Khurda.
5. K.C.Sethy, Electrician-cum-Wireman Grade II, C.R.W., S.E.Railway, Mancheswar, District-Khurda  
..... Respondents

*Som.*  
Advocates for respondents-M/s B.Pal &  
O.N.Ghosh  
for respondents 1  
to 3  
&  
Mr.B.Mohanty  
for Res.4 & 5

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 a declaration that the seniority list at Annexure-6 has been drawn up irregularly and a fresh seniority list should be drawn up. The second prayer is for quashing the promotion of respondent nos. 4 and 5 in order dated 27.4.1993 (Annexure-9) and for a direction to the respondents to consider the petitioner for promotion to the next higher grade from the date of promotion of his juniors.

2. The facts of the case, according to the applicant, are that for the Mancheswar Carriage Repair Workshop, in response to an advertisement he applied for the post of Apprentice Trainee and after being selected in a test on 1.6.1984 he was appointed in order dated 20.9.1985 (Annexure-3) as Trainee Wireman. The terms of appointment dated 28.2.1985 at Annexure-2 indicated that he would be under training for six months and after the training efforts would be made to absorb him in the regular cadre of the Railways if there is any vacancy, but no such guarantee is given. It was stated that after the training a test would be conducted for absorption in a working post. But no such test was conducted and the applicant was regularised with effect from 2.3.1987 (wrongly mentioned by the applicant as 3.3.1987). In the order of absorption at Annexure-4 the applicant's name finds place against serial no.10. The names of private respondent nos.4 and 5 do not find place in this list. A seniority list was prepared in 1988 in which the applicant's name was shown against serial no.99. The applicant represented against wrong assignment of position in the seniority list but no intimation was sent to him. Later on 19.7.1991 a fresh seniority list was published at Annexure-6 showing the applicant against serial no.131 and respondent nos.4 and 5 against serial

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nos.97 and 98. The applicant filed representations against improper fixation of seniority but without any result. Later on the seniority list of Skilled Artisans in Grade-III was divided into two groups and in the applicant's group his name was placed at serial no.76. He again objected to the same. But without considering his representation the departmental authorities in the impugned order at Annexure-9 have promoted respondent nos. 4 and 5 to the post Electrician-cum-Wireman Grade-II with effect from 28.2.1993. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. Departmental respondents in their counter have stated that for the Carriage Repair Workshop, Mancheswar, the applicant along with others were selected in a test as Trainee Electrician-cum-Wireman. In the Electrical Department of Mancheswar Carriage Repair Workshop during the period from 1983 to 1985, 142 Trainee Artisans of 12 trade panels were engaged. A combined gradewise seniority list was published. After considering the representations and grievances the final seniority list was published in memo dated 19.7.1991 at Annexure-6. Thereafter on the basis of a joint meeting with the two recognised unions, a decision was taken to bifurcate the existing seniority list of Electrical Department into two groups, viz., power group and train lighting group. Accordingly, bifurcated seniority lists were prepared and published after taking options of the staff wherever necessary. The applicant opted for the train lighting group and his name was shown against serial no.76 rightly. The respondents have stated that the applicant's seniority has been correctly fixed. They have also stated that his representation has been considered and rejected and intimation has been sent to him in memo dated 17.7.1991.

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The departmental respondents have also stated that private respondent nos. 4 and 5 have been rightly assigned seniority in the train lighting group above the applicant and they have also been promoted to the next higher rank according to their seniority. No person junior to the applicant has so far been promoted. On the basis of the above facts, the departmental respondents have opposed the prayers of the applicant.

4. The private respondents in their counter have repeated some of the averments of the departmental respondents and it is not necessary to cover the same again. The private respondents have stated that the order dated 20.9.1985 at Annexure-3 is only an appointment as Trainee Wireman given to the applicant. It is not an order of appointment to a regular post. They have stated that the applicant and the private respondents were all regularised with effect from the same date, i.e., 2.3.1987. Seniority of all the three has been counted from 2.3.1987. But while counting seniority, private respondent nos. 4 and 5 have been shown senior to the applicant because of their higher position in the original selection panel. The private respondents have stated that the seniority has been correctly fixed and promotion given to them. In view of the above, they have opposed the prayers of the applicant.

5. We have heard Shri S.C.Samantray, the learned counsel for the petitioner, Shri B.Pal, the learned Senior Counsel appearing for the departmental respondents, and Shri Biswajit Mohanty, the learned counsel for respondent nos. 4 and 5, and have also perused the records.

*S.C. Pal*

6. The admitted position between the parties is that after the training as Trainee Wireman no test was conducted. It is also admitted that the

applicant and private respondent nos. 4 and 5 over which the applicant claims seniority have been regularised with effect from the same date, i.e., 2.3.1987. The applicant claims his seniority from 20.9.1985 on the ground of his appointment as Trainee Wireman in this order at Annexure-3. But the offer of appointment at Annexure-2 makes it clear that this appointment is only for the purpose of six months training. The Railways had the option to extend the period of training. The applicant had to successfully pass the test after the training which in this case was not held. It was also made clear to the applicant and others that on completion of training there is no guarantee that they will be absorbed in the Railways though efforts will be made in that regard. In consideration of the above, it cannot be said that the order at Annexure-3 is a regular order of appointment. Therefore, the applicant's claim to get seniority with effect from 20.9.1985 is held to be without any merit.

7. Admittedly, the applicant and respondent nos. 4 and 5 have been regularised with effect from the same date, i.e., 2.3.1987. Respondent nos. 4 and 5 have stated in their counter that they have been assigned higher position in the seniority list because in the original selection panel through which the applicant and private respondents 4 and 5 were selected as Trainee Wiremen, respondent nos. 4 and 5 occupied higher position than the applicant. It is no doubt true that had a test been conducted after the training and the persons regularly appointed after successfully clearing the test, then seniority of such persons would have been fixed on the basis of their merit position in the test after

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training. In the absence of the test, the departmental authorities have gone by the merit position in the selection test in which the applicant and private respondent nos. 4 and 5 were originally selected for training. No fault can be found with that. Assignment of seniority to the applicant below private respondent nos. 4 and 5 cannot be said to be arbitrary. The departmental respondents have also pointed out that while rejecting the representation of the applicant in order dated 17.7.1991 at Annexure-R/4 it has been clearly mentioned that for fixing seniority date of regularisation has been taken into account maintaining interse seniority of the selection panel. It is also to be noted that in the case of K.C.Joshi v. Union of India, AIR 1991 SC 284, their Lordships of the Hon'ble Supreme Court have held that seniority would count only from the date of substantive appointment. In the instant case the substantive appointment of the applicant and respondent nos. 4 and 5 has been done with effect from 2.3.1987 and therefore their seniority has been rightly counted from that date.

8. In the result, the Original Application is held to be without any merit and is dismissed but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)  
3.9.99  
VICE-CHAIRMAN