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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 191 OF 1994
Cuttack, this the 13th day of March 2000

S.R.Begum

Applicant

Vrs.

Union of India and another

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)
VICE-CHAIRMAN

13.3.2000

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CORAM:

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

.....

S.R.Begum, wife of Syed Subham, aged about 48 years,
Jr.Clerk, office of the Dy.Chief Signal & Telecom Engineer
(C), S.E.Railway, Rayagada, At-Visakhapatnam (AP) ...
...Applicant

Advocates for applicant - M/s G.A.R.Dora
V.Narasingh

Vrs.

1. Union of India, through the Chief Administrative Officer (Project), Survey & Construction, S.E.Railway, At-Chandrasekharpur, PO-Bhubaneswar, District-Khurda.
2. Deputy Chief Signal & Telecom (Construction), S.E.Railway, Rayagada, At-Visakhapatnam (AP)
.....
Respondents

Advocate for respondents - Mr.D.N.Mishra
Standing Counsel
(Railways)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 20.3.1994 issued by Deputy Chief Signal & Telecom Engineer (Construction), Visakhapatnam, in which the applicant has been reverted to Group-D category and directed to report to D.P.O., S.E.Railway, Waltair, for further posting. The second prayer is for a declaration that the applicant is entitled to continue as regular Junior Clerk, Group-C with consequential benefits.

2. The applicant's case is that she is M.A., LL.B. and was appointed initially on 5.4.1975 as Casual Khalasi in the pay scale of Rs.196-232/-. She acquired temporary status in the Construction Organisation under the respondents. She was promoted to Semi Skilled Category in the scale of Rs.210-290/-, later on revised to Rs.800-1150/- with effect from 1.1.1986. She has been confirmed against Permanent Construction Reserve (PCR) Group-D post with effect from 10.5.1984 as per order dated 9.7.1990 at Annexure-1. After she had passed both written test and viva voce she was promoted as Junior Clerk in the scale of pay of Rs.950-1500/- in the order dated 19.5.1989 (Annexure-2). In the impugned order dated at Annexure-3 Deputy Chief Signal & Telecom Engineer (Construction), S.E.Railway, Rayagada at Visakhapatnam has directed the applicant to report to Divisional Personnel Officer, Waltair, for absorption in Group-D post. The applicant has stated that her promotion to the post of Junior Clerk in Group-C service is regular as she was promoted after she had passed the regular test and therefore styling her promotion to the post of Junior Clerk as ad hoc is wrong. It is also stated that the applicant joined the Construction Organisation as Class IV employee and has been confirmed against a Class IV Group-D post. Therefore, the direction in the impugned order at Annexure-3 for absorbing her in Class IV post in Open Line is misconceived. It is also stated that the statement in the impugned order at Annexure-3 that she is holding lien in Mechanical Department, Waltair is incorrect. She has all along been working in the Construction Organisation. In the context of the above facts the applicant has come up in this petition with the prayers referred to earlier.

3. By way of interim relief she had prayed for stay of operation of the order at Annexure-3. On the date of admission of the petition on 13.4.1994 the order at Annexure-3 was stayed.

3. The respondents in their counter have taken the preliminary stand that the application before this Bench of the Tribunal is not maintainable because the impugned order has been issued by Deputy Chief Signal & Telecom Engineer (Construction), Visakhapatnam of Waltair Survey & Construction Organisation and all other material documents were issued by the officials of Waltair Survey & Construction Organisation. This should have been challenged before the Hyderabad Bench of the Tribunal. It has been stated that in OA Nos. 290 and 838 of 1991 the Calcutta Bench of the Tribunal have taken a similar view. Copies of these two decisions are at Annexure-R/I. Respondents have further stated that the applicant joined on 5.4.1975 as Casual Khalasi on daily rated basis in Waltair-Kirandul Railway Electrification Project and worked as Record Sorter from 16.9.1990. While she was working as Casual Labourer in Waltair-Kirandul Railway Electrification Project, she was screened for regular absorption in Group-D post in Open Line of Waltair Division with similarly circumstanced casual labourers. Though she continued to work in the said Project, her lien was maintained in Mechanical Division of Waltair Division in Group-D post. She was also granted temporary status from 21.10.1986. Due to curtailment of work in Waltair-Kirandul Project, it was wound up and a small segment was brought under the control of Survey & Construction Organisation and in this process the

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applicant came over to Survey & Construction Organisation. On sanction of additional posts in Survey & Construction Organisation the applicant along with other casual labourers was granted permanent status against 40% PCR posts in Group-D in order dated 9.7.1990 giving effect from 10.5.1984. The respondents have furtherstated that the fact that the applicant had been regularly absorbed in the Open Line and her lien had been maintained in Mechanical Wing of Open Line has been suppressed by the applicant. The respondents have further stated that PCR staff though confirmed with regular status are absorbed in regular establishment of Open Line along with other casual labourers in order to give them opportunity for further promotion. Those who do not accept regular absorption in Open Line and prefer to remain in Construction Organisation are liable to move on transfer from one project to another in the entire South Eastern Railway. The respondents have further stated that when project work was in full swing and there was need for having some clerical hands, a selection was held from eligible Group-D staff of Survey & Construction Organisation for utilising them as Junior Clerks. It was clearly mentioned in the order of promotion that the promotion was purely on ad hoc basis and the same would not confer any prescriptive right in the parent Department. In Annexure-2 to the OA the above has been clearly mentioned. The respondents have furtherstated that completion of major activities of the project and consequent reduction in funds and non-sanction of additional work have resulted in curtailment of staff in Survey & Construction Organisation. In order to avoid hardship to the employees of Construction Organisation as a result of curtailment of

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staff, a policy has been framed after discussion with trade unions for dealing with such staff. A copy of the policy is at Annexure-IV. In the policy it has been laid down that the lien holders who have not opted to move to other construction projects have to be repatriated to their parent Divisions. The applicant having not submitted such option to move to other construction projects has been directed in the impugned order to report to Waltair Division for further posting where she holds her lien. The respondents have furtherstated that as the applicant has lien in the Mechanical Wing of Waltair Division in Open Line, she is due to go back there and will be entitled to be considered for future promotion in the Open Line. The respondents have also mentioned that the applicant's promotion to the post of Junior Clerk in Survey & Construction Organisation is only on ad hoc basis and not a regular promotion. In the context of the above facts, the respondents have opposed the prayer of the applicant.

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4. The applicant in his rejoinder has reiterated many of her averments in the OA. She has further mentioned about the seniority list, copy of which has been enclosed at Annexure-4. She has mentioned that there are two other persons Smt.T.Meenakshi and Smt.A.Lalita who are junior to the applicant in all the ranks. These two persons are continuing in the Construction Organisation. If there is curtailment in work, then the juniormost should have been reverted and not the applicant. On the above grounds, the applicant has reiterated her prayers in the rejoinder.

5. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel(Railways) for the respondents

and have also perused the records.

6. The point raised by the respondents on the question of jurisdiction has to be considered first. From the pleadings of the applicant herself it is clear that the impugned order at Annexure-A/3 has been issued by Deputy Chief Signal & Telecom Engineer (Construction), S.E.Railway, Visakhapatnam. The applicant is also working in the office of Deputy Chief Signal & Telecom Engineer (Construction), Visakhapatnam. The other orders at Annexures A/1 and A/2 have also been issued by the railway officials stationed at Visakhapatnam. On this ground following the decisions of the Calcutta Bench of the Tribunal, referred to by the respondents in their counter as also the provisions of the CAT (Procedure) Rules, 1987, the learned Standing Counsel (Railways) for the respondents has argued that this Bench of the Tribunal has no jurisdiction to hear the matter. The learned counsel for the petitioner, in reply, has submitted that this point has been considered and decided by the Tribunal in two O.a.No.609 of 1994, decided on 8.12.1995 and O.A.Nos. 605/93, 628/93, 629/93, 129/94 and 215/94 which were disposed of by a common order dated 17.8.1994. The learned counsel for the petitioner has submitted copies of these two orders at the time of hearing. We have gone through these two decisions and we find that the issue of jurisdiction was not raised nor considered in the above two orders and therefore these two decisions have no application in the present case. Under Rule 6 of CAT (Procedure) Rules, 1987, an application shall ordinarily be filed with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or

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the cause of action, wholly or in part, has arisen. In the present case the applicant is posted at Visakhapatnam and the order by which she has been transferred from Visakhapatnam to Waltair in Open Line has also been issued by an officer stationed at Visakhapatnam. Therefore, the cause of action has arisen in Visakhapatnam outside the jurisdiction of this Bench. A similar view in an identical matter has been taken by the Tribunal in their order dated 10.2.2000 in OA No. 610/94. In view of the above, we hold that the application is not maintainable before this Bench of the Tribunal and therefore the Application is rejected on the ground of lack of jurisdiction. In view of this, it is not necessary for us to consider the other points on merits raised by both sides.

7. The Original Application is accordingly rejected. No costs. The stay order issued on 13.4.1994 stands vacated.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
13.3.2000
VICE-CHAIRMAN