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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 335 OF 1994.

CUTTACK, This the 9th day of March, 2000.

SUNIL KUMAR BISWAS.

....

APPLICANT.

- VERSUS -

UNION OF INDIA & ORS.

....

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
9/3/2000



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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 335 OF 1994.

Cuttack, this the 9th day of March, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDL.).

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IN THE MATTER OF:

SUNIL KUMAR BISWAS,
Aged about 50 years,
Son of late Krishnapada Biswas,
at present working as Senior Divisional
Transportation Inspector, South Eastern
Railway, Khurda Road, residing at Qrs.
No. 426-C, Retang Colony, PO: Jatni, Dist. Puri.

• • • APPLICANT.

By legal practitioner: Mr. B. S. Tripathy,
Advocate.

- VERSUS -



1. Union of India represented by its General Manager, South Eastern Railway, Garden Reach, Calcutta, West Bengal.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta, West Bengal.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, PO: Jatni, Dist: Puri.
4. Senior Divisional Operation Manager, South Eastern Railway, Khurda Road, PO: Jatni, Dist. : Puri.

5. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, PO:Jatni, Dist:Puri.
6. K.C.Mohanty(I), Chief Divisional Transportation Inspector, South Eastern Railway, Khurda Road, PO:Jatni, Dist:Puri.
7. K.C.Mohanty(II), at present working as Chief Divisional Transportation Inspector, South Eastern Railway, At/Po/Dist.:Cuttack.
8. V.S.N.Murty, at present working as Chief Divisional Transportation Inspector, South Eastern Railway, At/Po:Berhampur, Dist:Ganjam.

... RESPONDENTS.

By legal practitioner: M/s.B.Pal,
O.N.Ghosh,
P.C.Panda,
Sr.Counsel
for Rlys.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application u/s.19 of the Administrative Tribunals Act,1985, applicant has prayed for a direction to the Respondents for quashing the promotion of Respondents 6 to 8 to the rank of Chief Divisional Transportation Inspector (in short C.D.T.I.) and also for a direction for quashing the promotion of Respondents 7 and 8 to the senior grade in the senior time scale of pay as per Annexure-5. The third prayer is for a direction to the Respondents to give promotion to applicant w.e.f.

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the date Respondents 6 to 8 were given promotion to the rank of Divisional Transportation Inspector and for consequential promotion to the senior grade in Senior Time-Scale of Pay with effect from the date Respondents 7 and 8 were allowed promotion to such grade.

2. Applicant's case is that, he was initially appointed as Assistant Station Master on 05-09-1964 and was promoted as 'D' Grade Assistant Station Master in 1975. He was further promoted to the post of Divisional Transportation Inspector on 31.7.1978 on ad-hoc basis and was regularised in that post on 19.09.1980. Applicant was again promoted as Senior Divisional Transportation Inspector (in short S.D.T.I.) in the year 1981. Since the date of his promotion as Senior Divisional Transportation Inspector, applicant has been discharging his duties smoothly and no adverse remarks were ever communicated to him. In the year 1984, there was up-gradation of posts of Chief Divisional Transportation Inspector in the scale of pay of Rs. 2000-3200/- due to re-structuring by the Railway Board. According to the restructuring formula, the Railway Board decided that the Character Rolls of different persons should be scrutinised as per the eligibility, for filling up of three posts of C.D.T.I.



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on promotion from the grade of S.D.T.I. In response to the above policy, Respondents called for applications and the Applicant alongwith M.L.Swamy and M.K.Sastri appeared before the Committee for scrutiny of CCRs but applicant was not considered fit for promotion on the ground of bad CCRs through nothing was communicated to him and only one post of C.D.T.I. was filled-up by giving promotion to Shri Sastri who belongs to general category. Applicant belongs to the category of scheduled caste and the Railway Board, while restructuring had laid down in the circular that while filling up of the post of C.D.T.I. reservation policy/prostter should be maintained and therefore, the applicant should have been promoted in the reserved category of post of CDTI. He preferred a number of representations to consider his case but without any result. Again in 1985, a selection was conducted for one reserved and one general post of C.D.T.I. which could not be filled up in 1984. In 1985, Respondents have called the applicant alongwith one Shri K.C.Mohanty-I, P.Barik and M.L.Swamy .Shri K.C. Mohanty-I and Shri P.Barik both are belonging to general category. Shri M.L.Swamy did not appear for selection.

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Case of applicant was not considered but both the posts of C.D.T.I. were filled up by promoting Shri K.C.Mohanty-I and Shri P.Barik who belong to the general category though the circular of the Railway Board envisages for filling up of the posts of C.D.T.I. by normal roster point. Applicant was again called to appear during 1991 for promotion to the rank of S.D.T.I. alongwith one K.C.Mohanty-II and V.S.N.Murty and the selection Committee was scheduled to sit on 17-6-1991. After getting the intimation to appear in the Selection test to be held on 17.6.1991, applicant preferred a representation to Respondent No.5 stating therein that though he had mentioned in his earlier representation that he was entitled for promotion to the post of C.D.T.I. since 1.1.1984 yet he has not yet been promoted without any reason nor was any adverse remarks communicated to him. He also prayed for considering his case for promotion since 1.1.1984 alongwith all benefits instead of asking him to appear in the selection test with his juniors to be held on 17.6.1991. without considering his representation, the Respondents conducted the selection test on 17-6-1991 and promoted Shri K.C.Mohanty-II

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and Shri V.S.N.Murty to the rank of C.D.T.I., ignoring the case of applicant. Applicant has stated that both Shri K.C.Mohanty-II and Shri V.S.N.Murty belong to general category. Being aggrieved by such non-consideration of his case, he filed a further representation on 17.9.1991 at Annexure-2. In all his representations, applicant has always drawn the attention to the instructions of the Railway Board regarding reservation of posts/vacancies for Scheduled Castes and Scheduled Tribes.

His further representation dated 10.11.1993 is at Annexure-3. Applicant has further stated that according to the Railway Board's circular dated 10.6.1993, adverse remarks in the CCRs of the employees are to be communicated within one month from the date of their recording and the employee should be allowed to represent against the said CCRs within the time specified. It is further stated that in 1994, Respondent No.2 has also granted promotion to Respondents 6 to 8 to the Senior Time-Scale of Pay of Rs. 2375-3500/- against the upgraded vacancies of Chief Divisional Transportation Inspector/in order dated 5.5.1994 at Annexure-5. According to the Railway Board's Circular a person in the junior cadre shall be given promotion to the next higher cadre after completion of the tenure of two years in the junior grade but the

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Respondents 7 and 8 have been given the benefit of promotion to the Senior Grade in the Time-Scale of Rs. 2375-3500/- prior to completion of the tenure of two years in the Junior Time Scale, as they were promoted to the post of C.D. T.I., in Junior Time-Scale of pay only on 17-6-1991. In the context of the above facts, applicant has come up with the prayers referred to earlier.



3. Private Respondents 6 to 8 have been issued with notice but they have not appeared nor filed counter.

4. Departmental Respondents, in their counter have opposed the prayers of applicant. They have stated that in this Original Application, the applicant has approached the Tribunal for the fourth time. He had earlier filed T.A. No. 277/1986, O.A. No. 353 of 1987 and RA No. 21 of 1989. As such the present application is barred on the principle of res judicata -constructive or otherwise. It is further stated that the applicant is working as Senior D.T.I. in the scale of pay of Rs. 1600-2660/-RPS from 1981 and he was called for the selection to the post of Sr.D.T.I. in the scale of Rs. 2000-3200/- RPS more than once but he did not attend the selection test. In the present application he has come up for consideration of his representation against the Scheduled

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Caste quota. Respondents have stated that applicant was appointed as Asst. Station Master on 6-9-1966 and was promoted to the post of ASM, Gr.II in the scale of Rs. 425-640 on 6-4-1975. He was further promoted to officiate as Junior D.T.I. in the scale of Rs. 455-700/- on 31.7.1978 purely on adhoc basis. He was provisionally regularised on being provisionally empanelled for the said post in the order dated 30.9.1980. He was further promoted to the post of S.D.T.I. in the scale of Rs. 1600-2600/- w.e.f. 19.1.1981, on ad-hoc basis. One temporary post of Sr.D.T.I. in the scale of Rs. 550-750/- was sanctioned with effect from 1.1.1979 in lieu of the post of Jr.D.T.I. in the scale of Rs. 455-700/- as a result of review of cadre of Inspectors as on 1.1.1979.

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The post of Sr.D.T.I. is a non-selection post controlled by the Division and filled up from among the Jr.D.T.I.s, on the basis of seniority cum suitability. As no regular Junior D.T.I. in the scale of pay of Rs. 455-700/- belonging to SC community available to fillup the upgraded post w.e.f. 1.1.1979, the same was filled up



by the senior-most staff on passing the suitability test. Applicant belongs to SC but he was not considered for promotion against the up-graded post of Sr.D.T.I. in the scale of Rs. 550-750/- w.e.f. 1.1.1979 as he was not a regular Jr.D.T.I. prior to 30.9.1980. However, he was promoted to officiate as Sr.D.T.I. in the scale of Rs. 550-750/- w.e.f. 19.1.1981 purely on adhoc basis on the condition that such promotion will not confer any right for promotion or seniority/confirmation. Applicant had earlier filed OJC No. 269/1982 for regular promotion to the post of Sr.D.T.I. The said OJC was transferred to this Tribunal and was re-numbered as TA No. 277/1986.

In order dated 28.1.1987 (Annexure-R/1), the TA was dismissed being devoid of any merit. The next grade of Rs. 550-750/- of Sr.D.T.I./II is Rs. 700-900/-. Three posts were up-graded and designated as Sr. D.T.I. as per establishment serial No.1/84 (Annexure-R/2). This Estt. Sl. provided that restructuring should be completed by 15.3.1984 but this could not be done due to administrative reason. The selection procedure was strictly adhered to in accordance with the Estt. Sl. No.1/84 and selection was made on scrutiny of service reports, without holding any written test or viva-voce. Applicant was not considered

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suitable for promotion on scrutiny of his service sheets.

The same was also communicated to the applicant in order dated 2-5-1985 (Annexure-R/3). Respondents have stated that as he was not found suitable for promotion to the post of Senior D.T.I., he can not claim promotion as a matter of right. Though he was found unsuitable for promotion as per scrutiny of service sheet and confidential reports, he was given chances to appear in the regular selection on 24-2-1985 in letter dated 11-2-1985 at Annexure-R/4, and again for supplementary test on 25.3.1985 but he failed to attend. Again a number of chances were given to him fixing 29.4.1985 and 8.5.1985 but instead of attending the selection, the applicant made a representation on 25.4.1985 for which the applicant was intimated the correct position in letter dated 2.5.1985 which is at Annexure-R/3 referred to above. Respondents have stated that applicant was given opportunity to appear in the selection for the post of Sr.D.T.I. morethan thrice. The applicant has also approached this Tribunal by filing Original Application No.353/1987 which was disposed of in order dated 22.6.89

(Annexure-R/5). Applicant has also filed a Review Application



No. 21/89 which was rejected in order dated 20.12.1990 (Annexure-R/6). Respondents have stated that applicant is representing that his case should be considered against SC quota for the post of S.D.T.I. in the scale of Rs. 2000-3200/- as well as Chief D.T.I. in the scale of Rs. 2375-3500/- but at the time of up-gradation in the year 1984 and 1985, his case was considered for promotion to the post of S.D.T.I. in modified procedure i.e. by scrutiny of service records and confidential reports. But the Selection Committee declared him unsuitable for such promotion and therefore, he could not be promoted. Thereafter, he was again called in the year 1991 for selection to the post of Sr.D.T.I. but he did not attend the same.

Respondents have further stated that the applicant can not be considered for promotion to the post of Chief D.T.I. unless he qualifies in the prescribed test for the post of Sr.D.T.I. Moreover, the post of Chief D.T.I. is controlled by the Headquarters and promotion to the said post is made basing on the zonal railway seniority. Respondents have further stated that the averments of applicant that the minimum period of service in the lower grade is two years is not correct. As per the Estt. Srl. No. 48/93, this has been relaxed as one year, as one time exception. On the



above grounds the Respondents have opposed the prayers of applicant.

5. Applicant in his rejoinder has stated that the post of Divisional Transportation Inspector (Jr/Sr.) were decentralised from 1.4.1977. As per the Railway Board's instruction while making adhoc promotion, the duration of which is for 45 days or more, reserved vacancies may be filled up by senior most SC and ST candidates who are within the zone of consideration and are liable to be considered. The post of Senior Divisional Transportation Inspector was de-reserved on 1.1.1979 and was filled up by unreserved candidate Shri D.Y. Chaintu which was arbitrary as the applicant was available as a SC candidate. Again on 1.1.1979 one upgraded post of Senior DII was filled up by one un-reserved candidate Shri A.C. Mohanty ignoring the de-reservation rules. Applicant has further repeated his averments about availability of three upgraded posts of Sr.D.T.I. on 1.1.1984 and the Board's instruction regarding maintaining roster point and promotion on the basis of scrutiny of service records without any written and viva-voce test. Applicant has stated that as per the DPO letter dated 2.5.1985, applicant alongwith



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two other un-reserved candidates were empanelled against the post of Senior Divisional Transportation Inspector. After the empanelment, the applicant demanded pre-coaching training as per the Railway Board's Circular dated 3.8.1984 as the post comes under the safety category but the Respondents appointed one Shri K.C. Mohanty against the SC quota even though a Vigilance case is pending against him. As regards the selection in the year 1991, the applicant made representation demanding pre-coaching selection training but this was not given to him. Applicant has further stated that no adverse remarks against him were ever communicated to him and the Departmental Respondents have violated the reservation principles by giving promotion to Respondents 6 to 8 who belong to the General category. On the above grounds, applicant has reiterated his prayers made in the Original Application.

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6. On 29-2-2000, when the matter was called the applicant was present in person and submitted that he would like to argue the case in person. Accordingly, we have heard the petitioner in person. Learned Senior counsel Mr. Bopal was not present. Applicant urged for

early consideration of his grievance. In view of this, hearing was concluded on that day.

7. In course of his submission, the petitioner has filed establishment Sl. No. 13/93 about the restructuring of certain Gr. 'C' and 'D' cadre and the circular relating to de-reservation of reserved vacancies and these have also been taken note of. The admitted position is that the applicant was promoted to officiate as Jr. D. T. I. in the scale of Rs. 455-700/- on 31-7-1978 and was regularised in the post of Junior D. T. I. on 30-9-1980. This has been mentioned by the applicant in para-4.C of the original Application and by the Respondents in para-3 of the counter. Applicant was further promoted to the post of Sr. D. T. I. w. e. f. 19.1.1981 on adhoc basis. This fact was also admitted by both sides. in TA 277/86, applicant had prayed that he had qualified himself for promotion to the post of Sr. D. T. I. on 30-9-1980 and therefore, his promotion to the post of Sr. D. T. I. should have been given w. e. f. 19.9.1980. This Tribunal rejected his contention and held that he was rightly given promotion w. e. f. 19.1.1981.

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Against these admitted position, the applicant's first grievance is that under the re-structuring formula, three posts of Sr.D.T.I. were to be filled up. He was called alongwith one M.L.Swamy and M.K. Sastri. This selection was to have been done on scrutiny of CRS and Service Records and even though no adverse entry was communicated to applicant, he was not selected and only one post was filled up by giving promotion to Mr.M.K.Sastri who belongs to general category. Respondents in their counter have stated that three posts which were upgraded, were those of senior D.T.I and not of Chief D.T.I. Applicant was working as Sr.D.T.I. on ad-hoc basis w.e.f. 19.1.1981 and he obviously could not have been considered for the next higher post of Chief D.T.I. Three upgraded posts for which applicant and two others were called were for promotion to the post of Sr.DTII. As the Selection Committee on scrutiny of CRS and service records found him unsuitable, he was not promoted. Applicant has stated that no adverse entry was communicated to him and therefore, he should have been declared suitable. First thing to be noted with regard to this point is that this selection took place in 1981.

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sometime in 1984 and as such, the applicant can not be allowed to agitate this grievance in an Original Application filed in 1994 i.e. after 10 years. Moreover, law is well settled that the Tribunal can not reassess the CRS and substitute its evaluation in place of the evaluation done by the Selection Committee. In the regular selection through written and *viva-voce* test the applicant did not appear. The applicant in para-4-K of the petition has mentioned that this selection was for the post of Chief D.T.I. but the Respondents have pointed out that the applicant along with K.C.Mohanty-I, P.Barik, and M.L.Swamy were called in 1985 for selection to the post of S.D.T.I. but the applicant did not attend the test as also in the supplementary test. Again a regular selection was conducted in June, 1991 for filling up of the three vacancies but again the applicant did not appear in the written test. Applicant was continuing as adhoc Sr.DTI but for getting regularised in the post of Sr.DTI, he has to appear in a selection test but even though he has been called to appear the test, he refused to attend the test. In view of this, he can not claim that he should be appointed as regular Sr.D.T.I. from the date his juniors were appointed.

Applicant has stated that candidates belonging to general category were appointed against the reserved category posts. As the applicant has not appeared in the selection test, even though he was given repeated chances to take the selection test, he can not make a grievance about he is not getting regular appointment to the post of Sr.D.T.I. against reserved post. Even for getting appointed to the reserved post, the applicant has to qualify in the selection test and as he has not taken the test, he can not claim to be regularised.

The next prayer of the applicant is for promotion to the post of Chief D.T.I. As the applicant's appointment in the rank of Sr.D.T.I. had not been made regularised he can not claim the post of Chief D.T.I.

8. *Vdm* Applicant has stated that as per the Circular of the Railway Board as a SC candidate, he should have been given the pre-selection coaching and even though he asked for the same, this facility was not provided to him. This point has been raised by the applicant for the first time in his rejoinder. In his Original Application he has not mentioned in this point and therefore, the Respondents have not got any chance to reply for the same. Applicant has also not enclosed the

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Circular of the Railway Board which provides for pre-selection training. In view of the above, this point is held to be without any merit and the same is rejected.

9. In the result, in view of the discussions made above, we find no merit in this original Application which is accordingly rejected but in the circumstances without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN