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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.355 OF 1994
Cuttack, this the 14th day of August, 1998


Pravash Kumar Bera Applicant

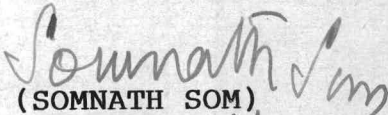
Vrs.

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)
VICE-CHAIRMAN
14.8.98

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CORAM:

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

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Pravash Kumar Bera alias Behera,
aged about 49 years,
son of Nagendranath Bera
a permanent resident of Bajkul, P.O-Bajkul,
P.O-Kishmot, P.S-Bhagabanpur, Midnapur, at present
working as Inspector of Works (Constn.), Bondhamunda,
Qr.No.L/182/2 Bondhamunda, Rly.Drivers Colony,
Sundargarh Applicant

By the Advocates - M/s A.K.Misra,
S.K.Das,
S.B.Jena,
J.Sengupta,
B.B.Acharya, &
A.K.Guru.

Vrs.

1. Union of India, represented through
its General Manager,
S.E.Railway, Garden Reach,
Calcutta-41.
2. Chief Administrative Officer (P),
S.E.Railway,
Bhubaneswar.
3. Chief Project Manager,
S.E.Railway,
Bilaspur, P.O-Bilaspur,
MP.
4. Project Manager, S.E.Railway,
Chakradharpur,
Singhabhumi, Bihar.

By the Advocates - Respondents
M/s B.Pal
A.K.Misra &
P.C.Panda.

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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 direction to the respondents to regularise his services as Inspector of Works, Grade III, in the establishment of Chief Project Manager, Construction, S.E.Railway, Bilashpur, and also for a direction that the petitioner has no lien in the Open Line Department and he belongs to Construction Organisation. The third prayer is to quash Annexure-9, the order dated 12.5.1994 repatriating him to Open Line Department under Divisional Railway Manager (P), Khurda Road, and Annexure-10, the order dated 13.5.1994 of Senior Project Manager, Chakradharpur, transferring him to Divisional Railway Manager (P), Sambalpur, S.E.Railway, for further posting.

2. The petitioner's case is that he was working as Store Mate under Inspector of Works, Bolangir. In the order dated 24.12.1977 (Annexure-1) he was promoted to the post of Work Mistry in Bolangir on purely stop-gap basis. He joined on 5.1.1978 as Work Mistry under Inspector of Works, S.E.Railway, Bolangir. Apparently, there was an order for his reversion to the post of Stores Mate and he applied on 3.5.1978 for his transfer to Construction Organisation. His application dated 3.7.1978 for transfer to Construction Organisation was forwarded by Divisional Superintendent (P), Chakradharpur, in his letter dated 26.5.1978 (Annexure-2), and in this letter it was mentioned that there was no objection to spare the applicant in the event of his transfer to Construction Organisation. In letter dated 15.6.1978 (Annexure-4), Chief Engineer (Construction), Bilashpur, indicated that the Construction

Organisation had no objection to take the applicant on transfer, and accordingly, it was requested that the applicant may be directed to Bilashpur for further posting. The applicant reported to the office of Divisional Engineer(Construction) on 4.7.1978 and in the order dated 12.7.1978 at Annexure-3 he was temporarily promoted to officiate as Works Mistry and posted under Inspector of Works (C), Bondhamunda. In order dated 1.2.1985 (Annexure-7) issued by Divisional Engineer (Construction), Tata, the applicant was promoted to officiate as Inspector of Works, Grade-III, on an ad hoc measure with effect from 1.2.1985. In this order at Annexure-7 it was mentioned that his promotion was purely on ad hoc basis and would not confer on him any right for future claim of seniority either in Open Line or Construction Department. It was also indicated that his promotion was ordered for a period of two months or till such time he was replaced by a regular candidate. Apparently, the petitioner continued as ad hoc Inspector of Works, Grade-III. In the order dated 12.5.1994 at Annexure-9, five candidates were posted as Inspector of Works, Grade-III, in the Construction Organisation. In this order at Annexure-9 these five persons were given posting and it was mentioned that these five persons were appointed as Inspector of Works, Grade-III on purely temporary measure for a period of three years. Consequent upon the posting of these five Inspectors of Works, five persons including the applicant were released to report to their parent organisation in the Open Line. In this order at Annexure-9 the applicant was ordered to report to Divisional Railway Manager (P), Khurda Road. Senior Project Manager, Chakradharpur, in his order dated 13.5.1994 at Annexure-10 directed that the applicant, who was transferred from Project Organisation, should report to Divisional Railway

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Manager (P), Sambalpur, for further posting. It was also indicated that before joining Construction Organisation in June 1978, he was working under Inspector of Works, Bolangir, as a Store Mate. The applicant's case is that the action of the respondents in sending him back to the Open Line Organisation is in violation of principles of natural justice and they are also estopped from sending him back. On the above grounds, he has come up with the prayers referred to earlier.

3. Respondents in their counter have pointed out that while the applicant was working as a Store Mate under the Open Line, Chakradharpur Division, he was transferred to Construction Organisation with effect from 4.7.1978. In the Construction Organisation, ad hoc promotion was given to him as Work Mistry on 4.7.1978 and thereafter as Inspector of Works, Grade-III, on 1.2.1985. Candidates approved by Railway Recruitment Board for filling up of the posts of Inspector of Works, Grade-III, in Construction Organisation, reported to the office of Chief Project Manager, S.E.Railway, Bilaspur, on 11.5.1994 and those candidates approved by Railway Recruitment Board were posted as Inspectors of Works under Senior Project Manager, Bilaspur and Senior Project Manager, Chakradharpur. Consequent upon their posting, ad hoc Inspectors of Works in the Construction Organisation, who were holding lien in the Open Line were released from Construction Organisation and were directed to report to their respective parent Department, in terms of Annexure-9, the order of Chief Project Manager, Bilaspur. The applicant is one of them. Accordingly, the applicant was transferred from Construction Organisation and was directed to report to Divisional Railway Manager (P), S.E.Railway, Sambalpur, as he was

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working under Inspector of Works, Bolangir, before he went to Construction Organisation. The respondents have stated that in view of the above facts, the order of his transfer releasing him from Construction Organisation and sending him back to Open Line is perfectly valid and justified. It is further submitted by the respondents that in the Open Line he was originally appointed as Store Mate. He was promoted as Work Mistry on 5.1.1978 on ad hoc basis and was again reverted as Store Mate on 3.5.1978 in the Open Line. He volunteered to go to the Construction Organisation and he was spared. He reported in Construction Organisation on 4.7.1978. There he got ad hoc promotion as Work Mistry and later on in 1985 as Inspector of Works, Grade-III, on purely ad hoc measure for a period of two months or till such time he was replaced by regular candidate. The applicant accepted the conditions and was accordingly promoted. The respondents have stated that now that he is replaced by a regular candidate selected through the Railway Recruitment Board, he cannot claim regularisation in the post of Inspector of Works, Grade-III, in the Construction Organisation where he has been given only ad hoc promotion without any process of selection and when regular candidate has reported for joining, he has been rightly released to report to his parent Organisation where his lien is continuing. In view of the above, the respondents have opposed the prayers of the applicant.

4. We have heard Shri A.K.Mishra, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Counsel appearing on behalf of the respondents, and have also perused the records.

5. It is submitted by the learned counsel for the petitioner that the candidates selected through the Railway Recruitment Board have been appointed as Inspectors

of Works, Grade-III, on purely temporary measure and for a period of three years only. As such, they cannot be considered as regular candidates on whose joining the petitioner is liable to be reverted and sent back to his parent Organisation. As the staff requirement in Construction varies depending upon the work taken up by them, these five new appointees have been appointed on a temporary measure and for a period of three years. But they have come through a process of selection undertaken by Railway Recruitment Board and therefore, their appointment cannot be taken as irregular. They must be taken as regular candidates appointed to the posts of Inspector of Works in the Construction Organisation. According to the terms of ad hoc appointment of the petitioner to the post of Inspector of Works, Grade-III, in the Construction Organisation, his appointment would continue for a period of two months which apparently has been extended from time to time or till regular candidates join. Therefore, on joining of the regularly recruited Inspectors of Works, Grade-III, the petitioner can have no claim to continue as Inspector of Works, Grade-III, in the Construction Organisation. As the petitioner has continued to have his lien in the Open Line organisation and he has not been confirmed against any post in the Construction Organisation and his lien in the Open Line Organisation has not been terminated, he has to go back to his parent organisation and that is what has been ordered in the orders issued at Annexures 9 and 10 referred to earlier. Moreover, when the applicant was sent to the Construction Organisation, in none of the orders it was mentioned that his transfer to Construction Organisation is on permanent basis and that is how he continued to retain his lien in the Open Line Organisation. We, therefore, find

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no merit in the prayer of the applicant for regularising him as Inspector of Works, Grade-III, in the Construction Organisation. He continues to have his lien in the Open Line Organisation and this lien can be terminated only on his permanent absorption in the Construction, which is not the case here. Therefore, his second prayer for a declaration that he has no lien in the Open Line Organisation is also held to be without any merit. The respondents in page 4 of their counter have pointed out that when person like the applicant returns from the Construction Organisation to the Open Line Organisation, where his lien is fixed, he would be posted in a post and with scale of pay which he would have got had he continued in the Open Line, and he would get such promotion which has been received by his immediate junior in the Open Line Organisation. In view of this, his service interest in the Open Line Organisation has been protected because of his lien. He should, therefore, have no apprehension to get back to his parent Organisation.

6. In the result, therefore, we hold that the application is without any merit and the same is rejected, but, under the circumstances, without any order as to costs. The stay order issued on 21.6.1994 also stands vacated.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM) 8.98
VICE-CHAIRMAN

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