

13

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NOS. 696/94 & 271/98
Cuttack, this the 6th day of August, 2001

U.V.S.A.Prakash Rao (OA 696/94)
D.C.Dash (OA 271/98)

....Applicants

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
6.8.2001

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ORIGINAL APPLICATION NOS. 696/94 & 271/98
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CORAM:

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

.....
In OA 696/94

U.V.S.A.Prakash, aged about 61 years,
son of U.Jagunadha Rao of 43-15-8, Subhalaxmi Nagar,
T.S.N.Colony, Visakhapatnam-16....Applicant

Advocates for applicant - M/s S.K.Dash
B.Mohapatra
S.K.Mishra
B.N.Mohapatra

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43.
3. Divisional Railway Manager, South Eastern Railway, Waltair.
4. Divisional Personnel Officer, South Eastern Railway, Waltair

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Respondents

Advocates for respondents - M/s B.Pal
O.N.Ghosh

In OA No. 271/98

Sri Dhruba Charan Dash, aged about 59 years, son of late
Jaya Krushna Dash of Rani Bhawan, Dattatota,
Town/Dist.Puri....

.....Applicant

Advocates for applicant - M/s S.K.Dash
B.Mohapatra
S.K.Mishra
B.N.Mohapatra

Vrs.

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1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
 2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43.
 3. Divisional Railway Manager, Khurda Road Division, South Eastern Railway, At/PO/PS/Town/Dist. Khurda.
 4. Divisional Personnel Officer, Khurda Road Division, South Eastern Railway, At/PO/PS/Town/Dist. Khurda

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Respondents

Advocate for respondents-Mr.R.Ch.Rath

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These two applications have been heard separately. But the two applicants have come up with identical prayers and on the same grounds. The respondents have filed identical counters except on one point which would be referred to later. Therefore, these two O.As. are being disposed of by a common order. The facts of both the cases are, however, set out separately.

2. In OA No. 696 of 1994 the applicant has stated that he originally joined as Commercial Clerk in S.E.Railway, Khurda Road Division. At that time the Divisional Superintendent was authorised to fill up the posts upto and including the grade of Rs.100-185/- in the Coaching Branches including Enquiry Clerk from the Divisional staff on the basis of Divisional seniority. Accordingly, Divisional Superintendent, S.E.Railway, Khurda Road Division, held a test on the basis of which the applicant was found suitable and was promoted to the post of Enquiry-cum-Reservation Clerk along with 8 others. A seniority list of Enquiry-cum-Reservation Clerks was also prepared by the Divisional office. The post of Enquiry-cum-Reservation Clerk (hereinafter referred to as "E.R.C.") was declared as a selection post with effect from 1.4.1964 and Chief Personnel Officer, Garden Reach, Calcutta (respondent no.2) selected some other staff and wanted to replace the applicant along with eight others promoted by the Divisional office. The Divisional Superintendent, Khurda Road Division, pointed out that the applicant and eight others have been promoted prior to 1.4.1964 on regular basis after passing the necessary suitability test and should not be

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disturbed by replacement. But respondent no.2 prepared a revised seniority list in which the names of the applicant and eight others were omitted. Being aggrieved with this, the applicant along with others approached the Hon'ble High Court of Orissa in OJC No.22 of 1976 which was disposed of in order dated 11.1.1978(Annexure-1). The Hon'ble High Court held that the petitioners are to be treated as ERC from the date of their appointment and should be assigned appropriate places in the gradation list on that footing. One R.Sanyasia, who was opposite party no.4 in the writ application, was declared to be junior to the petitioners before the Hon'ble High Court and the Railway Administration was directed to consider the claim of the petitioners for promotion to all the higher posts to which posts R.Sanyasia had been promoted in the meantime on the erroneous basis of his being taken as senior to the petitioner. It was ordered that this consideration should be made within six months from the date of receipt of the writ. The applicant has stated that he represented several times for implementing the above order of the Hon'ble High Court but without any favourable result. Thereafter one of the petitioners approached the Tribunal in TA No.266 of 1986 and the Tribunal held that the order of the Hon'ble High Court should be implemented forthwith by giving effect to the promotion and arrear emoluments to the petitioners before the Hon'ble High Court, but no action was taken. Thereafter the applicant approached the Tribunal in OA No. 463 of 1990, which was disposed of in order dated 13.11.1992 (Annexure-2). The Tribunal again directed that the applicants before them should be considered for promotion within sixty days from the date of receipt of

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the order and arrear emoluments should be paid within another sixty days. The applicant has stated that he retired on superannuation on 28.2.1993 as Chief Reservation Supervisor (CRS), Waltair, without getting the benefit of the judgment. Thereupon the applicant filed C.P.No.11 of 1994 in which the respondents took the plea that the Hon'ble High Court had directed to give promotion to the applicants before them to the higher posts to which R.Sanyasia alone was promoted. R.Sanyasia retired on superannuation in 1978. The applicant has stated that he was declared senior to R.Sanyasia. The respondents promoted two juniors one R.K.Banerjee and S.P.Dasgupta who were at serial nos. 34 and 38 respectively as against R.Sanyasia who was placed against serial no.18. But the respondents did not promote the applicant to the post of C.R.S. Grade-I in the scale of Rs.700-900/- revised to Rs.2000-3200/- to which post R.K.Banerjee and S.P.Dasgupta had been promoted. In the context of the above, the applicant has come up in this petition with the prayers to extend all benefits including arrear financial emoluments in respect of the promotional posts on and from the date of promotion of R.K.Banerjee and S.P.Dasgupta.

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3. It is not necessary to refer to the averments made in the counter by the respondents because these will be referred to while considering the submissions made by the learned counsel of both sides. No rejoinder has been filed.

4. In OA No.271 of 1998 the applicant has come up with the identical prayer for promotion to

the posts to which R.K.Banerjee and S.P.Dasgupta were promoted and for payment of arrear financial emoluments. Like the petitioner in OA No. 696 of 1994 he was also recruited as Commercial Clerk and was promoted after clearing a suitability test to the post of ERC by the Divisional authorities. He has also mentioned the subsequent action taken by Chief Personnel Officer, S.E.Railway (respondent no.2) in selecting some other officials and replacing the petitioner and eight others by those persons. He has also mentioned about the seniority list drawn up by respondent no.2 in which their names were omitted. This applicant had earlier approached the Hon'ble High Court of Orissa in OJC No.22 of 1976. He has further stated that in spite of representations for complying with the judgment of the Hon'ble High Court, no action was taken. On the contrary the applicant was given to understand that the order of the Hon'ble High Court of Orissa could not be implemented due to the interim order passed by the Hon'ble High Court of Calcutta in Civil Rule No. 1167(W) of 1974. Thereafter one of the nine petitioners in OJC No.22 of 1976 approached the Tribunal in TA No.266 of 1986. He has referred to the order of the Tribunal in TA No.266 of 1986 and has stated that in spite of this, no action was taken. Thereafter the petitioner approached the Tribunal in OA No.101 of 1990 which was disposed of along with two other OA Nos.100 and 244 of 1990 in the order dated 30.9.1992. The Tribunal issued direction similar to the direction issued by them in OA No. 463 of 1990. But even then the respondents did not take any action to implement the order of the Hon'ble High Court. Thereupon the applicant approached the

Tribunal in CP No.14 of 1993 which was dropped on the undertaking given by the counsel for the alleged contemnor that arrear emoluments should be paid within fifteen days. The applicant has stated that while he was declared senior to R.Sanyasia the departmental authorities had given further promotion to R.K.Banerjee and S.P.Dasgupta, who are much junior to R.Sanyasia, to higher post, but the case of the applicant has not been considered. The Tribunal in their order dated 30.8.1993 filed by the applicant noted the submission of the counsel for the applicant that leave be granted to the petitioner to file a representation before the competent authority agitating his grievance regarding seniority over R.K.Banerjee and S.P.Dasgupta and giving the same benefit as has been given to the petitioner in T.A.No.266 of 1986. The Tribunal directed that such a representation should be disposed of with a reasoned order within sixty days from the date of receipt of the representation. The applicant filed representation on 10.11.1993. But in spite of the order of the Tribunal in OA No.101 of 1990 to dispose of the representation through a reasoned order within sixty days no order was passed. The applicant retired on superannuation on 31.8.1993 and shifted from Cuttack to Puri and intimated the change of his address to respondent no.2, but no order was communicated to him. In the context of the above, the applicant has come up with the prayer referred to earlier.

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5. Respondents have filed counter which is identical to the counter filed by them in OA No. 696 of 1994 except on one point. No rejoinder has been filed.

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6. We have heard Shri S.K.Dash, the learned counsel for the applicant ~~xxxxxxxxxxxxxxxx~~ and Shri B.Pal, the learned Senior Panel Counsel (Railways) for the respondents in OA No.696 of 1994 and Shri B.Mohapatra, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned panel counsel (Railways) for the respondents in OA No.271 of 1998 and have perused the record. In OA No.696 of 1994 the learned counsel for the petitioner has filed written note of submission which has also been taken note of.

7. Even though the applicants in both these cases have made identical prayers for promotion to the post to which R.K.Banerjee and S.P.Dasgupta, who were their juniors, were promoted and for payment of consequential financial benefits, their cases are slightly different and have to be considered separately. Before doing that it has to be noted that the both the applicants in these two O.As. have not claimed for promotion to the post to which R.Sanyasia was promoted and consequential financial benefits. The respondents in their counter to OA No.696 of 1994 have mentioned that in accordance with the order of the Hon'ble High Court in OJC No.22 of 1976 the seniority of the petitioners therein was interpolated above R.Sanyasis (O.P.No.4 before the Hon'ble High Court) and benefit of promotion has been given to the applicant in OA No.696 of 1994 at par with his junior R.Sanyasia and payment of consequential financial benefits has also been ordered in Divisional Personnel Officer, Vizagpatnam's order dated 17.11.1993. This averment has not been denied by the applicant in OA No. 696 of 1994 and therefore, must be

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accepted moreso because the applicant in OA No.696 of 1994 has not claimed promotion vis-a-vis R.Sanyasia and consequential financial benefits. From this it is clear that the order of the Hon'ble High Court has been complied with so far as R.Sanyasia and the applicant in OA No.696 of 1994 are concerned.

8. The grievance of the applicant in OA No.696 of 1994 is that R.Sanyasia was against serial no. 18 in the seniority list and the applicant having been declared senior to R.Sanyasia was presumably above him. R.K.Banerjee and S.P.Dasgupta were against serial nos. 34 and 38 respectively. But they were given promotion to higher post whereas the applicant was not promoted. The respondents in their counter to OA No.696 of 1994 have mentioned in paragraph 6 that on the basis of restructuring of the cadre ad hoc promotions were given to the post of Chief Reservation Supervisor in the pay scale of Rs.700-900/- as on 1.1.1984. The case of the applicant for such promotion was considered, but he was declared unfit for promotion and therefore, he could not be promoted whereas R.K.Banerjee, his junior was found suitable and was promoted in the order dated 27.9.1984. The confidential report in respect of the petitioner was, however, reviewed later during the period ending with March 1985 and he was promoted as Chief Reservation Supervisor in the pay scale of Rs.700-900/- and posted to Howrah Reservation Office in order dated 1.11.1985. The applicant, however, did not join his promotional post at Howrah. He, therefore, continued to hold the post of ERS in the pay scale of Rs.550-700/- at Tata from where he was transferred to Vizagpatnam on his own request in his existing grade and capacity in the office order dated

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15.6.1987. As there was no vacancy in the grade of Chief Reservation Supervisor in the pay scale of Rs.700-900/- the applicant could not be promoted to that grade till a vacancy occurred at Vizagpatnam in 1990 and the applicant was promoted to the said post in 1990. From the above it is clear that at the time of ad hoc promotion of R.K.Banerjee, the case of the applicant was considered and he was found unsuitable for promotion. It is not open for the applicant to make a grievance of that a decade after. Moreover, on 1.11.1985 he was given promotion on review of his CR, but he did not join his promotional post. He also cannot make a grievance of this. Thereafter on his own representation he was transferred from Tatanagar to Vizagpatnam. He must have been aware that at Vizagpatnam there is no post of CRS and when vacancy arose he was promoted. In view of the above, we do not think that the applicant has any case for promotion to the post of CRS in 1984 when R.K.Banerjee was promoted. As a matter of fact, the applicant has not indicated in the O.A. when R.K.Banerjee and S.P.Dasgupta were promoted. The respondents in their counter to OA No.696 of 1994 have not made any averment with regard to promotion of S.P.Dasgupta. In consideration of the above, we hold that the applicant in OA No. 696 of 1994 is not entitled to the relief claimed by him.

J.Som. 9. In respect of the prayer of the applicant in OA No.271 of 1998, the respondents have taken the stand that R.K.Banerjee and S.P.Dasgupta have not been made parties in this OA and therefore, the prayer to get promotion to the post to which they had been promoted is not maintainable. This contention of the respondents is without any merit because the applicant

has not asked for any relief as against R.K.Banerjee and S.P.Dasgupta. The respondents have stated that vis-a-vis R.Sanyasia the judgment of the Hon'ble High Court and the order of the Tribunal have been implemented. The seniority of the applicant in OA No.271 of 1998 has been interpolated above R.Sanyasia and arrear financial benefits have also been paid to him. From the order dated 29.4.1993 at Annexure-R/1 we find that the applicant was given retrospective promotion to different posts and arrears were also allowed to him. From this it is clear that as against R.Sanyasia the applicant has been given retrospective promotion and arrear financial benefits. As against promotion of R.K.Banerjee and S.P.Dasgupta, the respondents in paragraph 12 of their counter have stated that as old records are not available and R.K.Banerjee and S.P.Dasgupta have not been made respondents in the O.A., the prayer is not maintainable. We have already rejected the stand of the respondents that R.K.Banerjee and S.P.Dasgupta are necessary parties to the O.A. The other stand that the old records are not available is obviously unacceptable because ⁱⁿ their counter to OA No.696 of 1994 the railway authorities, more particularly the same Chief Personnel Officer and Divisional Railway Manager have made specific averment about the date of ^{and} promotion of R.K.Banerjee / consideration of the case of the applicant in OA No. 696 of 1994 as we have noted earlier. In view of this, the averment of the respondents that old records are not available cannot but be rejected. The respondents have also taken the stand that the order of the Tribunal in OA No.101 of 1990 filed by the applicant has been fully complied with. In this O.A.

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the applicant made no grievance with regard to promotion of R.K.Banerjee and S.P.Dasgupta. For alleged non-implementation of the order of the Tribunal in OA No. 101 of 1990 he filed C.P.No.14 of 1993 and in this O.A. he has made grievance of promotion to R.K.Banerjee and S.P.Dasgupta. As this was not a subject matter of OA No. 101 of 1990, the applicant could not have raised this matter in the C.P. This contention is also without any merit because the Tribunal in their order dated 30.8.1993 in C.P.No.14 of 1993 filed by the applicant issued direction to dispose of his representation within sixty days. The averment made by the applicant about filing of representation by him has not been denied by the respondents in their counter. Against the order of the Tribunal directing the respondents to dispose of the representation of the applicant with regard to promotion of R.K.Banerjee and S.P.Dasgupta they have not approached the higher forum and therefore, they cannot take the stand that this was not the subject-matter of OA No.101 of 1990. The applicant unfortunately has not given any details in his O.A. about the date of promotion of R.K.Banerjee and S.P.Dasgupta to higher post and the post held by the applicant at that relevant point of time. In view of this, it is not possible to take a final view in the matter. We, therefore, dispose of the prayer of the applicant in OA No.271 of 1998 with a direction to Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta (respondent no.2) and Divisional Railway Manager, S.E.Railway, Khurda Road Division (respondent no.3) to dispose of the representation of the applicant, dated

10.11.1993, within a period of sixty days from the date of receipt of copy of this order. In case the representation is not available with the respondents, the applicant is directed to file a further representation within thirty days from the date of receipt of copy of this order, before respondent no.2, who is directed to dispose of the same through a speaking order within a period of sixty days from the date of receipt of the representation and intimate the result to the applicant within fifteen days thereafter.

10. In the result, therefore, O.A.No.696 of 1994 is rejected and O.A.No.271 of 1998 is disposed of with observation and direction as above. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOMI)

VICE-CHAIRMAN

CAT/Cutt.B/ 6th August, 2001/AN/PS