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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 798 OF 1994
Cuttack, this the 15th day of November, 1999

Shivji Thakur Applicant

Vrs.

Chief Electrical Engineer (Construction),
S.E.Railway, 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*

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
SOMNATH SOM
VICE-CHAIRMAN
15/11/99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 798 OF 1994
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CORAM:

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

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Shivji Thakur, aged about 40 years, son of late Shiv Govind Thakur, At/PO-Bishnupur Titidha, P.S-Rajapakar, District-Vaishala, at present working as Khalasi at Sambalpur under DEE (Con)/SambalpurApplicant

Advocate for applicant - Mr.Satrughna Dash

Vrs.

1. Chief Electrical Engineer (Construction), South Eastern Railway, At/PO-Garden Reach, Calcutta-43.
2. Chief Personnel Officer, South Eastern Railway, At/PO-Garden Reach, Calcutta-43.
3. Chief Personnel Officer, South Eastern Railway (Electrical), At/PO-Garden Reach, Calcutta.
4. General Manager Personnel, South Eastern Railway, At/PO-Garden Reach, Calcutta.
5. Divisional Railway Manager, At/PO-Modipara, District-Sambalpur.
6. Divisional Electrical Engineer, At/PO-Modipara, District-Sambalpur.
7. Sr.Divisional Personnel Officer, At/PO-Modipara, District-Sambalpur.
8. Labour Enforcement Officer, Sector-5, Rourkela.
9. Asst.Elect. Foreman (Construction), South Eastern Railway, RourkelaRespondents

Advocate for respondents - Mr.D.N.Mishra
S.C.(Railways)

SOMNATH SOM, VICE-CHAIRMAN
O R D E R

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to restore the

petitioner in Temporary Wireman, Grade-II in the scale of Rs.1200-1800/- as per office order dated 2.9.1991. The second prayer is that the promotion which has been given on 27.2.1992 to the juniors of the petitioner should also be given to the applicant.

2. The applicant's case is that he was appointed as Wireman 8.2.1973 in Construction Organisation in Bokaro Steel City .He was transferred to Rourkela ~~xxxxxxxxxx~~ and again to Sambalpur in order No.13/91 dated 15.5.1991 at Annexure-1. In the office order dated 27.2.1992 at Annexure-2 some of the temporary staff like the petitioner and who are junior to him were appointed as temporary Skilled in Class-III category against posts sanctioned in order dated 16.9.1991 against 50% direct recruitment quota. Assistant Electrical Foreman(Construction), Rourkela, wrote to the petitioner on 3.3.1993 enquiring as to why he did not attend the screening test held on 2.3.1993. This letter is at Annexure-3. In reply, in his representation dated 12.3.1993 at Annexure-3(a) the petitioner explained that his junior colleagues have been absorbed in Open Line as Class III. He also stated that he could not attend the screening test on 2.3.1993 because of illness. He therefore prayed that he should be posted in Open Line like his juniors. The applicant has stated that according to the seniority list at Annexure-4 it is seen that some of the juniors have superseded him illegally. The applicant filed several representations for promotion to the post of Wireman Grade III but without any result. The petitioner has

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stated that while he was working at Rourkela, he was promoted to Temporary Wireman Grade-II in the scale of Rs.1200-1800/- in order No.8/91 dated 2.9.1991. But on 5.5.1993 he was transferred to Sambalpur and without giving notice he was reverted and allowed to continue as Khalasi. The applicant has stated that he has the necessary qualification to be appointed to the post of Temporary Wireman Grade-II. But in spite of his representations, no action has been taken and that is why he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have taken the stand that the application is barred by limitation as the cause of action, if any, had arisen in 1991. The respondents have stated that the applicant was initially allowed to work as Casual Khalasi from 8.2.1973 *S.J.m.* in the Construction Organisation under Electrical Foreman (Construction), Bokaro. He was given temporary status on 1.1.1984. On 1.9.1984 as there was some requirement of some skilled labourers at Rourkela, he was directed to proceed to Rourkela as temporary Blacksmith *S.J.m.* in the scale of Rs.260-400/- and to join under Electrical Foreman, Rourkela. The applicant, while working as Temporary Blacksmith, represented to work as Temporary Wireman Grade-III which was accepted in Order *S.J.m.* dated 15.3.1994. He joined as Temporary Wireman Grade-III *S.J.m.* in the same scale of which the revised scale was Rs.950-1500/-. Due to shifting of electrical unit from Rourkela to Sambalpur with effect from 1.7.1991 the applicant was shifted from the control of Assistant Electrical Foreman (Construction), Rourkela to Divisional Electrical Engineer (Construction),

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Sambalpur. He was promoted as Temporary Wireman Grade-II in the scale of Rs.1200-1800/- with effect from 1.9.1991. As the Construction Organisation had no permanent cadre, ~~nor~~ temporary employees also being ~~nor~~ permanent in nature, to avoid retrenchment due to ~~of~~ reduction of cadre owing to closure of projects, the employees were asked to exercise option for transfer to other projects or for being absorbed in permanent establishment in Open Line in the Divisional Office. After formation of Sambalpur Division, option was exercised by the project employees to be absorbed in the said Division. The applicant opted for the same and on being screened, was issued with the posting order posting him as Khalasi in the scale of Rs.750-940/-. Thus from 5.5.1993 the applicant became a permanent employee of Sambalpur Division. The respondents have stated that the applicant never joined as Wireman on 8.2.1973. He joined originally as Khalasi and was then allowed to work as Temporary Blacksmith and then as Temporary Wireman Grade-III on his request and further as Temporary Wireman Grade-II at Bokaro and subsequently at Rourkela. The applicant was allowed to work in the promotional post of Temporary Blacksmith at Rourkela coming under jurisdiction of Chakradharpur Division. The applicant having come over to Chakradharpur Division and joined the post, cannot have a right or claim for the post which came later at Bokaro, Adra Division, in Open Line. On 1.9.1984 he had come over to Chakradharpur Division on a temporary skilled post and so he cannot claim promotion in subsequent vacancies in 1991 at Adra Division to which some of his alleged juniors have been

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promoted. As per Railway Board's policy decision, temporary employees of Construction Organisation have to be screened for regular absorption as per vacancies in the Division under which the Construction Organisation falls and not in any other Division where the vacancies exist. This policy has been laid down in the circular dated 16.3.1987 at Annexure-R/1. The applicant having come over to Chakradharpur Division and subsequently having been absorbed in Sambalpur Division, cannot claim promotion in some other Division. It is further stated that the applicant exercised option and was called to the screening test and has been absorbed on regular basis as Khalasi in the said Division with effect from 5.5.1993. As the applicant delayed in attending the screening test for regular absorption, he was absorbed later. This has nothing to do with the vacancies or absorption in Bokaro. The respondents have further stated that Annexure-4 enclosed to the OA is not a seniority list and has been created only for misleading the Tribunal. In any case the seniority list, if any, of Bokaro Division is not relevant to the claim of the applicant. It is further stated that the applicant having accepted to join as Khalasi cannot now go back to some other Division on the ground that in those Divisions his juniors have been benefitted. It is stated that in Sambalpur Division where the applicant is now working none of his juniors has been promoted ignoring his claim. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. We have heard Shri Satrughna Dash, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel for the respondents and have also perused the records.

5. From the pleadings of the parties the admitted position is that the applicant the Railway service on 8.2.1973. According to the petitioner he was appointed as Wireman on 8.2.1973. The respondents have stated that he joined as Casual Khalasi on 8.2.1973. He never joined as Wireman but was originally allowed to work as Khalasi and then as Temporary Blacksmith and thereafter as Temporary Wireman Grade-III and further as Temporary Wireman Grade-II at Bokaro. Subsequently he came to Rourkela as Temporary Blacksmith. The first point of controversy therefore is if the applicant joined on 8.2.1973 as Khalasi or as Temporary Wireman. The order dated 15.5.1991 at Annexure-1 filed by the applicant has not been denied by the respondents in their counter. In this order the applicant has been shown as Wireman and it has been mentioned that he has been granted temporary status. This *prima facie* shows that the applicant was working as Wireman at least at the time of issue of the order dated 15.5.1991. By this order the applicant was transferred from Rourkela to Sambalpur. So it is clear that at the time of his transfer from Rourkela to Sambalpur, the applicant was working as Wireman with temporary status. But it has to be noted at this stage that he was working as such in the Construction Organisation. The respondents have stated that because of shrinkage of work the Electrical Unit where the applicant was working was transferred

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from Rourkela to Sambalpur. It is also admitted that the applicant was promoted as Temporary Wireman Grade-II with effect from 1.9.1991. As the applicant had come away to Sambalpur Division and had opted for absorption in Open Line in Sambalpur Division, obviously he cannot make a claim for getting absorbed in Open Line in Chakradharpur Division from where he had come away. Therefore, his grievance that in Chakradharpur Division some of his juniors were promoted to higher grade cannot be entertained and he cannot be promoted in the Sambalpur Division to the same grade. Similarly he cannot claim to go back to Chakradharpur Division for getting promoted to higher grade. These contentions are therefore held to be without any merit.

6. The next contention of the applicant is that in Sambalpur Division he should have been absorbed in Open Line as Wireman instead of being absorbed as Khalasi. So far as Construction Organisation is concerned, the rules provide that they are to be screened and absorbed in Open Line on the basis of their seniority and on the availability of vacancies. On the availability of vacancies, the applicant has been absorbed as Khalasi. The respondents have specifically averred that none of the juniors of the applicant has been absorbed or promoted to any post higher than that of Khalasi. In view of this, the applicant does not have a claim to be absorbed in a post higher than that of Khalasi. This contention is therefore held to be without any merit and is rejected.

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7. But while we reject both the claims of the applicant, one aspect has to be kept in view. The respondents have mentioned in paragraph 4 of the counter that the applicant was promoted as Temporary Wireman Grade-II in the scale of Rs.1200-1800/- with effect from 1.9.1991. He was absorbed as Khalasi in the scale of Rs.750-940/- from 5.5.1993 after having been screened and found suitable. Thus, he has been absorbed in a lower scale in the Open Line compared to the scale he was getting in the Construction Organisation. What is more the maximum of the scale in which he has been regularly absorbed is lower than even the initial of the scale which he was getting in the Construction Organisation. In view of the fact that in the Construction Organisation he has been granted temporary status, while absorbing him in the Open Line, the pay which he was getting in the Construction Organisation has to be protected. As such pay which he was getting in the Construction Organisation would be more than the maximum of the scale in which he has been absorbed, such pay protection should be given to him by granting him personal pay to the extent of difference. This, if not already done, should be done within a period of 90 (ninety) days from the date of receipt of copy of this order and arrear benefits, if any, due as per the above order should be paid to him within 60(sixty) days thereafter.

8. In the result, therefore, the O.A. is disposed of in terms of the observation and direction above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
15.11.99