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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 273 OF 1995

Cuttack, this the 19th day of June, 2001

Aswini Kumar Rout

....Applicant

Vrs.

General Manager 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.
(SOMNATH SOM)
VICE-CHAIRMAN
19.6.2001

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CORAM:

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

.....

Aswini Kumar Rout, aged about 42 years, son of late Jayadev Rout, at present working as Fitter, Grade-I (M.W.) under the Chief Workshop Manager, Carriage Repair Workshop, S.E.Railway, Mancheswar, District-Khurda

..... Applicant

Advocates for applicant - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.P.Panda
D.K.Sahoo
M.P.Jagadevroy

Vrs.

1. General Manager,
South Eastern Railway, Garden Reach, Calcutta.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta.
3. Chief Workshop Manager, South Eastern Railway, Carriage Repair Workshop, Mancheswar, District-Khurda.

..... Respondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.
In this application the petitioner has prayed for quashing the order dated 16.5.1995 passed by Chief Workshop Manager, Carriage Repair Workshop, Mancheswar (copy not enclosed) and for a direction to the respondents to allow the applicant to continue in the post of Fitter (MW) Grade-I as per order at Annexure-1. Departmental respondents have filed counter opposing the prayers of the applicant. No rejoinder has been filed. The learned counsel for the petitioner and his associates were absent when the matter was called for hearing. As this is a 1995 matter it

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was not possible to adjourn the matter indefinitely. We have, therefore, heard Shri Ashok Mohanty, the learned Senior Panel Counsel for the respondents and have perused the record.

2. The applicant's case is that he was originally appointed as Khalasi on 7.4.1973 at Bandamunda Railway Station and was given Semi-skilled ^{rank} in 1978. He came and joined Carriage Repair Workshop, Mancheswar, on 1.4.1985 and was given promotion to Skilled Grade on 1.5.1985. He was promoted to Fitter Grade-II on 25.1.1991. The applicant has stated that while working as such in Mancheswar he was given further promotion to the post of Fitter Grade-I in order dated 6.4.1995 at Annexure-1. It is stated that without any reason the departmental respondents have issued order dated 16.5.1995 reverting the applicant from the post of Fitter Grade-I to Fitter Grade-II. It is stated that as the order is not available, he has not been able to enclose a copy of this order. On the above grounds he has come up in this petition with the prayers referred to earlier.

3. It is not necessary to refer to the averments made by the respondents in their counter as these will be taken note of while considering the submissions made by the learned Senior Counsel for the respondents.

J. Sam.

4. It appears that one G.C.Sahoo and others filed OA No.230 of 1989 which was disposed of in order dated 5.4.1991 (Annexure-R/1). The applicants therein moved the Tribunal in that OA for counting their ad hoc period of service towards fixation of their seniority. In the order dated 5.4.1991 the Tribunal directing ^{ed} counting the period of ad hoc service towards seniority and accordingly the seniority of the applicants before the Tribunal in OA

No.230 of 1989 was revised and their position was interpolated in the seniority list. According to this revised seniority list, which is at Annexure-R/II, one A.K.Viswanatham is the seniormost amongst Fitter (MW)III. The respondents have stated and this has not been denied by the applicant by filing any rejoinder that the applicant is much junior to A.K.Viswanatham. It is stated that due to a clerical error the applicant was given provisional promotion to the post of Fitter Grade-I in the order dated 6.4.1995 at Annexure-1. A.K.Viswanatham filed an application on 15.4.1995 pointing out the above error and stating that he being the seniormost has to be considered for promotion in place of the applicant. After enquiry, the claim of A.K.Viswanatham was found correct and accordingly the applicant was reverted and A.K.Viswanatham was promoted in place of the applicant. These averments of the respondents have not been denied by the applicant by filing any rejoinder. From the order at Annexure-1 promoting the applicant it is seen that in the order itself it is written that the order is subject to the decisions of different courts in various pending cases. According to the decision of the Tribunal in OA No.230 of 1989 seniority of A.K.Viswanatham was refixed and as he is the seniormost person he naturally has a better right to be considered for promotion than his juniors. In view of this, we find no infirmity in the action of the respondents in reverting the applicant and promoting A.K.Viswanatham. It is also to be noted that that even though the applicant has prayed for quashing the order promoting A.K.Viswanatham, he has not made A.K.Viswanatham as a party. On this ground also the application is bound to fail.

J. J. J.

5. In consideration of all the above, the Original Application is held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
19.6.2001
VICE-CHAIRMAN

CAT/CB/19-6-2001/AN/PS