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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.353 OF 1995  
Cuttack this the 15th day of March, 2002

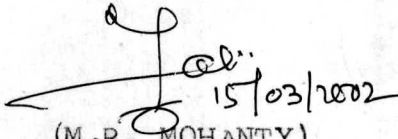
A. Sethi ... Applicant (s)

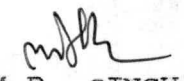
-VERSUS-

Union of India & Ors. ... Respondent (s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Yes

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(M.P. SINGH)  
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 353 OF 1995  
Cuttack this the 15th day of March/2002

CORAM:

THE HON'BLE MR. M.P. SINGH, MEMBER (ADMINISTRATIVE)  
AND  
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)  
...

Adhikari Sethi, aged about 46 years,  
S/o. Banamali Sethi, At/PO-Sabulia,  
PS-Rambha, Dist: Ganjam, at present  
working as Chief Booking Supervisor,  
Grade-II, South Eastern Railways,  
Puri, Town/Dist-Puri

...

Applicant

By the Advocates

Mr. T. Rath

-VERSUS-

1. Union of India represented through the  
General Manager, South Eastern Railways,  
Garden Reach, Calcutta-43
  2. Chief Personnel Officer, South Eastern Railways,  
Garden Reach, Calcutta-43
  3. Divisional Railway Manager, South Eastern Railways,  
Khurda Road Division, At/PO/PS/Dist-Khurda
  4. Senior Divisional Personnel Officer,  
South Eastern Railways, Khurda Road Division,  
At/PO/Dist- Khurda
  5. K.Karmakar, Chief Parcel Supervisor, South Eastern  
Railways, Parcel Office, Jajpur-Keonjhar Road,  
At/PO/PS/Dist-Jajpur
  6. Sibaram Patra, Chief parcel Supervisor, South  
Eastern Railways, Parcel Office, Berhampur, Dist-Ganjam
  7. B.C.Das, Chief Parcel Supervisor, South Eastern Railways,  
Parcel Office, Puri, At/PO/PS/Town/Dist-Puri
  8. N.Baliarsingh, Chief Parcel Supervisor, South Eastern  
Railways, Parcel Office, Khurda Road, At/PO/PS/Dist-Khurda
  9. A.K.Sinha, Chief Booking Supervisor, South Eastern  
Railways, Booking Office, Bhadrak, At/PO/PS/Dist-Bhadrak
  10. N.V.Raghava Rao, Chief Book Supervisor, Gr.II,  
South Eastern Railways, Booking Office, Berhampur,  
At/PO/PS/Town/Dist-Cuttack
  11. K.R.M.Pattnaik, Chief Booking Supervisor, Gr.II  
South Eastern Railways, Booking Office, Berhampur,  
At/PO/PS/Town-Berhampur, Dist-Ganjam
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12. S.K.Pradhan, Chief Booking Supervisor, Gr.II, South Eastern Railways, Booking Office, Cuttack, At/PO/PS/Town/Dist-Cuttack
13. B.Jani, C.B.S.(I), Booking Office, Cuttack Railway Station, South Eastern Railways, Town/Dist-Cuttack
14. D.Konhar, C.B.S.-I, Booking Office, Berhampur Railway Station, Berhampur, Dist-Ganjam

...

Respondents

By the Advocates

Mr.D.N. Mishra,  
Standing Counsel  
(Railways)

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O R D E R (ORAL)

MR.M.P.SINGH, MEMBER (ADMINISTRATIVE): Heard Shri T. Rath, the learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel for the Respondents(Railways) and perused the records.

2. The applicant, in this Original Application has sought for the following reliefs.

- a) To direct the Respondent Nos. 1 to 4 to give promotion to the applicant to the post of Chief Booking Supervisor, Grade-I, in the cadre of Commercial Supervisors, with retrospective effect and to extend all consequential benefits including the arrear financial emoluments to the applicant in respect of the promotional post at least with effect from the date of promotion of his juniors, i.e., the Respondent Nos. 5 to 9 and 13, 14;
- b) To direct the Respondent Nos. 1 to 4 to revise the provisional seniority lists under Annexure-2 and 3 to the Original Application, taking into account the seniority of the applicant over the Respondent Nos. 5 to 14; and
- c) To pass any other appropriate order/direction in favour of the applicant, as this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case.

3. The admitted facts of this case are that the applicant, a Member of Scheduled Caste Community was appointed as Commercial Clerk, carrying the scale of pay of Rs.975-1540/-, in which post he joined on 17.12.1973. He was subsequently

promoted to the post of Head Booking Clerk, carrying the scale of pay of Rs.1400-2300/-, w.e.f. 1.1.1984 and thereafter to the post of Chief Commercial Clerk in the scale of Rs.1600-2660/- w.e.f. 29.9.1988. The services rendered by the applicant in the grade of Chief Commercial Clerk w.e.f. 29.9.1988 to 4.9.1992 have been treated as fortuitous by the Respondents, Para-4(c) of in terms of Railway Boards letter No.89-E(SCT) 1/49/5/pt. dated 16.6.1992 as mentioned in Annexure-R/2 to the counter. Para-4(c) of the aforesaid letter reads as under :

"4.(c) The general seniority is to be fixed as per seniority position of the candidates in the panel/select list. However, if a SC/ST candidate has been promoted on or after 22.2.1985 in excess of the prescribed quota of 15%(SC) and 7.5%(ST) on the total number of sanctioned posts, his service in that promotional grade will be treated as fortuitous; and such promotions will be adjusted against the reserved points of future vacancies. His seniority will be reckoned from the date of such adjustment for the purpose of consideration of his promotion in the next higher grade. This procedure will be applicable for promotions made upto 11.3.1992."

In the meantime the number of posts in the grade of Chief Commercial Clerk (Rs.1600-2660) has been increased from 18 to 24 and in the next higher grade, i.e., Chief Booking Supervisor (Rs.2000-3200/-) from 9 to 15 under the restructuring Scheme w.e.f. 31.3.1993. Since the services of the applicant for the period from 29.9.1988 to 4.9.1992 have been treated as fortuitous, he could not be considered for promotion to the next higher grade of Chief Commercial Supervisor. He was, however, promoted to that grade subsequently w.e.f. 19.10.1996.

4. The question arises for consideration is whether the services of the applicant for the period from 1988 to 1992

can be treated as fortuitous in terms of Para-4 (C) as extracted by us earlier.

From the materials placed before us, i.e., Annexures-R/1, R/2, R/3, R/4, R/5 and as per Para-3 of the reply filed by the Respondents (Railways), there were five persons in the grade of Chief Commercial Supervisor (Rs.2000-3200/-) belonging to Scheduled Caste Community, whose details as follows:

<u>Name</u>		<u>Date of Promotion to SC</u> (Rs.2000-3200/-)
1. R.N. Burman	...	07.05.1984
2. N.M.Mangam	...	22.07.1985
3. G.P.Dhali	...	10.03.1987
4. G.C.Adhikari	...	26.08.1990
5. S.N.Ram	...	04.09.1992

The point for consideration is whether the applicant when promoted to the post of C.C.C. (Rs.1660-2600) was an excess of prescribed quota of 15% (SC). From the facts mentioned above, it is clear that the applicant was promoted to the post of C.C.C. w.e.f. 29.9.1988 and on that date only three persons belonging to S.C. (S/Shri G.C. Adhikari, S.N.Ram and the applicant) were available in that grade. There were 18 posts of C.C.C. on that date and prescribed quota of 15%(SC) comes to three. In other words, the applicant when promoted to the post of C.C.C. on 29.9.1988 was not in excess of prescribed quota and his services in that grade cannot be treated as fortuitous. S/Shri R.N.Burman, N.M.Mangam and G.P.Dhali were holding the higher post of Supervisory Grade (Rs.2000-3200) in 1988 and they were in excess of prescribed quota of 15%(SC) in

that grade. However, we find from the seniority list of Supervisory Grade (Rs.2000-3200) as on 1.3.1993 (Annexure-R/2) that the appointments of S/Shri G.P.Dhali, G.C.Adhikary and S.N.Ram have been shown as fortuitous and they have been considered against general seniority. From the above facts it is, therefore, clear that there was only <sup>one</sup> candidate viz., Shri R.N.Burman, <sup>against</sup> ~~belonging to~~ Scheduled Caste community <sup>quota</sup> in the Supervisory Grade of Rs.2000-3200/-. Shri N.M.Mangam has in the meantime retired on superannuation. In this view of the matter and also the fact that the applicant was within the prescribed quota of 15%(SC) in the grade of Chief Commercial Clerk, the services rendered by him in that grade could not have been treated as fortuitous.

5. The respondents in their reply have taken the stand that since the number of Scheduled Caste candidates promoted on or after 22.2.1985 was in excess of the prescribed quota of 15%, the services of the applicant for the period from 1988 to 1992 were treated as fortuitous. They have also stated that Shri S.N.Ram was promoted on 20.6.1991 to the post of Commercial Supervisor. However, he was given the seniority from 4.9.1992 and therefore, the services of the applicant having been counted in the grade of Commercial Clerk from ~~that~~ date does not hold good in view of the facts mentioned above. As they have shown all the appointments made in the Supervisory grade (except R.N.Burman) against general vacancies vide Annexure-R/1, the applicant's services ought to have been counted in the grade of Chief Commercial Clerk for the purpose of considering him to the next higher grade of Commercial Supervisor from the

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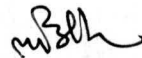
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date his juniors were so considered inasmuch as the applicant's position in the seniority list of Chief Commercial Clerk was quite high.

For the reasons discussed above, we direct the Respondents(Railways) to treat the period of service rendered by the applicant from 29.9.1988 to 4.9.1992 as non-fortuitous and consider his case for promotion to the post of Chief Commercial Supervisor(Rs.2000-3200) with effect from the date his immediate junior was so considered and in case the applicant is found eligible/suitable, he should be promoted, as aforesaid, from the date his immediate junior was promoted, in which case, he should be given all consequential benefits.

The O.A. is allowed as above. No costs.

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(M.P. SINGH)  
MEMBER (ADMINISTRATIVE)