

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

(X)

ORIGINAL APPLICATION NO. 528 OF 1995  
Cuttack, this the 23rd day of July, 2001

Sri B.B.Patra ....

Applicant

Vrs.

Union of India and another ... 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  
SOMNATH SOAM  
VICE-CHAIRMAN  
23.7.2001

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 528 OF 1995  
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**CORAM:**

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

.....  
Sri B.B.Patra, son of late Maguni Patra, Sr.Project  
Manager, S.E.Railway, Chandrasekharpur, Bhubaneswar,  
District-Khurda ..... Applicant

Advocates for applicant - M/s G.A.R.Dora  
V.Narasimh

Vrs.

1. Union of India, through the Secretary representing Railway Board, Government of India, Ministry of Railways (Rail Bhawan), New Delhi.
2. General Manager, S.E.Railway, Garden Reach, Calcutta-43.

..... Respondents

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

O R D E R  
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to treat the petitioner as a permanent appointee in Junior Class I Scale of Indian Railway Service of Engineers (hereinafter referred to as "IRSE") with effect from 14.10.1985 and for giving him consequential benefits.

2. The case of the applicant is that he was initially appointed as Inspector of Works on 15.12.1961 and was regularly promoted as Inspector of Works Grade-I in 1973 and A.E.N. in April 1977. In order dated 20.11.1982 (Annexure-A/2) he was promoted to Senior Scale along with Shri Y.Bapi Raju who like the petitioner

belongs to Scheduled Tribe and was senior to the petitioner. The applicant has stated that promotions to IRSE (Junior Scale) is done on the basis of merit adjudged by the Departmental Promotion Committee presided over by a Member of Union Public Service Commission. In Presidential order dated 13.11.1985 at Annexure-A/3, the applicant was promoted to Junior Scale of IRSE with effect from 14.10.1985. The applicant has stated that five posts were meant for S.E.Railway and out of which one was for Scheduled Tribe incumbent. The case of Shri Y.Bapi Raju, who was senior to the applicant, was also considered along with the applicant for such promotion. But the applicant was given appointment to Junior Scale of IRSE because he was found more meritorious than Y.Bapi Raju. The applicant has stated that in order dated 5.6.1987 at Annexure-A/4 he was appointed to Junior Administrative Grade with a special charge allowance. The substantive appointment of the petitioner in Junior Scale of IRSE in order dated 13.11.1985 at Annexure-A/3 was cancelled in the order dated 13.7.1993 at Annexure-A/7 and in the same order Y.Bapi Raju was inducted to Junior Scale of IRSE with effect from 14.10.1985 in place of the applicant. In another Presidential order issued on the same day, i.e., 13.7.1993 at Annexure-A/8 the applicant was appointed substantively to Junior Scale of IRSE with effect from 4.12.1992. The applicant has stated that before cancelling his substantive appointment to Junior Scale of IRSE with effect from 14.10.1985 in order dated 13.7.1993 at Annexure-A/7 no showcause notice was issued to him. The applicant came up before the Tribunal in OA No. 506 of 1993 which was disposed of in order dated 19.8.1994 at Annexure-A/11. The Tribunal in their order quashed the

order of cancellation of the applicant's appointment to Junior Scale of IRSE with effect from 14.10.1985 and gave liberty to the departmental authorities to give opportunity to the petitioner and proceed with such cancellation and pass suitable orders. The applicant has stated that he has been duly appointed to Junior Scale of IRSE with effect from 14.10.1985 and there is no legal reason for cancelling his appointment. In the context of the above, he has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that in Group-B panel of AEN published on 15.3.1977 (Annexure-A/1 of the O.A.) both Y.Bapi Raju and the applicant were empanelled. This panel was challenged by N.R.Das and others before the Hon'ble High Court of Calcutta in 1978 and all the empanelled candidates were made private respondents in that case. The Hon'ble High Court of Calcutta passed orders on 16.7.1984 directing the Railways to enlarge the panel and to retain the interse seniority. In an appeal carried to the Division Bench by the Railways, the earlier judgment of the Hon'ble High Court was upheld and the SLP before the Hon'ble Supreme Court was dismissed on 10.7.1985. Accordingly, the panel of AEN of the year 1977 was enlarged from 25 to 80 on 12.8.1985. N.R.Das, the applicant before the Hon'ble High Court of Calcutta filed two contempt petitions and ultimately on the basis of the orders of the Hon'ble High Court of Calcutta on the contempt petitions the seniority list and the panel of AEN were finalised. In terms of the judgment of the Hon'ble High Court of Calcutta the seniority of Group-B officers of S.E.Railway underwent revision and accordingly, review DPC was convened by Union

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Public Service Commission. In the recommendation of Review D.P.C. the applicant could not find place against the vacancies of 1981-84 because of his low seniority position. It is stated that because of revised seniority position Y.Bapi Raju, who was admittedly senior to the applicant, was considered and selected for appointment to Junior Scale of IRSE with effect from 14.10.1985 against ST vacancy of 1982. The applicant could not be included in the panel because of his low seniority position and in order dated 13.7.1993 his substantive appointment to Junior Scale of IRSE was cancelled. The respondents have stated that in obedience to the order of the Tribunal, dated 19.8.1994 in OA No.506 of 1993 at Annexure-A/11, the substantive appointment of the applicant to Junior Scale of IRSE with effect from 4.12.1992 has been cancelled and the order cancelling his substantive appointment to Junior Scale of IRSE with effect from 14.10.1985 has been withdrawn. The respondents have further stated that it has been decided to cancel the substantive appointment of the applicant in Junior Scale of IRSE with effect from 14.10.1985 and accordingly a showcause notice was issued to him. The applicant filed a representation dated 20.11.1995 in response to the showcause notice. The respondents have not indicated if any order has been passed by him in pursuance of the showcause notice and in consideration of the representation of the petitioner.

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4. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have perused the records.

5. It has been submitted by Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents that because of pendency of the present O.A. no order has been passed so far cancelling the substantive appointment of the applicant in Junior Scale of IRSE with effect from 14.10.1985. We note that in this case the counter has been filed on 5.1.1996 and the applicant has retired from service in May 1997. As no order cancelling his substantive appointment in Junior Scale of IRSE has been passed till now, as mentioned by the learned Standing Counsel (Railways) for the respondents, it must be taken that in law the applicant continued as a member of IRSE till his retirement. In view of this and in view of the order dated 6.1.1995 at Annexure-A/12 withdrawing the order cancelling the substantive appointment of the applicant in Junior Scale of IRSE with effect from 14.10.1985, the main prayer of the applicant has been granted to him by the respondents. As the applicant has already retired and till the date of retirement, no order cancelling his substantive appointment in Junior Scale of IRSE has been issued, the applicant must be deemed to have continued as a member of IRSE till his retirement. He will also be entitled to all consequential benefits. The applicant was appointed in Junior Scale of IRSE with effect from 14.10.1985 and the order of cancellation came on 13.7.1993. He must have, therefore, got the consequential financial benefits as a member of IRSE from 1985 till the cancellation of his substantive appointment in 1993. Therefore, other financial benefits to which he is entitled should be

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calculated and paid to him within a period of 90 (ninety) days from the date of receipt of copy of this order.

6. In the result, therefore, the Original Application is disposed of in terms of observation and direction above. No costs.

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(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SONY)  
23.7.2001  
VICE-CHAIRMAN

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