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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 432 OF 1996
Cuttack, this the 12th day of February, 2004.

BANA BEHARI SWAIN.

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APPLICANT.

VRS.

UNION OF INDIA & ORS.

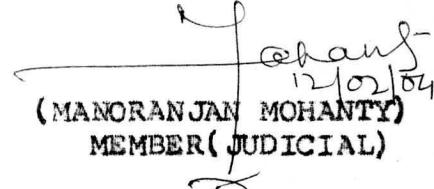
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RESPONDENTS.

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


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 432 of 1996
Cuttack, this the 12th day of February, 2004

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
A N D
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL).

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BANA BEHARI SWAIN,
Aged about 42 years,
S/o. Jagannath Swain,
At present working as
Station Master, At: Patpur Rly. Station,
Bada Bandha, Po: Chatua, Via: Mukurja,
DISTRICT: JAGATSINGHPUR.

APPLICANT.

By legal practitioner: M/s. S. Das, B. N. Udgata, A. Das, Advocate.

-Versus-

1. Union of India represented by the Secretary, Ministry of Railways, New Delhi.
2. Divisional Railway Manager, South Eastern Railway, Khurda Road Division, PO: Jatni, Dist. Khurda.
3. Additional Divisional Railway Manager, South Eastern Railway, Khurda Road Divn., PO: Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road Divn., PO: Jatni, Dist. Khurda.

RESPONDENTS.

By legal practitioner: Mr. Ashok Mohanty, Standing Counsel Railways.

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O R D E R

Mr. Manoranjan Mohanty Member (Judicial):

The Applicant was appointed as Trainee Signaller, on 02-01-1975, under the Principal of Zenal Training School at Bhuli and, on completion of such training, he was posted as Jr. Signaller (in the scale of pay of Rs. 260-400/-) on 18.09.1975 at Asansol Division of Eastern Railways. Thereafter, he was promoted to efficacate as Asst. Station Master (ASM) in the scale of pay of Rs. 330-560/- (against)

departmental promotion quota) on 31.07.1980 and posted at Topsi Railway Station of Asansol Division of Eastern Rlys. Subsequently, he was transferred to Adra Division of S.E. Railways and reported at Adra on 09.09.1982. Again the Applicant, came on mutual inter divisional transfer with Sri R.H. Bouri of Khurda Road Vision (with the approval of the competent authority) where he reported on 23.02.1988 and posted at Meramundai Railway station in place of the said Shri Bouri. It is the case of the Applicant that, in the gradation list, he was shown senior to Shri R.H. Bouri. But while granting promotion, the case of the Applicant was ignored and said Shri Bouri was granted promotion. In the said premises, this Original Application has been filed under section 19 of the Administrative Tribunals Act, 1985 for a direction to the Respondents to promote him to the next higher grade of Deputy Station Superintendent (in the scale of pay of Rs. 1600-2660/-) from 01.03.1993.

2. The Respondents, in their counter, have disclosed that, as per the Rules-310 of Chapter-III of Indian Railway Establishment Manual (Vol.-I) revised edition of 1989, in case of mutual exchange, the senior will take junior's seniority and the junior will retain his own seniority in the new seniority units and, in the said premises, even though Shri Bouri was promoted on 01.08.1982 (while preparing the gradation list, wrongly, due to non-availability of up-to-date records of the Applicant), the Applicant was shown senior; which was subsequently detected and corrected. It has been disclosed by the Respondents that the Applicant joined in Khurda Road Division on 23.2.1988 and, as such, he should be shown below the last ASM/SM; who has been promoted

to the grade of Rs.1400-2300/- prior to 23.02.1988 and, on receipt of representations of other officials, the matter was scrutinised and, after proper examination, it was found that the rule(under annexure-R/3) has not been properly adhered to in its letter and spirit and it was further found that the Applicant will rank below one Shri D.Nageswar Rao, the last Station Master promoted to the grade of Rs.455-700/- on 1.11.1985 in Khurda Road Division. It has been mentioned that the administration has the power to correct any palpable mistake at any point of time. However, no junior has been promoted to the higher post ignoring the case of the Applicant. The Applicant, even though has been found suitable, was not promoted to the post/rank of Deputy Station Superintendent, due to pendency of disciplinary/appeal cases against him till date and that in case he is exonerated from the charges, he will get the promotion to the post of Deputy Station Supdt.

3. Heard learned counsel for both sides and perused the materials placed on record. Applicant has also filed rejoinder; which has been taken note of.

4. It is needless to mention here that even though the Applicant in his original Application has alleged that his juniors have been promoted, but no such junior has been made as party to this O.A. As such, no direction can be issued against such persons without giving them/him adequate opportunity to have his say. Hence, such plea of the Applicant is not sustainable in view of nonjoinder of parties. The Applicant has also not prayed for quashing of the promotion order of any of the persons. It is also seen from the records, that the Applicant is not junior to any of the persons who have been allowed promotion to the post in question.



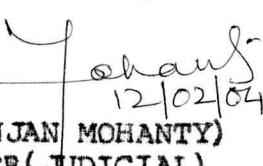
5. By filing rejoinder it has been brought to the notice of this Tribunal that no disciplinary cases are pending against the Applicant. During the course of hearing, by filing documents, it was brought to the notice of this Tribunal that disciplinary cases are pending against the Applicant. We have also looked into the same; which formed a part of this record.

6. In view of the above, since we find no merit in this O.A.; which is accordingly dismissed. However, since the Respondents have stated that though the Applicant has been found suitable, he has not been promoted due to pendency of disciplinary/appeal cases. It is, therefore, directed that in case the disciplinary cases are finalised in the meantime, basing on the result of such proceedings, the case of the Applicant for promotion to the next higher post in question, shall be undertaken as per the Rules, within a period of thirty days, if not already done. In case disciplinary proceedings has not yet been finalised, then it is hereby directed that (since the same is pending for a long time) expeditious steps shall be taken by the Respondents to conclude the disciplinary/ appeal cases of the Applicant.

7. In the result, this O.A. is disposed of.

No costs.


(B. N. Sasmal)
VICE-CHAIRMAN


12/02/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)