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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

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ORIGINAL APPLICATION NO. 436 OF 1996  
Cuttack this the 19th day of June, 2001

Bhagaban Mishra ... Applicant(s)

-VERSUS-

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

(FOR INSTRUCTIONS)

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

*Somnath Som*  
SOMNATH SOM  
VICE-CHAIRMAN  
19.6.2001

14.6.2001  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.436 OF 1996  
Cuttack this the 19<sup>th</sup> day of June, 2001

**CORAM:**

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

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**Bhagaban Mishra**, 50 years,  
Son of Kailash Ch.Mishra,  
Bramhan-nuagaon, PO: Ichhapur,  
Cuttack - at present serving as  
Lab.Suptd.Gr.II in S.E.Rly.Hospital,  
Khurda Road, Khurda

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Applicant

By the Advocates

M/s.A.K.Mishra  
J.Sengupta  
B.B.ACharya  
D.K.Panda,  
P.R.J.Dash  
C.Mohanty

-VERSUS-

1. Union of India through its  
General Manager, S.E.Rly, Calcutta-43
2. Chief Personnel Officer,  
S.E.Rly., Calcutta-43
3. Divisional Rly.Manager, S.E.Rly.,  
Khurda Road, Khurda
4. R.P.Nath, at present serving as  
Lab.Suptd. Gr.II, S.E.Rly.Hospital  
Kharagpur, Medinapur

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Respondents

By the Advocates

M/s. B.Pal  
P.C.Panda

O R D E R

**MR.G.NARASIMHAM, MEMBER (JUDICIAL)** : Applicant, Bhagaban Mishra joined in the Railway Service as Assistant Chemist on 25.12.1973 in the scale of Rs.150-300/-, which was subsequently revised to Rs.380-560/- and thereafter from Rs.1320-2040/-. By the time he entered in service he was a Matriculate and had Diploma in Laboratory Training for five years in the Hospital. After joining service, he acquired Degree in Arts from Berhampur University. He was

promoted to the cadre of Chemist w.e.f. 1.1.1984 in the scale of Rs.1400-2300/-.. The next promotional post is Laboratory Superintendent, which carries the scale of Rs.1640-2900/-.. These three posts are now designated as Laboratory Superintendent, Gr.III, Laboratory Superintendent, Gr.II and Laboratory Superintendent Gr.I, respectively.

In the seniority list of Laboratory Superintendent, Gr.II(Chemist) published on 1.5.1994, the applicant figures at Sl. No.2. After the promotion of Smt.Kumari Bhattacharya, at Sl. No.1, the applicant became the senior-most in the cadre of Laboratory Superintendent, Gr.II. On 14.11.1994, due to retirement of one G.R.Pathak, the applicant was allowed to manage that seat as Laboratory Superintendent Gr.I, in addition to his duties till a regular posting was made and was sanctioned the scale of Rs.1640-2900/-.. On 18.10.1995, he was promoted to officiate in Grade I post, purely on adhoc basis for a period of three months against the existing vacancy, i.e., vacancy caused due to retirement of G.R.Pathak. However, by order dated 22.2.1996 he was reverted to the post of Gr.II with effect from 16.1.1996. Respondent No.4 (R.P.Nath) was called to appear at the selection and not the applicant.

The grievance of the applicant is that he being the senior-most Laboratory Superintendent Gr.II, should have been called to appear at the selection for the post of Lab. Superintendent Gr.I. Even though he is not a Graduate in Science, according to him, on previous occasions, some Laboratory Superintendent, Gr.II officials, without having Science Degree were promoted as Laboratory Superintendents

Gr.I. Hence the Department could not have insisted upon Graduation in Science as a qualification in case of the applicant.

The applicant, therefore, prays for issue of direction on the departmental respondents to promote him to the post of Laboratory Superintendent Gr.I in the scale of Rs.1640-2900/- w.e.f. 1.11.1994 and for a declaration that he is entitled for promotion to that post bereft of his educational qualification.

2. Respondent No.4 (R.P.Nath) though duly noticed had neither entered appearance nor contested the case.

The departmental respondents (Res. 1 to 3) filed their counter. Their case is that originally an Assistant Chemist, who has completed 15 years of service and possessed Diploma in Laboratory Technician Course was being considered for selection to the post of Chemist. Thereafter in Board's letter dated 18.2.1978 (Annexure-R/4), the qualification was relaxed, so that the Assistant Chemists, who have put in five years of service could be considered for selection to the post of Chemist through a Trade Test. Regarding filling up of the post of Laboratory Superintendent (now Gr.I), in Board's letter dated 1.8.1972 (Annexure-R/6), the same had to be made by recruitment through the Agency of the Railway Service Commission from candidates having M.Sc., with experience of two years in a Laboratory/Institution undertaking analysis connected with foods, drugs or clinical biochemistry. For departmental promotion from the cadre of Chemist, the qualification required was Graduation in Science with five years experience as Chemist. But as

difficulties were experienced in getting suitable, qualified and experienced persons, it was decided by the Ministry of Railways for filling up the post of Laboratory Superintendents, qualification of Graduation in Science should not be insisted upon. Similarly the requirement of five years of service should also be dispensed as one time ~~measure~~ dispensation in this category to the available persons of four years standing. Accordingly, in letter dated 16.8.1980 (Annexure-R/1) instructions were imparted that senior-most employees available in the cadre of Chemist could be considered for promotion to the post of Laboratory Superintendent. By Board's letter dated 16.11.1984 (Annexure-R/3) cadre review and restructuring of Group C & D were undertaken and in that process 30% in Cadre-III and 30% in Cadre-II and 40% in Cadre-I of Laboratory Superintendents were upgraded. Since the post of Laboratory Superintendent, Gr.II was a selection post, as per the guidelines issued in Board's letter dated 16.11.1984, the selection was made only on scrutiny of service records and in that process the applicant was promoted to Gr.II, w.e.f. 1.1.1984. In the seniority list of Laboratory Superintendents, Gr.II, similarly S/Shri Gopal Pathak, Ms.Krushna Murty, A.Ramakrishna, T.Raju and G.P.Ramtake were promoted as Laboratory Superintendents Gr.II, w.e.f. 1.1.1984. In the seniority list of Laboratory Superintendent, Gr.II, the applicant became the senior-most after the promotion of Smt.Kumari Bhattacharya in February, 1996. But the applicant does not have the requisite qualification for promotion to the post of Laboratory Superintendent, Gr.I, in the absence of Degree

in Science. Accordingly the next senior-most Laboratory Superintendent, Gr.II, i.e. R.P.Nath(Res.No.4), who had fulfilled the requisite qualification for the post of Laboratory Superintendent Gr.I, i.e., Degree in Science, having five years of experience as Chemist, was promoted by order dated 7.8.1996 (Annexure-R/7). In terms of Estt. Serial No.269/89 dated 10.11.1989, the applicant was given promotion on adhoc basis as he was the locally senior personnel till a regular selected candidate was promoted or appointed. This does not mean that he had the requisite qualification for promotion to that post and on joining of Shri R.P.Nath, the applicant was reverted. Dispensation of the qualification of graduation in Science was made only as one time measure in Board's letter dated 16.8.1980 under Annexure-1.

In fact the applicant and five others filed Original Application No.1019/90 (Annexure-R/14) before the C.A.T., Calcutta Bench, claiming eligibility for promotion/selection to the post of Laboratory Superintendent Gr. I, basing on Railway Board's circular dated 16.8.1980 (Annexure-R/1) and for a declaration that Board's letter dated 28.2.1989 (Annexure-R/20) for selection to the post of Lab.Superintendent Gr.I by the departmental candidates strictly on the basis of qualifications as laid down earlier is not applicable in their case for promotion. This C.A. was dismissed on contest in order dated 15.5.1996 by the Divisional Bench of C.A.T., Calcutta (Annexure-R/15).

3. The applicant filed rejoinder reiterating his case by mentioning the names of some employees, who were

promoted as Laboratory Superintendent, Gr.I, without having qualification of Degree in Science. He also filed Board's letter 6.7.2000, through a Memo, stating that it has some relevancy for adjudication of this case. He also filed a typed copy of judgment of C.A.T., Principal Bench in Original Application No.2190/92, disposed of on 19.9.1997. The Department in their turn filed reply to this Memo, enclosing some more circulars of the Railway Board.

4. We have heard Shri A.K.Mishra, the learned counsel for the applicant and Shri B.Pal, the learned senior counsel for the respondents (Railways). Also perused the records.

5. Facts are not in dispute. The issue is whether the applicant has the eligibility to be considered for promotion to the post of Laboratory Superintendent Gr. I. There is no dispute that for departmental promotions from the cadre of Chemists (now Laboratory Supdt.Gr.II) to the Laboratory Superintendent Gr.I, the employees concerned must be Graduates in Science and must have acquired five years of experience as Chemists. So far as experience as Chemist is concerned, the applicant has such experience, but he is not a Graduate in Science. In Board's letter dated 16.8.1980 (Annexure-R/1), the qualification of Graduation in Science was dispensed with as one time measure for want of suitable qualified hands for promotions. In the case filed before the C.A.T., Calcutta Bench by the applicant and others, in order dated 15.5.1996 (Annexure-R/14) the Calcutta Bench observed that the applicants did not have the requisite qualifications for promotion to the post of Laboratory Superintendents Gr.I and therefore, they were not

called for the Trade Test. While taking note of the observations of the Apex Court in the case of Council of Scientific and Industrial Research vs. K.G.S.Bhatt, reported in AIR 1989 SC 1972 to the effect that there should be opportunity to the advancement for the employees working in the public or private organisation and that a person is appointed not for job but for whole career, the Bench observed that the applicants had already got promotion from the post of Laboratory Superintendents Gr.III to the post of Laboratory Superintendents Gr.II under the restructuring scheme. We too agree with those observations of that Bench. When a competent Bench of the Tribunal disallowed the case of the applicant for consideration of his promotion to the post of Laboratory Superintendent Gr.I on the ground that he did not possess the requisite qualification, the applicant could not have filed this Original Application before this Bench, almost claiming the same relief on 21.6.1996, i.e., one month, and six days after the pronouncement of the judgment by the C.A.T., Calcutta Bench, and that too by suppressing this vital information in his Original Application. We, therefore, cannot but observe that the applicant has not approached this Tribunal with clean hands.

With regard to judgment of the C.A.T., Principal Bench in O.A.2190/92, filed by the applicant, we are afraid we cannot take note of this judgment, which is a typed copy without mention as to whether the same is a reported judgment. Further this typed copy has not at all been attested to be true copy of the judgment, as required under the Rules. It cannot be assumed that the original judgment has been

correctly typed. This will be evident from the fact that though there has been discussion about the Rules of 1982, in Page-2 of the judgment, there has been no mention of such Rules, while mentioning ~~all~~ the relevant facts. On the other hand Para-2 makes a mention of Railway Board's letter dated 1.8.1992 dealing with educational qualification prescribed for promotion to the post of Lab. Superintendent Gr.I. In view of this confusion and uncertainty, it is not safe to take note of this typed copy of the judgment, as earlier stated, has not at all been attested to be true copy and/or certified copy of the judgment.

7. We have earlier stated that the applicant filed Railway Board's letter dated 6.7.2000, dealing with promotion of Laboratory Staff in the Medical Department and the qualifications. This Original Application was filed in the year 1996, claiming promotion to the cadre of Laboratory Superintendent Gr.I w.e.f. 1.11.1994. Hence, we cannot take note of the import of this circular, even if it helps the applicant at this stage, in order to decide whether the applicant was entitled to be promoted to the post of Laboratory Superintendent Gr.I, w.e.f. 1.11.1994, and if the applicant feels that this circular is advantagious to him for his promotion to Lab. Superintendent, Gr.I, <sup>and</sup> if so advised, he can submit required representation before the concerned authorities. Hence, we cannot and should not offer any view on this circular dated 6.7.2000 in regard to promotional prospects of the applicant to the post of Laboratory Superintendent Gr.I.

8. In the result, we do not see any merit in this

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Original Application, which is accordingly dismissed, but without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
19.6.200

19.6.01  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.SAHOO//