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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.825 OF 1996  
Cuttack this the 25<sup>th</sup> day of July/2000



Babaji Charan Swain ... 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 / 25/7/2000

25/7/2000  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO.825 OF 1996  
Cuttack this the 25<sup>th</sup> day of July/2000

**CORAM:**

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

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Sri Babaji Charan Swain  
aged about 53 years.  
S/o. Late Parsuram Swain  
Vill - Khandal, PO: Sukleswar  
PS: Mahanga, Dist : Cuttack

worked as Train Lighting Fitter  
Grade - II, Talcher Rly. Station  
Dist : Angul, S.E.Railway under  
Electrical Foreman Bhubaneswar  
S.E.Railway, Bhubaneswar,  
Khurda Road Division

...

Applicant

By the Advocates

M/s .B.B.Patnaik  
S.Mohanty  
B.Behera

-VERSUS-

1. Union of India represented by  
General Manager, South Eastern Railway  
Garden Reach Road,  
Calcutta - 43 (W.B.)
2. Divisional Railway Manager,  
Jatni, Khurda Road, S.E.Railway  
Dist - Khurda
3. Senior Divisional Personal Officer,  
S.E.Rly., Jatni, Khurda Road,  
Dist - Khurda
4. Senior Divisional Electrical Engineer,  
At/PO/ Jatni, Khurda Road,  
S.E.Railway, Dist - Khurda
5. Electrical Foreman (J.E)  
S.E.Rly., Bhubaneswar  
Dist - Khurda

...

Respondents

By the Advocates

M/s .D.N.Mishra  
S.K.Panda

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O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application filed by a Train Lighting Fitter Gr.II, Talcher Railway Station on 13.11.1996 against five authorities of S.E.Railways, respondents in spite of issue of notices ordered on 18.11.1996 had not filed their counter even till end of February/2000. On 29.2.2000 it was ordered further time cannot be allowed to respondents to file counter and accordingly the case was adjourned to 29.3.2000 for hearing. On 29.3.2000 Shri D.N.Mishra, learned Standing Counsel for the respondents (Railways) submitted that counter had been filed on 23.3.2000. However, in view of order passed on 29.2.2000 counter filed ~~is~~ <sup>can be</sup> to be ignored. However during hearing we heard the submissions of Shri D.N.Mishra, learned Standing Counsel on the averments made in the Original Application.

2. The case of the applicant is that for promotion to the post of Fitter Gr.I, on the basis of seniority Fitter Gr.II has to appear in the trade test to be conducted for the purpose. This trade test was scheduled to be held on 18.9.1996 at 8.00 A.M. at Puri. Intimation regarding the date, place and time of the test was sent by Res.3 in his letter dated 30.8.1996 to Res.5 with instruction to inform about this to the applicant serving at Talcher (Annexure-1). However, Res.5 did not communicate the same to the applicant nor to the Electrical Chargeman, under whom the applicant is serving. But the applicant on 12.9.1996 came to know about the contents of Annexure-1. Hence on 14.9.1996, he went to Bhubaneswar, the headquarters of Res.5 and requested him to issue necessary letters and duty pass and spare memo to enable him to attend the test. Res.5 expressed

inability stating that his Clerk being absent the same cannot be issued. The applicant returned to Talcher in a depressed condition. On 17.9.1996 he had applied for 3 days C.L. and went to Puri with a hope that he would be permitted to appear in the test. However, he was not allowed to participate in the test as he could not produce any letter of Res.5. On 27.9.1996 he sent representations to Res. 2, 3 and 4 stating his grievance and requested them to consider his promotion to the post of Fitter Gr.I on the basis of seniority (Annexure-2), but without any response. On 1.11.1996 Res.3 issued notification giving promotions to selected persons in Fitter Gr.I ignoring the applicant and out them two are juniors to the applicant. Since the applicant was not given due opportunity and was not even allowed to appear in the trade test, by the Department, he prays for issue of direction to Res.2 to give him promotion to the post of Fitter Gr.I with effect from 1.11.1996 with usual scale of pay as admissible under the rules.

3. We have heard Shri B.B.Patnaik, learned counsel for the applicant. As earlier stated also heard Shri D.N.Mishra, learned Standing Counsel for the respondents and perused the records. Since as per his own averments successful completion of trade test is a pre-condition for consideration of promotion to the post of Fitter Gr.I and since he did not/could not appear the trade test held on 18.9.1996 applicant's claim for promotion to Fitter Gr.I with effect from 1.11.1996 cannot be acceded to.

4. Next question for consideration is whether the Department was at a fault in not allowing the applicant to appear at the trade test. It is true that the Department did not file counter within the time stipulated and thereafter within extended by the Tribunal. This does not necessarily mean that

we are bound to accept the facts mentioned in the application to be nothing but true. Even assuming that Res.5 did not/could not issue him necessary memo and pass to enable him to go to Puri to appear in the trade test, the applicant would have gone to Puri on 18.9.1996 and made an attempt to appear at the test in which case the authority/authorities conducting the test in normal course would not have prevented him unless there had been any difficulty with regard to his identity, which of course, is not the case of the applicant. It is true that in the application he had averred that he had been to Puri on the date fixed for trade test but was not permitted to participate in the test. This averment appears to be not true. If indeed the applicant had been to Puri, as averred by him in the O.A. and was not permitted to participate in the test, in normal course in his representations dated 27.9.1997 (Annexure-2) to the authorities concerned he would have mentioned this vital fact. Strangely Annexure-2 is conspicuously silent about this fact. When we confronted the learned counsel for the applicant as to this vital omission in Annexure-2, we could not get any satisfactory reply. We are, therefore, not inclined to

Thus it is clear that the applicant has not approached the Tribunal with clean hands. In view of this we are not inclined to accept the story set out by the applicant which appears to be fictitious.

5. In the result, we do not see any merit in this O.A. which is accordingly dismissed, but without any order as to costs.

*Somnath S. S.*  
(SOMNATH S. S.)  
VICE-CHIEF JUDGE  
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B.K.SAHOO//

25-7-2004  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)