

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 83 OF 1996
Cuttack this the 23rd day of May/2003

D.B. Kar ... Applicant(s)

VERSUS

Union of India & Others ... 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 ? No

Y R Mohanty
(M.R.MOHANTY)
MEMBER (JUDICIAL)

N. S. Som
(N.B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER(JUDICIAL)

Dinabandhu Kar,
Retd. Deputy Station Superintendent
Sakhigopal, Dist - Puri

... Applicant

By the Advocates

Mr. D.P. Dhalasamant

-Versus-

1. Union of India represented through General Manager, South Eastern Railway, Garden Reach, Calcutta-700043
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-700 043
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, Dist-Khurda

... Respondents

By the Advocates

Mr. R.C. Rath,
Standing Counsel(Rlys.)

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN : Applicant (Shri Dinabandhu Kar) a retired Deputy Station Superintendent, South Eastern Railways, in this Original Application under Section 19 of the Administrative Tribunals Act, 1985, has prayed for direction to be issued to Respondents/Railways to give him the promotional benefits, which have been given to other employees, who had exercised their option for S.M. channel before 1983.

2. The applicant, in his application has disclosed that he had joined service as a direct recruit A.S.M. and

at that point of time had exercised his option which was irrevocable for the cadre of A.S.M. to A.S.M. Subsequently in June, 1983, the cadre was restructured by an order of Chief Personnel Officer, S.E.Railways (Res. No.2). Prior to restructuring, the cadre comprised of A.S.M. at the bottom and Station Superintendent at the top. The promotional cadre bifurcated into (i) A.S.M. to A.S.M. and (ii) A.S.M. to S.M. both in the scale of Rs.425-620/- (non-selection) and then Rs.455-700/- (selection) before becoming one common source for promotion to Deputy Station Superintendent/S.M. in the scale of Rs.550-750/- (non-selection), Rs.700-900/- Station Superintendent, Gr.II and Rs.840-1010/- Station Superintendent, this Gr.I. By restructuring process, the Respondents brought out changes in the pay scales, designations and percentage in recruitment by selection and non-selection method. Two alternative schemes for restructuring were framed, described as alternative-I for combined cadre and alternative-II for separate cadre. In pursuance of restructuring of Station Master/A.S.M. cadre, S.E.Railways Zone decided to implement alternative-I (combined cadre), as enumerated in Railway Board's letter dated 29.7.1983 in consultation with the Organized Labour Union as that was more beneficial to the vast majority of employees. The applicant has averred in his application that this direction of the Chief Personnel Officer worked to the prejudice of numerous persons, who had exercised their option for promotion to the channel of Station Master. It is, however, stated that the applicant had exercised his option for the Station Master channel before 1983, but the promotional benefits were not extended

to him. He has further alleged that by virtue of the order passed by the Hon'ble Supreme Court in Civil Appeal No.2054 of 1990, the Respondents had granted promotional benefits to the Station Masters, who had exercised their option before 1983 in the same manner as it would have been if option had not been abolished by the Respondents from 1983. He also cited an example of one Shri B.N.Panda, Deputy Station Superintendent, who had exercised his option before 1983 and was given the promotional benefits under the restructuring scheme, although the said Shri Panda was not an appellant before the Hon'ble Supreme Court in Civil Appeal No.2054/90. It is the further allegation of the the applicant that similar promotional benefits were extended to three other persons, who were not before the Hon'ble Supreme Court. With these submissions, the applicant has approached this Tribunal seeking reliefs, as stated above.

3. The Respondents-Railways have contested the allegations of the applicant by filing a counter. They have stated that alternative-I was implemented in S.E. Railways in respect of all the employees as that was found to be more beneficial, in consultation with the Labour Union. This position has also been held valid by the Apex Court in Civil Appeal No.2054/90, wherein they observed as follows.

"... But both the employees unions have accepted the implementation of the letter of Chief Personnel Officer as it is beneficial to a majority of the employees. Therefore, it may not be disturbed. At the same time all those 204 employees who had opted before 1983 must be entitled to the benefit which would have been available to them on their options".

4. From the above order/observations of the Hon'ble Apex Court, it is clear that alternative-I was implemented legally for all the employees of S.E.Railway excepting those 204, who had at that time agitated that they would like to remain under alternative-II. The applicant, who is insisting that he was an optee for alternative-II was not included in the group of 204 nor was he taken into account by the Respondents-Railways. In fact the Respondents that in their counter have categorically denied/the applicant had ever exercised his option for Station Master cadre before 1983. In fact they have stated that the applicant was promoted to the grade of Rs.455-700/- w.e.f. 1.8.1982 in the A.S.M. channel (Annexure-R/10) due to restructuring of cadre under alternative-I. Again the applicant was promoted to the post of Deputy Station Superintendent in the scale of Rs.1600-2600 (RP) w.e.f. 18.12.1989 (Annexure-R/11). They have also stated that since 1986, the applicant had never objected to change of his option from S.M. channel to A.S.M. channel even after publication of seniority list of in 1981 A.S.M. in the scale of Rs.425-640/- (RP). In other words, the applicant had never represented before the Respondents against the above change, i.e., change of name from A.S.M. optee list published in the year 1972. They have also stated that the petitioner was not an applicant before the Hon'ble Supreme Court in the aforementioned S.L.P nor in the Contempt Petition. The main thrust of argument as advanced by the Respondents is that the applicant

having remained silent with regard to change of his option since 1981 cannot agitate the matter for promotion in pursuance of the judgment of the Hon'ble Supreme Court in 1993, far less to agitate after two years from the date of retirement.

5. We have heard the learned counsels of both the sides and perused the records placed before us. During oral submission, the learned counsel for the applicant placed before us a letter dated 12.1.1996, issued by the C.P.O., S.E.Railways conferring the benefit of option exercised by 39 petitioners in O.A.1259/94 before the Calcutta Bench of this Tribunal and of another group of 77 non-applicants and fervently appealed that his case may also be considered by the Respondents accepting that the applicant was in the category of 77 non-applicants referred to earlier and was non-applicant in various OAs filed before the Tribunals. Although in the face of it no exception can be taken to the submission made by the learned counsel for the applicant, but it is to be noted here that at the end of that letter dated 12.1.1993, the Respondents had notified as follows.

"With the implementation of the above orders, this issue would stand finally closed".

6. The applicant has filed this O.A. before the Tribunal on 1.2.1996, i.e., after the issue of letter dated 12.1.1996 (as referred above) by the C.P.O. It is also not clear either in the application or otherwise from the submissions made by the learned counsel as to what extra benefit the applicant would have been entitled to had he been extended the benefit of Alternative-II. Because,

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according to submissions made by the Respondents, the applicant was promoted to the scale of Rs.455-700/- w.e.f. 1.2.1982, i.e., prior to 1.8.1982. He has also not explained either by filing rejoinder or during oral arguments as to why he remained silent for all these 16 years with regard to change of his option, and/or whether such deviation/change was at his instance. At the same time, it is also a fact that the Respondents have not given any reason for not including the case of the applicant in the list of 77 non-applicants for the restructured cadre of S.M/A.S.M. Having regard to these facts and circumstances of the case and the prayer made by the applicant, the Respondents are directed to consider his case also in the line they had considered the cases of 77 non-applicants, if his case will fall within the parameters according to which similar cases of non-applicants were considered by them by virtue of the letter No. P/L/11/4/ 10695/Court Case/SBS/87/Pt., dated 12.1.1996. We accordingly dispose of this O.A. with the above direction. No costs.

22/1/96
(M.R.MOHANTY)
MEMBER (JUDICIAL)

B.N.SOM
(B.N.SOM)
VICE-CHAIRMAN

By/