

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 189OF 1998
Cuttack, this the 3rd day of May, 2000

Sri K.V.Ramana ... Applicant

Vrs.

Union of India and others 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 SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACKBENCH, CUTTACK.
ORIGINAL APPLICATION NO. 1890F 1998
Cuttack, this the 3rd day of May, 2000

CORAM:

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

Sri K.V.Ramana, 57years, son of K.V.L.Narasimha, at
present serving as Assistant Engineer, Khurda Road,
S.E.Railway, District-Khurda

.....

Applicant

Advocates for applicant - M/s A.K.Misra
B.B.Acharya
J.Sengupta
D.K.Panda
PRJ Das
C.Mohanty
G.Sinha

Vrs.

1. Union of India, represented through General Manager,
SE Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, SE Railway, Garden Reach,
Calcutta-43.
3. Sri N.Murty Nandi, c/o Chief Project Manager,
Nagpur, SE Railway, Nagpur.
4. Sri T.V.R.J.Sharma, C/o Chief Project Manager,
SERailway, Sambalpur

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Respondents

Advocate for respondents-Mr.D.N.Misra
SC(Railway)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

JJm
In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to consider
the case of the petitioner without taking into
consideration the adverse remarks which have been
communicated to him at Annexure-10. The second prayer is
for a direction to the respondents to promote the
petitioner to Senior Scale in Group-B cadre
retrospectively when respondent nos. 3 and 4 were
promoted with effect from 23.12.1996 and 6.1.1997 along

with all service and financial benefits.

2. The departmental respondents have filed counter opposing the prayers of the applicant. The applicant has filed a rejoinder. The departmental respondents have filed a reply to the rejoinder whereupon the applicant has filed an additional rejoinder.

3. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the departmental respondents and have also perused the records. The private respondents were issued with

notice but they have not appeared nor filed counter.

4. For the purpose of considering this Application it is not necessary to go into too many facts of this case. The admitted position is that the applicant was promoted to the post of Assistant Engineer from the post of Junior Engineer on 11.3.1993 according to the petitioner and on 23.6.1993 according to the departmental respondents. In this petition his grievance is for promotion to the next higher post of Executive Engineer. Admittedly private respondent nos. 3 and 4 are junior to the applicant. But while their cases were considered and they were promoted in order dated 23.12.1996 to the post of Executive Engineer, the applicant's case, according to him, was not considered even though he is senior to these two persons. The order of promotion of private respondent nos. 3 and 4 is at Annexure-6. The departmental respondents in their counter filed on 2.9.1999 have stated that the case of

the applicant was duly considered for promotion to the post of Executive Engineer (Adhoc) along with others in November 1996 but he was not recommended for promotion. For contesting the above averment of the departmental respondents in their counter several submissions have been made in the rejoinder and additional rejoinder, and the learned counsel for the petitioner during hearing of the matter has also made several submissions on this point. All these are irrelevant because the case of the applicant was not actually considered by the DPC in November 1996 and this averment made by the departmental respondents in their counter is wrong and the departmental respondents themselves have corrected the above averment in their reply to the rejoinder filed on 23.2.2000 in which they have taken the stand that the Selection Committee in their meeting in November 1996 did not consider the case of the applicant because by that time he had not completed three years of non-fortuitous service in Group-B. Thus the sole question for decision is whether non-consideration of the petitioner's case for promotion to the post of Executive Engineer (Adhoc) by the DPC in November 1996 is correct or not. Before looking into that aspect, one more point has to be taken note of. Admittedly the petitioner was communicated with adverse entries for the year 1996-97. A copy of the letter communicating adverse entries is at Annexure-10. In case the petitioner's case was due to be considered in November 1996, then these adverse entries obviously cannot be taken into consideration because these must have been written sometime after March 1997.

J. J. M.

The departmental respondents in their reply to the rejoinder, filed on 23.2.2000, have stated that the applicant joined the post of Assistant Engineer on 1.9.1994 but was granted proforma promotion with effect from 23.6.1993 (from 11.3.1993 according to the petitioner) and therefore, when DPC met in November 1996 and considered two other persons U.M.Vijayan and G. Ramayya the applicant had not completed three years of service as Assistant Engineer. Because of this the case of the applicant was not considered in the DPC meeting held in November 1996. The departmental respondents have further stated that the applicant was subsequently considered by the DPC during December 1997 but was not found suitable because of the adverse entry in the year 1996-97. The applicant in his additional rejoinder has pointed out that G.Ramayya is junior to the petitioner but his case was considered by the DPC in November 1996. As regards U.M.Vijayan, the applicant has pointed out that he joined as Assistant Engineer only on 23.1.1996 and he had also not even completed one year by November 1996 when the DPC met and the petitioner's case was not considered on the ground of his not having put in three years of regular service. The departmental respondents in the last paragraph of their counter filed on 2.9.1999 have admitted that at the time of his consideration U.M.Vijayan had put in less than three years of service. The departmental respondents have stated that Shri Vijayan was promoted in accordance with the Railway Board's circular dated 2.1.1992. The circulars dated 2.1.1992 and 2.11.1989 issued by the Railway Board are at Annexure R/1. In the letter dated 2.11.1989 it has

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been clarified that Group-B officers, i.e., Assistant Engineers who have not completed three years non-fortuitous service on the ground of administrative error or other reasons like return from secondment abroad should also be considered for ad hoc appointment subject to their being found suitable as per the prescribed criteria. In the letter dated 2.1.1992 of the Railway Board it has been further clarified that senior Group-B officers like Assistant Engineers should be deemed to have rendered service put in by his immediate junior and if that happens to be three years or more, then such senior should be considered for ad hoc promotion to Senior Scale, i.e., to the rank of Executive Engineer. From this it is clear that the requirement of three years regular service as Assistant Engineer has been relaxed by the Railway Board to the extent mentioned in the circulars dated 2.11.1989 and 2.1.1992. The benefit of these two circulars applies squarely to the case of the petitioner moreso because the departmental authorities have given the benefit of these two circulars to U.M.Vijayan. In view of this, it is clear that the applicant's case was wrongly overlooked in the DPC meeting held in November 1996. We, therefore, direct the departmental authorities to hold a review DPC meeting and consider the case of the petitioner for promotion to the post of Executive Engineer (ad hoc) from the date his immediate junior was promoted. While considering the case of the petitioner regarding suitability for his promotion to the rank of Executive Engineer, the adverse entries for 1996-97

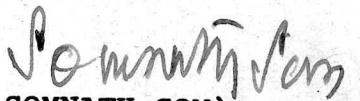
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should not be taken into account. This process should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

5. In the result, therefore, the Original Application is allowed but without any order as to costs.


(G.NARASIMHAM)

MEMBER(JUDICIAL)


(SOMNATH SOM)
3.5.2000
VICE-CHAIRMAN

An/PS