

7

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 33 OF 1998

Cuttack this the 12th day of March, 1999

PRONOUNCED IN THE OPEN COURT

E.K.S.Nair

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* .

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

8

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 33 OF 1998  
Cuttack this the 12th day of March, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Sri E.K.S. Nair,  
aged about 57 years,  
S/o. Late E.R.K. Nair,  
At present :-  
Chief Permanent Way Inspector,  
South Eastern Railway,  
At/Po/Dist: Cuttack

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Applicant

By the Advocates : M/s.P.V.Ramdas  
P.V.B.Rao

-Versus-

1. Union of India represented by the  
General Manager,  
South Eastern Railway,  
Garden Reach,  
Calcutta-43
2. Divisional Railway Manager  
South Eastern Railway,  
Khurda Road, At/Po:Jatni,  
Dist: Khurda, Pin: 752050
3. Senior Divisional Engineer(North)  
South Eastern Railway,  
Khurda Road,  
At/Po:Jatni, Dist:Khurda  
Pin: 752 050
4. Senior Divisional Personnel Officer  
South Eastern Railway,  
Khurda Road,  
At/Po:Jatni, Dist:Khurda

S. Som.

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Respondents

By the Advocates : M/s.D.N.Mishra  
S.K.Panda

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to respondents to consider his eligibility to cross the Efficiency Bar with effect from 1.5.1993 within a stipulated period. He has also prayed for payment of arrears within a stipulated period in case he is eligible to cross the Efficiency Bar.

2. The case of the petitioner is that he is working as Chief Permanent Way Inspector, S.E. Railway being posted at Cuttack. He is in the scale of Rs.2375-75-3200-EB-3500/- from 1.5.1986. On 1.5.1993, he was drawing Rs.3200/- in the above scale and his next increment is at the stage of E.B. which he was due to cross with effect from 1.5.1993 as mentioned in para-4-3 of the Original Application. It is submitted by the learned counsel for the petitioner that there has been nothing adverse against him in his C.R. and he was also not under proceeding as on 1.5.1994. But the departmental authorities did not consider his case for crossing the E.B. Subsequently, on 17.12.1994 he was placed under suspension and the order of suspension was revoked on 20.3.1996 and the period of suspension was treated as duty. On 17.6.1996 disciplinary proceeding was initiated against him for imposition of major penalty and this ended with a punishment of stoppage of two increments at the E.B. stage. The applicant has stated that his case for crossing E.B. was not considered prior to order of his pension and initiation of disciplinary proceeding and

that is why he has come up with this application with the prayers referred to earlier.

3. In this case inspite of several adjournments respondents have not filed their counter. Learned Standing Counsel Shri D.N.Mishra, on 10.11.1998 wanted two weeks time as last chance for filing counter. Thereafter two adjournments were given, but counter was not filed. On 24.12.1998 it was ordered that further time cannot be allowed for filing counter and the matter was posted to 19.1.1999 for final disposal at the admission stage; on which date at the instance of Shri Mishra four weeks time was allowed for filing counter and the matter was fixed peremptorily to 12.3.1998 for final disposal at the admission stage. Inspite of this no counter has been filed by the respondents. On behalf of Shri D.N.Mishra, a short adjournment is asked for. In view of the fact that learned Standing Counsel has already taken twice time as last chance for filing counter and the same has not been filed, prayer for further adjournment for filing counter is rejected. As the matter is posted to-day for final disposal at the admission stage, I have taken up the matter for hearing. Heard Shri P.V.Ramdas, learned counsel for the petitioner and Shri D.N.Mishra, learned Standing Counsel appearing for the respondents and perused the records. It is seen from the averment of the applicant that he is working in the scale of Rs.2375-75-3200-100-EB-3500/- from 1.5.1986 and on 1.5.1993 he was drawing Rs.3200/- in the above scale. He was due to cross the Efficiency Bar raising from Rs.3200/-

Scm

with effect from 1.5.1994. It is submitted by the learned counsel for the petitioner that he was placed under suspension in December, 1994. But from the time from May, 1994 till December, 1994, his case for crossing the E.B. was not taken up for consideration by the respondents. He was not communicated any order either allowing him to cross the E.B. nor was given any order indicating that his E.B. had been withheld. It is submitted by the learned counsel for the petitioner that he is entitled to be considered for crossing E.B. on the basis of his <sup>and</sup> service record, as these were prior to 1.5.1994, a subsequent proceeding cannot be brought to bear on the question of crossing of E.B. with effect from 1.5.1994.

4. In consideration of the above submissions made by the learned counsel for the petitioner this Original Application is disposed of by issuing a direction to departmental authorities that in case the petitioner's case for crossing of E.B. with effect from 1.5.1994 has not been considered between 1.5.1994 till the date of suspension on 17.12.1994 and in case no order has been communicated to the applicant indicating him that his E.B. has been withheld at the stage of Rs.3200/- the respondents should consider the eligibility of the applicant to cross E.B. with effect from 1.5.1994 on the basis of his service records as were existing on 1.5.1994 and pass necessary orders within a period of 90 days from the date of receipt of this order. No costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
12.5.99

B.K.SAHOO