

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION No. 492 OF 1998
Cuttack this the 4th day of Sept. /2000

Biswanath Bhoi

...

Applicant(s)

-VERSUS-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 46

Somnath Bhoi
(SOMNATH BHOI)
VICE-CHAIRMAN
1/2000

4.9.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.492 OF 1998
Cuttack this the 4th day of Sept/ 2000

CORAM:

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

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Sri Biswanath Bhoi, aged about 31 years
Son of Prasad Bhoi, resident of Village -
Gujatak, PO: Hirakud, PS: Hirakud, Sit:
Sambalpur - at present working as Wireman
(High Skilled-II), P.S. Section, Ordnance
Factory at Badmal, PO: Gandapatrapali,
District - Bolangir

...

By the Advocates

Applicant

M/s.G.K.Mohanty
G.P.Samal
B.P.Pradhan
S.R.Swain
P.C.Mohanty

-versus-

1. Union of India represented through its
Secretary, Ministry of Defence, Central
Secretariat, New Delhi
2. General Manager, Ordnance Factory,
At: Badmal, PO: Gandapatrapali, Via-
Saitala, District - Bolangir
3. Asst.General Manager, Ordnance Factory
At: Badmal, PO: Gandapatrapali, Via-Saitala
Dist : Bolangir
4. Dy.General Manager, Ordnance Factory,
At: Badmal, PO: Gandapatrapali, Via-
Saitala, Dist - Bolangir
5. Works Manager, Ordnance Factory
At - Badmal, PO: Gandapatrapali
Via - Saitala, Dist - Bolangir
6. Jaya Bihari Dalei, Wireman
BWS-49/6147, At:Ordnance Factory
At: Badmal, PO:Gandapatrapali,
Via - Saitala, Dist: Balangir

...

Respondents

By the Advocates

Mr.A.K. Bose
Sr.Standing Counsel
(Central) (For Res.
1 to 5)

O R D E R

MR .G .NARASIMHAM, MEMBER (JUDICIAL): In this application challenging demotion order dated 17.6.1998 (Annexure-R/3) from the post of Wireman (High Skilled-II) to Wireman (Skilled) in the Ordnance Factory, Badmal, the facts not in controversy are that the applicant as well as Jayabihari Dalei (Res. No.6) in April/90, ~~passed~~ passed the interview for the post of Semi-skilled Wireman and both of them were selected and subsequently appointed. In September/1992, both of them also appeared in the Trade test for promotion to the post of Wireman (Skilled) Grade. The applicant was promoted on 27.7.1993 and Res. 6 on 25.9.1993. The applicant after receiving a call letter appeared in the trade test for High Skilled-II (Line Mistry), the next promotional post on 31.8.1997. On his passing the test he was promoted as Wireman (High Skilled-II) (L.M.) on 31.8.1997, in the scale of Rs.1200-1800/- . Thereafter through impugned order dated 17.6.1998 (Annexure-A/3) he was demoted to the Skilled Grade and Res. 6 was promoted to High Skilled Gr.II. While praying for quashing the impugned order, the applicant claims in the Semi-skilled Grade he was senior to Res.6; even in Skilled Grade he was senior to Res.6. He having successfully completed the trade test for next promotional post High Skilled-II and having been appointed to that post should not have been demoted to make room for Res.6.

2. The Department in their counter take the stand that Res.6 is senior to the applicant on merit basis in the Wireman (Semi-skilled) Grade. Both were eligible for promotion to the Skilled Grade from the date on which the applicant was promoted, but by mistake the name of Res.6 was not referred to D.P.C. even

though he passed the trade test along with the applicant. This mistake was detected later and the case of Res.6 was referred to D.P.C., which not only recommended for his promotion but also recommended to amend the seniority list of Wiremen. In this way there was some delay in Res.6 getting promotion to the Skilled Grade and on account of this delay the applicant got undue benefit on getting promotional chance earlier than Res.6 to High Skilled-II Grade. On the recommendation of the D.P.C. the seniority list of Wiremen (Skilled Grade) was amended and Res.6 was given the seniority than the applicant. Accordingly the Department took a decision to demote the applicant from H.S. II to Skilled Grade and promote Res.6 on the basis of his passing the trade test. On these grounds Respondents pray for dismissal of this Original Application.

3. Respondent No.6 through a separate counter supported the stand of the Department.

4. No rejoinder has been filed by the applicant.

5. We have heard the learned counsel on record including Shri A.K.Bose, learned Sr.Standing Counsel. Also perused the records.

6. As per the aforesaid pleadings the applicant can succeed if it can be established that he is senior to Res.6 in the Semi Skilled Grade and also in Skilled Grade. There is ^{no} dispute that he and Res.6 faced the trade test in April/90 for the post of Wiremen (Semi-skilled). The applicant claims seniority over Res.6 as Wireman (Semi skilled) on the ground that he joined the post on 12.6.1990, earlier than the date on which Res.6 joined the post. However, he does not deny that in the merit list Res. 6 was above him. Seniority in the initial appointment through recruitment

is dependent on the merit list and not on the date(s) of joining, because, a candidate, nearer to the place of posting has the opportunity to join immediately after receiving the letter of appointment than the candidate staying at a place far away from the place of posting. There is thus no dispute that Res.6 is senior to the applicant in the Semi-skilled Grade. It is also not in dispute that both of them appeared the trade test for the next promotional post on the same date, and passed. The plea of Departmental respondents that by mistake name of Res.6 was not sent to D.P.C. has not been countered by the applicant. The D.P.C. after recommending promotion of Res.6, instructed for correction of seniority list of Semi-skilled Wiremen and accordingly the seniority list was corrected by them showing Res.6 senior to the applicant even in the Skilled Grade. We do not see any illegality or irregularity in this correction of the seniority list, because, admittedly both the applicant and Res.6 appeared the trade test for promotion on the same date and both of them passed. Thus, Res.6 is also senior to the applicant in the Skilled Grade. Being senior, Res.6 should have got the earlier opportunity to appear in the test for the next promotional post, i.e. H.S. II Grade than the applicant. After detection of the mistake this was rectified by giving an opportunity to Res.6 for passing the trade test thereafter demoting the applicant to Skilled Grade and promoting Res.6 to H.S.II Grade. It is not understood how under such circumstance, demotion of the applicant would be illegal or irregular. As averred in the counter, on account of this demotion recovery of pay and allowances, excess paid to the applicant had been waived. Even in the impugned order it has been clearly

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mentioned that Res.6 has been accorded notional seniority in the post of Wireman H.S-II w.e.f. 19.8.1997 to 17.6.1998, without any financial benefits. Thus, we are of the view that impugned order dated 17.6.1998 does not suffer from any legal infirmity.

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

Somnath SCM
(SOMNATH SCM)
VICE-CHAIRMAN

4.9.2008
(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//