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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 535 OF 1998.
Cuttack, this the 30th day of Aug., 2001.

ATULO KRUSHNA DAS.

APPLICANT.

:VERSUS:

UNION OF INDIA & OTHERS.

RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *Yes*
2. whether it be referred to all the Benches of the Central Administrative Tribunal or not? *No*

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 535 OF 1998.
Cuttack, this the 30th day of August, 2001.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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SRI ATULO KRUSHNA DAS, Aged about 60 years,
S/o. Late Sauri Das, At-Gajapati Nagar, Po;
Jatni, Dist: Khurda-752 050 retired as Chief
Estimator Under Senior Divisional Electrical
Engineer, Khurda Road, Khurda (Respondent No. 5).

... APPLICANT.

By legal practitioner : DR. D. B. Mishra,
S. S. Das,
N. C. Misra,
A. P. Misra,
T. K. Sahoo,
P. K. Das,
Advocates.

- VERSUS -

1. Union of India represented through its General Manager, S. E. Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, S. E. Railway, Garden Reach, Calcutta-43;
3. Chief Electrical Engineer, S. E. Railway, Garden Reach, Calcutta-43.
4. Divisional Railway Manager, S. E. Railway, Khurda Road, PO: Jatni, District-Khurda-50;
5. Senior Divisional Personnel Officer, S. E. Railway, Khurda Road, PO: Jatni, District-Khurda-50.

J. N. M. ... RESPONDENTS.

By legal practitioner : M^s. S. L. Patnaik,
Additional Standing Counsel (Rlys.).

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O R D E R

MR. SOMANATH SOM, VICE-CHAIRMAN:-

In this Original Application, the applicant has prayed for a direction to the Respondents for stepping up of his pay in the light of the letters at Annexures-8 and 9. His 2nd prayer is for fixing his pay from 12.5.1991 by giving him retrospective promotion and for arrears with 18% interest.

2. Departmental Respondents have filed counter opposing the prayer of applicant and the applicant has filed rejoinder.

3. The case of the applicant is that he has worked in the Railways in different ~~categories~~ ^{categories} for a number of years as J.W.M.

Trade Apprentice, Supervisor Apprentice, and Electrical Charge man Gr.C. He was transferred as estimator on 8.10.1974 with loss of seniority. In the seniority list of Estimator, as on 1.11.1984 at Annexure-2, his name is against Sl.No. 18 whereas the name of one A.B. Patro is at Sl.no.19. In the next seniority list of Drawing Office Staff as on 1.7.87 at Annexure-3, applicant's name appears at sl.no.9 and name of Shri A.B. Patro is at Sl.no.11. Applicant has stated that in 1989 and 1990 there was cadre restructuring and applicant was promoted to the level of Sr. estimator on adhoc basis on 19.7.1988 at Annexure-4 which was subsequently regularised w.e.f. 1.3.1990 in letter dated 18.9.1996 at Annexure-5.

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Applicant has stated that at all levels Shri AB Patro was junior to him, as Estimator/Draughtsman in the scale of Rs.1400-2300/-, Head or Sr. Estimator Rs.1600-2600/- and in the post of Chief Estimator in the scale of Rs.2000-3200/-. Shri AB Patro was promoted as Chief Estimator/Draughtsman on adhoc basis on 12.5.1991 in the scale of Rs.2000-3200/-. This was the

second Ad-hoc promotion and was illegal. The applicant represented for his Ad-hoc promotion to the level of Chief Estimator/Draughtsman in the scale of Rs.2000-3200/- from 12.5.1991 when Shri Patro was so promoted. His case was recommended by his superior officer in letter dated 29.11.1996 and 2.12.1996 at Annexures-8 and 9 but without any result. Applicant ultimately retired on superannuation on 1-2-1997 and in the context of the above, he has come up in this Original Application with the prayers referred to earlier.

4. It is not necessary to refer to all the averments made by the Respondents in their counter and the applicant in his rejoinder as these will be referred to while considering the submissions made by learned counsel for both sides. It is only necessary to note that Respondents have admitted that Shri AB Patro is junior to the applicant. They have stated that the applicant was posted at Khurda Road Division whereas Shri AB Patro was posted in Kharagpur Division. Shri AB Patro was promoted on adhoc basis on local promotion and it was made clear to him that promotion does not confer upon Shri Patro any right or title for seniority or for future promotion. They have stated that on the basis of the adhoc promotion of Shri Patro, the pay of applicant can not be stepped up because according to the Estt. Sl. No. 182/90 enclosed at Annexure-R/1 stepping up of the pay of senior with regard to junior drawing more pay is available only in cases where promotions are on regular basis. Respondents have also stated that the applicant wants step up of his pay from 12.5.1991 but he has approached the Tribunal in 1998 and as such the application is barred by limitation.

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5. We have heard Dr. D.B. Mishra, learned counsel for the Applicant and Madam S.L. Patnaik, learned Additional Standing Counsel (Rlys.) appearing for the Respondents and have also perused the records.

6. Instances of a junior getting more pay than his senior on the basis of adhoc promotion and consequent fixation of pay of the junior at a higher level on the junior and senior both getting regular promotion has been subject matter of several OAs before different Benches of the Tribunal. The matter went to the Hon'ble Supreme Court in case of UNION OF INDIA VRS. R. SWAMINATHAN reported in AIR 1997 SC 3554. It is not necessary to refer to the facts of the case. It is only necessary to note that there the prayer of stepping up of the pay allowed by the different Benches of the Tribunal and rejected by the Hon'ble SC was after regular promotion to the junior to the higher post. The Hon'ble SC held that stepping up of his pay is governed by FR 22(1) (a) (1) and proviso to FR 22 and the circular dated 4.2.1986 issued by the Govt. of India. Hon'ble SC held that stepping up of his pay will have to be considered strictly in terms of these rules and circulars and the cases of the Respondents before them are not covered by the circular allowing step up of his pay. In the instant case, the relevant circular is Estt. Sl. No. 182/90 which has been enclosed at Annexure-R/1. According to this circular stepping up of pay is allowable only on regular promotion. In the instant case the second prayer of the applicant is to give him regular promotion from 12.5.1991. His prayer for regular promotion from 12.5.91 is obviously

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barred by limitation because he has approached the Tribunal in 1998 after he has retired from Govt. service. This prayer is accordingly rejected.

7. So far as stepping up of his pay is concerned for adhoc appointment such stepping up of his pay is not permissible. Applicant has also not mentioned in the O.A. what was the pay fixed in respect of Mr. AB Patro and how his pay was fixed on his regular appointment, and at what level his pay was fixed.

8. In view of the discussions made above, we hold that the applicant is not entitled to get any of the reliefs claimed in this O.A. which is accordingly rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
30.3.2001

KNM/CM.