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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 687 OF 1998
Cuttack, this the 29th day of August, 2000

Harish Chandra Rana ...

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
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 6870F 1998
Cuttack, this the 29th day of August, 2000

CORAM:

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

.....
Harish Chandra Rana, aged about 39 years, son of Gunamani Rana, Tracer, Office of the Sr.D.E.E., S.E.Railway, At-Khurda Road, P.O-Jatni, Dist.Khurda.

..... Applicant

Advocates for applicant - M/sG.A.R.Dora
J.K.Lenka
G.R.Dora

Vrs.

1. Union of India, through the General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.
3. Divisional Railway Manager (P), S.E.Railway, Khurda Road, P.O-Jatni, Dist.Khurda.

.... Respondents

Advocates for respondents - Ms.S.L.Patnaik

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a direction to the respondents to include his name in the seniority list of Assistant Draftsman and for a direction to pay him the scale of pay of Rs.1200-2040/- of Assistant Draftsman from 26.3.1992 to 31.12.1995 and the scale of Rs.4000-6000/- from 1.1.1996 onwards.

2. The applicant's case is that he completed two years ITI Course plus one year apprenticeship in Electrical Wireman trade. On the basis of interview and practical test held in response to an open advertisement, he joined Mancheswar Workshop on 3.1.1986 as Trainee Wireman

and was regularised as Wireman Grade-III with effect from 2.3.1987 in the scale of Rs.950-1500/- . He was promoted as Tracer on ad hoc basis in the scale of Rs.975-1540/- with effect from 27.3.1987. The order of appointment as Trainee Wireman and Wireman is at Annexure-A/1 and the order of ad hoc promotion to the post of Tracer is at Annexure-A/2. The applicant has stated that he was promoted as Tracer against a regular vacancy after he had cleared the selection test and therefore styling his promotion to the post of Tracer as ad hoc was incorrect which is borne out by Annexure-A/3. The applicant has stated that in order dated 11.11.1991 (Annexure-A/4) under-matric Khalasis and Matriculates without ITI training appointed as Tracers on ad hoc basis were regularised without test. The applicant was transferred from Mancheswar Workshop to Khurda Road in order dated 1.6.1990 (annexure-A/5) and was posted against an existing vacancy. The applicant has further stated that in pursuance of Establishment Serial No.143/85 dated 9.7.1985 (Annexure-A/6) he became Junior/Assistant Draftsman with effect from 26.3.1992. The applicant has stated that from letter dated 3.8.1992 (Annexure-A/7) it is clear that the post of Tracer has been upgraded and redesignated as Junior Draftsman and the applicant has been posted at Khurda Road against the regular post of Assistant Draftsman. His name has also been included in the seniority list of Assistant Draftsmen which is at Annexure-A/8 against serial no. 16. For his outstanding performance and devotion to duty he has been given cash awards and merit certificate which have been enclosed. Tracer's scale of pay of Rs. 975-1540/- has been revised from Rs.3200-4900/- with effect from 1.1.1996. The scale of Assistant Draftsman at Rs.1200-2040/- has been revised to Rs.4000-6000/- from the said date. The applicant

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has stated that he is entitled to the pay scale of Rs.1200-2040/- from 26.3.1992 and replacement scale of Rs.4000-6000/- from 1.1.1996. But when he demanded the higher pay scale, his name has been deleted from the seniority list of Assistant Draftsmen, and against the above background of facts he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter opposing the prayers of the applicant have stated that the applicant was erroneously promoted to the post of Tracer on ad hoc basis with effect from 27.3.1987 when the post of Tracer was not in existence. In Establishment Serial No.143/85 relied upon by the applicant the post of Tracer has been frozen with effect from 1.7.1985. When that fact was detected the applicant's name was immediately deleted from the seniority list of Assistant Draftsmen treating his promotion irregular and this was also intimated to him in letter dated 30.8.1994 (Annexure-R/1). Therefore, the question of his upgradation from Tracer to Assistant Draftsman on completion of five years from 27.3.1987, i.e., with effect from 26.3.1992 does not arise. Moreover, he has also no Diploma in Draftsmanship. Because of his erroneous promotion his posting and transfer were also done erroneously and therefore he cannot get the financial benefit of the post of Assistant Draftsman. He also does not have the required qualification for being directly recruited as Assistant Draftsman after the post of Tracer was frozen.

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4. The applicant in his rejoinder has stated that from the order dated 9.9.1991 (Annexure-A/3) it is clear that he was promoted as Tracer after he had passed the necessary selection test and was posted against an

existing vacancy. This shows that the post of Tracer was existing at that time. In order dated 11.11.1991 (Annexure-A/4) 22 ad hoc Tracers have been regularised. These 22 include three persons who were appointed as ad hoc Tracers on 8.8.1985, 1.3.1986 and 8.8.1985 respectively which shows that the post of Tracer was existing after 1.7.1985. The applicant is the only Tracer who has been left out. Had his name been included along with twenty-two ad hoc Tracers he would also have been regularised and thereafter the Tracer cadre would have been frozen. As regards qualification the applicant has stated that in Establishment Serial No. 143/85 dated 9.7.1985 Tracers with Diploma in Draftsmanship and those who do not possess Diploma but have completed five years of service as on 1.1.1984 were upgraded as Junior Draftsmen. It was also provided that the balance non-qualified Tracers will be progressively promoted by upgrading their post as Junior Draftsman as and when they complete five years of service or acquire necessary qualification. This review will be done every six months commencing from 1.7.1986. The applicant completed five years of service on 26.3.1992 and became Junior /Assistant Draftsman. He was the last person and after his upgradation the cadre of Tracer does not exist. The applicant has contested the averment of the respondents that the cadre of Tracer was frozen with effect from 1.7.1985 because three persons S.P.Patil, B.Rajendra Rao and D.K.Kotala, ad hoc Tracers, who were appointed after 1.7.1985, on 8.8.1985, 1.3.1986 and 8.8.1985 respectively, were regularised in 1991. The applicant has stated that the Railway Board's instructions that the cadre of Tracer will be frozen really meant that only after the existing Tracers are upgraded as

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Junior/Assistant Draftsman the cadre of Tracer will be converted into Junior/Assistant Draftsman. On the above grounds the applicant has reiterated his prayer in the rejoinder.

5. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Madam S.L.Patnaik, the learned Railway Advocate for the respondents. The learned Railway Advocate has filed copies of the following decisions which have been taken note of:

(i) Navendra Laxman Jambhulkar v. Union of India and others, OA No.1356/95, decided by Mumbai Bench of C.A.T. on 7.12.1999;

(ii) Rameshchandra Nagwanshi v. Union of India, TR Application No. 371/87, decided by Mumbai Bench, Camp at Nagpur, on 17.7.1992; and

(iii) Chakraborty and another v. Union of India, OA No.294/87 decided by Mumbai Bench on 29.7.1993.

These decisions have been looked into. Before proceeding further it is necessary to note that TR Application No. 371 of 1987 and O.A.No.294 of 1987 deal with Signal Inspector's cadre and facts are widely different and these two decisions have no relevance to the present controversy before us.

6. In support of the prayers made by the applicant the learned counsel for the petitioner has submitted that in accordance with Establishment Serial No.143 of 1985 issued on 9.7.1985 the applicant should have been taken as Assistant Draftsman after completion of five

years of service as Tracer from 27.3.1987 to 26.3.1992. It is stated that this Establishment Serial provides that non-qualified Tracers will be progressively promoted by upgrading their post as Junior Draftsman as and when they complete five years of service or acquire necessary qualification and for this purpose review will be done every six months commencing from 1.7.1986. It is also provided that the existing cadre of Tracer will be frozen and actual requirements reviewed and determined with the Board's approval within six months. In view of this, it is argued that on completion of five years of service on 26.3.1992 the applicant had been rightly given the job of Assistant Draftsman and he is entitled to the scale of pay of Assistant Draftsman. We have gone through this Establishment Serial carefully and we are unable to accept the proposition of the learned counsel for the petitioner. This Establishment Serial was issued on 9.7.1985 and dealt with existing regular incumbents in the post of Tracer in all the four disciplines of the Engineering Department, like Civil Engineering, Mechanical Engineering, Signal & Telecom Engineering and Electrical Engineering. Thus upgradation of Tracers to Junior Draftsmen ordered by this circular was meant for regular incumbents in the post of Tracer as on the date of issue of the circular. It is provided that amongst the regular incumbents those who possess Diploma in Draftsmanship and those who do not possess Diploma in Draftsmanship but have completed five years of service as on 1.1.1984 will be straightaway upgraded to Junior Draftsman. The balance non-qualified Tracers will be progressively upgraded to Junior Draftsmen as and when they complete five years of service or acquire necessary qualification. This dispensation of upgrading the post of Tracer to Junior

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Draftsman is meant only for existing regular incumbents in the post of Tracer. The applicant became Tracer on ad hoc basis only with effect from 27.3.1987 and therefore this Establishment Serial does not cover his case. It has been submitted by the learned counsel for the petitioner as a second limb of argument that the applicant was appointed as Tracer after he cleared the selection test as is borne out by Annexure-A/3 and was posted against an existing vacancy and therefore it was wrong to term his appointment as ad hoc. Even if it is taken for sake of argument that this was so, the applicant cannot be permitted to make a grievance of the same more than a decade after the ad hoc appointment was made. The other aspect of the matter is that the respondents have stated that from 1.7.1985 the cadre of Tracer was frozen. The learned counsel for the petitioner has pointed out that the three persons whose names we have noted earlier were appointed on 8.8.1985 and 1.3.1986. But these three persons were appointed as ad hoc Tracers much prior to the appointment of the applicant as ad hoc Tracer. As a special case in order dated 11.11.1991 the Railway Board regularised 22 ad hoc Tracers. The applicant has made a grievance of regularisation of the three persons who were appointed much prior to him. In view of this, it cannot be stated that he was subjected to hostile discrimination. The twenty-two ad hoc Tracers were all appointed on 1.3.1986 or before. In Navendra Laxman Jambhulkar's case (*supra*) the Mumbai Bench considered this order of regularisation of 22 Tracers and noted that these 22 Tracers who were regularised were appointed prior to 1.3.1986. But actually as we see one of them/^{at least was} appointed on 1.3.1986. In view of this the

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applicant who has been appointed much later cannot be said to be similarly situated as those 22 Tracers and cannot claim similar treatment or complain of discrimination. In **Navendra Laxman Jambhulkar's case (supra)** the applicant was appointed as Tracer on 31.10.1990. If the contention of the learned counsel for the petitioner is accepted, then even when Tracers have been appointed erroneously in different Railways after the cadre of Tracer was frozen, as in **Navendra Laxman Jambhulkar's case (supra)**, they will all be entitled to be upgraded as Junior Draftsman after five years of service. This is plainly not intended in Establishment Serial No.143/85. The contention of the learned counsel for the petitioner that only when all the Tracers irrespective of their date of appointment are upgraded to Junior Draftsmen in terms of the Establishment Serial No.143/85 the cadre of Tracer will be frozen, cannot be accepted because this Establishment Serial relates to the existing regularly appointed Tracers who are in existence as on 1.7.1985. The subsequent order of regularisation of 22 Tracers was in respect of ad hoc Tracers who were appointed as Tracers on 1.3.1986 and prior to that.

7. The prayer of the applicant is to allow him the scale of pay of Assistant Draftsman from 26.3.1992 in the old scale of Rs.1200-2040/- and in the revised scale of Rs.4000-6000/- from 1.1.1996. The applicant has never been appointed as Assistant Draftsman. He has not enclosed any order in which he has been upgraded from the post of Tracer to Assistant Draftsman. He has only enclosed a provisional seniority list of Assistant Draftsmen in which, as already noted, his name appears against serial no.16. In this seniority list which is provisional the date of his

promotion to the grade of Assistant Draftsman is not mentioned and therefore merely on the basis of Establishment Serial No.143/85 which, we have held, is not applicable to him, he will not be entitled to the scale of pay of Assistant Draftsman.

8. In consideration of all the above, we hold that the application is without any merit and the same is rejected. No costs. The stay granted in order dated 24.12.1998 stands vacated.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
29/8/2000
VICE-CHAIRMAN

August 29, 2000/AN/P.S