

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 167/1999.
Cuttack, this the 16th day of October, 2001.

P. SATYANARAYANA.

....

APPLICANT.

VRS.

....

RESPONDENTS.



UNION OF INDIA & ORS.

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 Pan
(SOMNATH SOM)
VICE-CHAIRMAN
16.10.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 167/1999
Cuttack, this the 16th day of October, 2001.

C O R A M:

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

P. SATYANARAYANA, AGED ABOUT 49 YEARS
SON OF LATE LAXMINARAYAN AT PRESENT
WORKING AS MOTOR MECHANIC GR.III
O/O THE CHIEF PROJECT MANAGER, RLY.
ELECTRIFICATION, SENIOR SECTION
ENGINEER (G), VISAKHAPATNAM (A.P.).

.... APPLICANT.

By legal practitioner: M/S. B. S. Tripathy, M. K. Rath, Advocate.

-VERSUS-

Union of India represented through its
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43.

2. Chief Personnel Officer, S. E. Railway,
Garden Reach, Calcutta-43.

3. Chief workshop Manager,
Carriage Repair workshop,
South Eastern Railway,
At/PO: Mancheswar,
Bhubaneswar,
Dist: Khurda.

4. Additional Chief Mechanical Engineer (W),
Carriage Repair workshop, South Eastern
Railway, At/PO: Mancheswar, Bhubaneswar,
Dist: Khurda.

.... RESPONDENTS.

By legal practitioner: Mr. S. R. Patnaik, Additional Standing Counsel.

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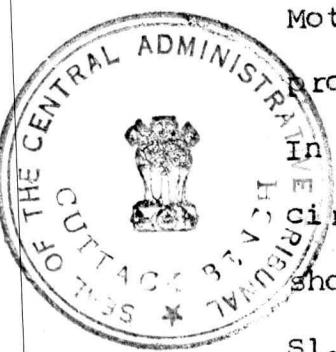
O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the seniority list at Annexure-2 and the order of promotion at Annexure-4. His second prayer is for directing the Respondents to count the service period of applicant prior to the cut off date and accordingly re-fix his seniority with effect from the date his juniors have been given promotion.

2. Applicant has stated that he was appointed as Motor Mechanic on 19.3.1969 and came on transfer on promotion to Mancheswar Carriage Repair workshop on 15.4.85. In a provisional seniority list of Motor Mechanic Grade-III circulated in the year 1987(Annexure-1), applicant's name was shown against Sl.No.15 and one Mohan Dandasena was shown against Sl.No.16 and Khursid Khan and Benudhar Kumar against Sl. Nos.28 and 29. Applicant has stated that in 1997 another provisional seniority list of Motor Mechanic Grade-III was published in which M.Dandasena, K.Khan and B.Kumar were shown against Sl.Nos.15, 28 and 29 respectively. In this seniority list (Annexure-2), the name of applicant did not find place. Applicant filed seven representations; first one being 24.7.1998 and last one on 17.3.1999. Applicant has stated that while these representations were pending in impugned order dated 30.10.1993 at Annexure-4, C.Gouda and M.Dandasena were promoted to the post of Motor Mechanic Grade-I from 1.10.92.

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Applicant has stated that while preparing the seniority list the relevant instructions have been ignored. He has also stated that his service prior to cut off date should have been taken into consideration as has been done in respect of similar employees and in the context of the above, he has come up in this original Application with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayers of applicant. No rejoinder has been filed.

4. It is not necessary to refer to all the averments made by the Respondents in their counter. It is only necessary to note that Respondents have denied the averments of applicant that he was initially appointed as Motor Mechanic on 19.3.1969. Respondents have stated and this has not been denied by applicant by filing any rejoinder that applicant was initially appointed as Shed Khalasi on 19.3.1969. According to the Respondents, he came on transfer to Mancheswar Carriage Repair workshop on 15.4.1985 as a shed Khalasi and was promoted to the skilled Gr.III on 1.5.1985 purely on adhoc basis with the condition that Mancheswar workshop has not been declared as an independent Unit at that time for assigning seniority in promotion. Respondents have further stated that when Mancheswar workshop was set up staff were transferred from different units and applicant came from Visakhapatnam to Mancheswar work shop in CPO's order dated 3.7.1984 in which it was indicated that a cut off date will be announced by the Railway Administration later and the inter-se-seniority of the staff transferred to Mancheswar workshop will be based on the length of nonfortuitous service



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in the grade on particular cut off date. Till Cut-off date, the staff transferred to Mancheswar workshop will retain their lien in their parent Department. Ultimately, in order dated 9-11-1987, the CPO declared the cut-off date as 1-1-1988 and a separate and independent cadre for the workshop was formed w.e.f. 1-1-1988. After the separate cadre for Mancheswar workshop, staffs were given an option to go back to their parent cadre but the applicant did not exercise option and chose to continue in Mancheswar workshop. It is further stated that the staff transferred from other units to Mancheswar workshop and those who were recruited at Mancheswar workshop were promoted on adhoc basis prior to the cut off date i.e. 1-1-1985 with the condition that promotion on adhoc basis will not confer any right to claim seniority. Respondents have stated that after the independent cadre was formed revised provisional seniority list was prepared on the basis of length of non-fortuitous service in each grade taking into consideration the substantive status of the staff as on 31-12-1987 in their parent unit where their lien was being maintained upto 31-12-1987. Respondents have stated that the substantive status of applicant in the parent unit was Khalasi helper and accordingly his name was included in the provisional seniority list of Khalasi helper as on 2-9-1989 and as the applicant's substantive status was Khalasi helper his name did not find place in the revised seniority list of Motor Mechanic Gr.II. He was later on regularised as Motor Mechanic in the order dated 13.1.1999 at Annexure-IV w.e.f. 1-1-1988. On the basis of the above averments, the Respondents have opposed the prayers of Applicant.

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5. We have heard Shri B.S.Tripathy, learned counsel for the Applicant and Shri S.R.Patnaik, learned Additional Standing Counsel for the Respondents. Learned Counsel for the applicant has filed a written note of submission which has also been taken note of.

6. From the above recital of facts, it is clear that initially when the staff from different units came to Mancheswar workshop it was indicated to them that they will maintain their lien in their parent organisation till the cut off date is announced. The applicant's lien in the parent organisation was that of a Khalasi helper. He joined the Mancheswar workshop on 15.4.1985 as Khalasi Helper and was promoted to Skilled Gr.III on 1.5.1985 on Ad-hoc basis. It is also undisputed that seniority of the staff in Mancheswar workshop had to be determined as on 1.1.1988 taking into account the substantive status of the employees in their parent organisation as on 31.12.1987, i.e. immediately before the cut off date. The applicant's substantive status in the parent organisation was Khalasi Helper and therefore, his seniority was initially correctly shown as Khalasi Helper as on 1-1-1 988 but subsequently in order dated 13.1.99 issued by the Respondents at Annexure-IV he was regularised as Mech. Gr.III w.e.f. 1.1.1988. In this order it is mentioned that the seniority position of applicant as MM Gr.III is against Sl.No.10 in the seniority list of MM Gr.III. The seniority list at Annexure-2 was published on 7.7.1998 and the applicant's grievance is against this seniority list. In the order at Annexure-IV Respondents have ordered that name of applicant should be in the seniority list of MM Gr.III circulated on 4.12.1998 against Sl.No.10. Unfortunately, this

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seniority list of 4-12-1998 has not been enclosed by either side and therefore, it is not possible to ascertain if after inserting the name of applicant against Sl. No.10 in the seniority list of MM Gr.III in the seniority list published on 4.12.1998, applicant become senior to M. Dandasena. Applicant has stated that in the list which is at Annexure-1 he was shown above Shri M. Dandasena but this list is a provisional list and in the note below the list it is clearly mentioned that the seniority is subject to revision on receipt of substantive status prior to 1.1.1988 against the lien position of the above staff. In view of this we dispose of the prayer of applicant with regard to seniority with a direction to the Respondents that his name should be incorporated against Sl. No.10 of the seniority list circulated on 4.12.1998 for MM Gr.III

7. The second prayer of applicant is for quashing the promotion order at Annexure-4. In that order amongst Motor Mechanics, C. Gouda, M. Dandasena, B. Sudharkumar and K. Khan were promoted. The first three persons were promoted to the post of Motor Mechanic Gr.I w.e.f. 1.10.1992 whereas K. Khan was promoted to MM Gr.II w.e.f. 20.10.1992 on proforma basis. In the note below, the promotional order it has been mentioned that these promotions have been ordered in obedience of the decision of the Tribunal in OA Nos. 271/89, 383/89 and 431/89. We note that even going by the provisional seniority list at Annexure-1 enclosed by applicant himself, C. Gouda is shown above the name of applicant. As regards the others, the applicant has enclosed the promotional order but has not made those persons as Opp. Parties in this OA. Therefore, no order affecting their interest adversely can be passed without hearing them. In view of this, we

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hold that the applicant's prayer for quashing the order of promotion is without any merit and the same is accordingly rejected.

8. On the question of seniority it has been stated by the learned counsel for the applicant in his note of arguments that his case is covered by the judgment of the Tribunal in OA Nos. 372/91 and OA No. 95/92. On a reference to the judgment in OA No. 372/91 we find that in that case, the Tribunal in their order dated 3.12.1993 had directed in para-7 of the order to prepare a seniority list gradewise as on 1.1.1983 for Khalasi Helper Skilled Gr.III and Gr.II. In the instant case, the applicant has been regularised as Motor Mechanic Gr.III w.e.f. 1.1.1988 and therefore, this decision does not go to support his case in any way. In OA No. 95/92, disposed of in order dated 9.8.2000, the Tribunal noted that the applicant therein was promoted to higher grade of Masoon Gr.II after clearing the Trade test and therefore, it was held that this period of service as Masoon Gr.II after clearing the Trade test will count towards seniority. In the instant case the applicant has made no averment that he was promoted to the post of Motor Mechanic Gr.III on 1.5.1983 after passing the Trade Test. In view of this we hold that the applicant is not entitled to count his period of service from 1.5.1983 as MM Gr.III towards his seniority in that grade but in order dated 13.1.1999, the applicant has been regularised as MM Gr.III from 1.1.1983 and his seniority has been incorporated against Sl.No. 10 of MM Gr.III in the seniority list circulated in letter dt. 4.12.1998. In view of this we order that in case any of the juniors in the list i.e. position coming below Sl.No.10, have

been given promotion to the higher grade then the applicant will be entitled to such promotion from the date his junior in the seniority list of 4.12.1998 has been given such promotion subject of course, to his passing the Trade test if any.

In the result, therefore, the OA is disposed of

in terms of the observations and directions made above. No

> costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16/10/2001

KNM/CM.

