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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS.370, 386 and 554 of 1999
Cuttack, this the 3rd day of August, 2000

Rudra Narayan Pani (OA 370/99)
D.Gurudiah (OA 386/99)
A.Bhagawati Rao (OA 554/99)

.....

.....Applicants

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

..... 3.8.2000
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
3.8.2000



CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.370,386 & 554/99
Cuttack, this the 30th day of August, 2000

CORAM:

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

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In OA 370/99

Rudra Narayan Pani,
aged about 38 years, son of Sri Benudhar Pani, Vill-Bhata
Katuri, PO-Bada Nagen, Dist.Dhenkanal,
now working as: Senior Research & Development Inspector, South
Eastern Railway, Khurda Road, PO-Jatni, Dist.Khurda
..... Applicant

Advocates for applicant - M/s Manoj Mishra
B.Mishra
D.K.Pattnaik
A.K.Naik

Vrs.

1. Chief Commercial Manager, South Eastern Railway, 14th Strand Road, Calcutta-43 (West Bengal).
2. Chief Commercial Manager (FM), South Eastern Railway, 14th Strand Road, Calcutta-43 (West Bengal).
3. Divisional Railway Manager, South Eastern Railway, Khurda Road Division, Town/PO-Jatni, Dist.Khurda.
4. Senior Divisional Personnel Officer, S.E.Railway, Khurda Road, Town/PO-Jatni, Dist.Khurda.
5. Senior Divisional Commercial Manager, S.E.Railway, Khurda Road, At/PO-Jatni, Dist.Khurda.
6. Union of India, represented through General Manager, S.E.Railway, Garden Reach, Calcutta
7. Mr.D.Gurudiah, son of late D.Nookaraju, Commercial Inspector, S.E.Railway, Khurda.
8. Mr.A.Bhagawati Rao, son of late A.Ravindrada, Commercial Inspector-II, South Eastern Railway, Khurda Road, Khurda
..... Respondents

Advocates for respondents-M/s Ashok Mohanty
R.C.Rath
M/s G.A.R.Dora
J.K.Lenka
S.R.Patnaik

In OA 386/99

D.Gurudiah, aged about 46 years,
son of late D.Nookaraju, Commercial Inspector, S.E.Railway,
At/PO/Dist.Cuttack
..... Applicant
Advocates for applicant-M/s GAR Dora, GR Dora, J.K.Lenka



vrs.

1. Union of India, represented through the General Manager, S.E.Railway, Garden Reach, Calcutta, West Bengal.
2. Chief Commercial Manager, South Eastern Railway, 14th Strand Road, Calcutta-43.
3. Divisional Railway Manager (P), South Eastern Railway, Khurda Road Division, At/P/O-Jatni, Dist.Khurda.
4. Rudra Narayan Pani, aged about 38 years, son of Sri Benudhar Pani, Senior Research & Development Inspector, South Eastern Railway, Khurda Road, PO-Jatni, Dist.Khurda

.....

...Respondents

Advocates for respondents - M/s Piyush Kr.Misra
Ashok Mohanty
R.Ch.Rath
M/s H.K.Mohanty
D.Tripathy

In OA No. 554/99

A.Bhagawati Rao, aged about 40 years, son of late A.Ravindrada, at present working as Commercial Inspector, Grade-II, S.E.Railway, At-Khurda Road, PO-Jatnia, District-Khurda....

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Applicant

Vrs.

1. Chief Commercial Manager(FM), South Eastern Railway, 14th Strand Road, Calcutta-43.(West Bengal).
2. Chief Personnel Officer (Commercial), 14th Strand Road, Calcutta-1.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road Division, Town/PO-Jatni, District-Khurda.
4. U.P.L.Das, Senior Divisional Personnel Officer, S.E.Railway, Khurda Road, Town/PO-Jatni, District-Khurda.
5. Milindra Narayan Silendra Roy, Senior Divisional Commercial Manager, South Eastern Railway, Khurda Road, Town/PO-Jatni, District-Khurda.
6. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta (West Bengal)
7. Railway Board, represented by its Chairman, Rail Bhawan, New Delhi.

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Respondents

Advocate for applicant -Mr.Ananda Chandra

Advocates for respondents-M/s D.N.Mishra, Manoj Mishra, Basudev Mishra, D.K.Patnaik, B.K.Mishra & Ashok Mohanty

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These three applications have been heard separately, but the point of controversy is the same. The applicant in one of the applications is the private respondent in other cases. The departmental respondents have taken the same stand in all these cases. Therefore, these three cases are being disposed of by one order. The facts of the three cases are however set out separately.

2. In OA No. 370/99 the petitioner, working as Senior Research & Development Inspector (SRDI), S.E.Railway, Khurda Road, has prayed for quashing the order dated 16.7.1999 (Annexure-9) repatriating him to his parent cadre as Head Goods Clerk. This order has been issued by Senior Divisional Personnel Officer, Khurda Road. The second prayer is for a direction to the respondents to implement the order dated 20.7.1999 (Annexure-10) issued by the Chief Commercial Manager(FM), S.E.Railway, Calcutta, cancelling the order at Annexure-9. The applicant's case is that he joined as Commercial Clerk on 15.10.1981 and was promoted as Commercial Tracer from which post he was promoted as SRDI on being found suitable in the screening held on 28.9.1989, by virtue of the order dated 3.11.1989 (Annexure-1). The applicant has been continuing as SRDI from 3.11.1989. He has stated that there is no allegation against him during his period of service as SRDI. On the contrary he has received several awards from Railway authorities which have been mentioned in his bio data at Annexure-2. The applicant has stated that later on the post of SRDI was cadred by Railway Zonal Headquarters, Calcutta and it was decided that the seniority in the grade of SRDI will be



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taken into consideration to determine the inter se seniority in the category of Commercial Inspector, Grade-III for their next promotion to the grade of Commercial Inspector, Grade-II. The memorandum providing for encadrisation of the post of SRDI is dated 27.11.1998 and is at Annexure-3. The applicant has stated that after encadrisation of the post he made representation on 25.2.1999 at Annexure-6 for fixing his interse seniority. The applicant has stated that Senior Divisional Commercial Manager, S.E.Railway, Khurda Road, issued order dated 13.7.1999 stating that during the preceding six months the applicant's work has been unsatisfactory and the letter was sent to him to place on record the displeasure of the Senior Divisional Commercial Manager regarding applicant's poor performance in the Division. The applicant in his letter dated 25.7.1999 indicated giving details the work done by him and refuting the allegation that his work has not been satisfactory. Immediately thereafter in the impugned order dated 16.7.1999 (Annexure-9) the applicant has been reverted to the post of Head Goods Clerk and posted as Head Goods Clerk, Nalco Siding. The matter was brought to the notice of the Chief Commercial Manager who in his letter dated 20.7.1999 has cancelled the order of repatriation of the applicant to his parent cadre. The applicant has stated that he was on duty from 16.7.1999 to 20.7.1999 at Calcutta on the basis of approved tour programme and while at Calcutta he fell sick and has been on sick leave from 20.7.1999. Therefore, the order at Annexure-9 for his repatriation has not been served on him and the same has not been given effect to. In the context of the above facts the applicant has come up with the prayers referred to earlier.

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3. Before noting the submissions made by the respondents in their counter in this and the other two cases

13. and the averments made by the applicants in the other two cases, it is to be noted at this stage that from the above recital it is clear that on the question of repatriation of the applicant to his parent cadre and cadrisation of the post of SRDI in the category of Commercial Inspector Grade-III there is obviously difference of opinion between the Divisional Headquarters and the Zonal Headquarters of the SE Railway both of whom have issued contradictory orders. As such contradictory orders affect the three applicants in these cases in different ways and support their respective cases, the three applicants have rushed to the Tribunal with their grievances. Before proceeding further we must mention that we deprecate issuing of such contradictory orders by two tiers in the same hierarchy resulting in grievances of some and raising hopes of others. As the respondents have taken the same stand in their counters in all these cases, we are not referring to the averments made by the respondents in their counter to OA No.370 of 1999 separately. These will be referred to later on.

4. In OA No. 386 of 1999 the petitioner has prayed for setting aside the order dated 27.11.1998 (Annexure-7) merging the post of SRDI with Commercial Inspectors and also for quashing the order dated 20.7.1999 at Annexure-9 cancelling the order of repatriation of R.N.Pani (respondent no.4) who is the applicant in OA No.370 of 1999. The applicant in OA No. 386 of 1999, D.Gurudiah is private respondent no.7 in OA No. 370 of 1999. The case of the applicant in OA No.386 of 1999 is that he was appointed as Commercial Clerk on 17.2.1981 and was promoted to the post of Senior Commercial Clerk (Goods) on 11.8.1986 after passing the suitability test. He has been confirmed in the post. Respondent no.4 R.N.Pani, the applicant in OA No. 370/99 was

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appointed as Commercial Clerk and was promoted as Senior Clerk (Goods) long after the applicant which is borne out by the seniority list of Senior Commercial Clerks at Annexure-1. According to their option, Commercial Clerks are promoted to the scale of Rs.1200-2040/- either in the Coaching Line or in the Goods Line. The applicant and respondent no.4 have opted for the Goods Line. The promotional avenue in the Goods Line above the Senior Clerks are Head Goods Clerk, Chief Goods Superintendent (Grade II) and Chief Goods Superintendent (Grade-I). It is clear from the circular dated 25.1.1996 (Annexure-2) that both Senior Clerks (Goods) and Senior Clerks (Commercial) in the pay scale of Rs.1200-2040/- are eligible to apply for the post of Commercial Inspector in the scale of Rs.1400-2300/-. The selection is made on the basis of written test and viva voce. Respondent no.4 applied for the post of Commercial Inspector but did not reach the zone of consideration. The channel of promotion for Commercial Inspector is different from the Goods Line. Above Commercial Inspector Grade-III is Commercial Inspector Grade-II and thereafter Commercial Inspector Grade-I above whom there is Chief Commercial Inspector. The pay scale of Rs.1400-2300/- has been revised to Rs.5000-8000/- and the pay scale of Rs.1600-2600/- has been revised to Rs.5500-9000/-. C.G.S.(Grade-I) and C.I.(Grade-I) are in the pay scale of Rs.2000-3200/-, now revised to Rs.6500-10,000/-. There is no post in the Goods Line corresponding to Chief Commercial Inspector, Grade-I which is in the pay scale of Rs.7500-12000/-. Seniority lists of Goods Line and Commercial Inspectors line are maintained separately and the posts are not interchangeable. The applicant after passing the written test

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and viva voce, was promoted to Commercial Inspector, Grade-III in order dated 2.9.1996 and he joined the post on 7.9.1996. Respondent no.4 was found ineligible for Commercial Inspectors line and he was promoted in his parent line, i.e., Goods Line as Head Goods Clerk in the pay scale of Rs.1400-2300/-. Respondent no.4 was later on appointed as SRDI in order dated 13.11.1989 (Annexure-5) in the pay scale of Rs.1600-2600/-. The applicant has stated that SRDI is an ex cadre post. The appointment order of respondent no. 4 promoting him to the post of SRDI clearly states that the appointment is temporary and will not confer any right on respondent no.4 for retention and confirmation in the said post and respondent no.4 will retain his lien in his parent line, i.e. Goods Branch. It is further stated that there is one post of SRDI/RDI in each Division. In all other Divisions the pay scale of the post is Rs.1400-2300/-, revised to Rs.5000-8000/-. But in the Khurda Road Division the pay scale of the post of SRDI is Rs.1600-2600/- now revised to Rs.5500-9000/-. The applicant though senior to respondent no.4 did not apply for the post of SRDI because it is an ex cadre post and the incumbent would retain his lien in his parent cadre where he will get promotion. SRDI cannot get promotion in the line of Commercial Inspector. In letter dated 27.11.1998 at Annexure-7 the Chief Personnel Officer has decided to include the post of SRDI/RDI in the Commercial Line in the pay scale of Rs.5000-8000/- and respondent no.4 is in the pay scale of Rs.5500-9000/- which has not been encadrised and therefore the order dated 16.7.1999 at Annexure-4 repatriating respondent no.4 to his parent cadre of Head Goods Clerk is in accordance with the rules. It is stated that surprisingly respondent no.2 in his letter dated 20.7.1999 has cancelled the order of

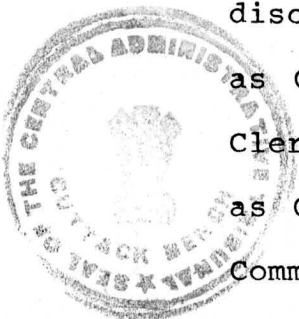


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repatriation in which order he has referred to the letter dated 27.11.1998 of encadrisation which is only for the post of SRDI/RDI in the pay scale of Rs.5000-8000/-. In the context of the above facts the applicant has come up with the prayers referred to earlier.

5. The applicant in OA No.554 of 1999 is one A.Bhagawati Rao. R.N.Pani, the applicant in OANo.370/99 and private respondent no.4 in OA No. 386of 1999 is private respondent no.8 in OA No. 554/99. It is also to be noted that in this OA the Senior Divisional Personnel Officer, S.E.Railway, Khurda Road Division and Senior Divisional Commercial Manager, S.E.Railway, Khurda Road have been impleaded as respondent nos.4 and 5 by name. The applicant's prayer in this OA is similar to the prayer of the applicant in OA No.386of 1999 for setting aside the merger decision dated 27.11.1998 (Annexure-6) and the cancellation of the order of repatriation of respondent no. 8 to the Goods Line as Head Goods Clerk in the order dated 20.7.1999. He has also prayed for a declaration that respondent no.8's repatriation as Head Goods Clerk to the parent cadre is valid, and the decision to merge the ex cadre post of SRDI/RDI with the Commercial Inspectors Grade-III and counting of ex cadre service experience for the purpose of seniority in the rank of Commercial Inspector Grade III is illegal, arbitrary and discriminatory. The applicant's case is that he was appointed as Commercial Clerk on 16.4.1977 and was promoted as Senior Clerk (Commercial) on 1.1.1984. Respondent no.8 was lappointed as Commercial Clerk on 17.10.1981 and was promoted to Senior Commercial Clerk (Goods) long after the petitioner on 25.9.1987. The petitioner opted for Coaching (Commercial) line and respondent no.8 (wrongly mentioned as the applicant) opted

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opted for Goods Line. As per option, Commercial Clerks are promoted to the scale of Rs.1200-2040/- either in Coaching Line or in Goods Line. Promotional avenues in the Goods Line above the Senior Clerk are Head Goods Clerk, Chief Goods Superintendent Grade-II and Chief Goods Superintendent Grade-I. While respondent no.8 was officiating as Commercial Controller, he was selected for the ex-cadre post of SRDI in the pay scale of Rs.1600-2600/-, revised to Rs.5500-9000/-. In letter dated 2.11.1989 (Annexure-1), in which respondent no.8 was appointed to the post of SRDI, it was clearly mentioned that such promotion is temporary and will not confer on him any right or claim for retention in the post and confirmation, etc. and respondent no. 8 will retain his lien in his parent line of Goods Branch. On 28.7.1994 the departmental authorities initiated the process of filling up of the post of Commercial Inspector in the pay scale of Rs.1400-2300/-. In the letter dated 28.7.1994 at Annexure-2 notice was issued for holding written test and viva voce for filling up of the post of Commercial Inspector, Grade-III. In this notice it was stipulated that Commercial Clerks (both Goods and Coaching) would be eligible to compete in the selection. The petitioner and respondent no.8 applied for the said post and respondent no.8 did not reach the zone of consideration. The petitioner qualified in written and viva voce and was promoted as Commercial Inspector Grade-III in order dated 31.1.1995 (Annexure-3). The applicant has further stated that the seniority lists of Goods Line and Commercial Inspectors Line are maintained separately and the posts and incumbents are not interchangeable. Promotional avenues for Commercial Inspector Grade-III and Head Goods Clerk are different. Above Commercial Inspector Grade-III are Commercial Inspector Grade-II and



Commercial Inspector Grade-I. The petitioner has mentioned that respondent no.8 was appointed against an ex-cadre post by way of appointment which was purely temporary and respondent no.8 retained his lien in the parent line. In the order dated 26.4.1985 it was reiterated by the Chief Personnel Officer, S.E.Railway that incumbents of ex-cadre post of SRDI will have to seek further promotion in their parent cadre and not in the line of Commercial Inspector. On the basis of above, respondent no.8 was promoted in his parent line to the post of Head Goods Clerk but continued to work against the ex-cadre post of SRDI. On 27.11.1998 respondent nos. 1 to 6 after due consultation with the recognised unions of the Railways, decided to open a channel of promotion to the SRDI/RDI of the Commercial Department for further advancement with the Inspectorial staff of Commercial Department. This order dated 27.11.1998 is at Annexure-6. The applicant has stated that this decision communicated in letter dated 27.11.1998 has no legal force because this has not been approved and confirmed by the Railway Board which is a must for every case of merger of an ex-cadre post with a cadre post. The applicant has further stated that in order dated 13.7.1999 (Annexure-8) respondent no.8 was served with a letter of displeasure of his superior officer because of his poor performance in his job. Following the above letter, the Senior Divisional Personnel Officer in his letter dated 16.7.1999 (Annexure-9) repatriated respondent no.8 to his parent cadre in the Goods Line and posted him as Head Goods Clerk at Nalco Siding. He was also relieved in the order dated 17.9.1999 at Annexure-10. The applicant has stated that the above order dated 13.7.1999 was cancelled by order dated 20.7.1999 (Annexure-11) passed by the Chief Commercial Manager. In the



context of the above facts the applicant has come up with the prayers referred to earlier.

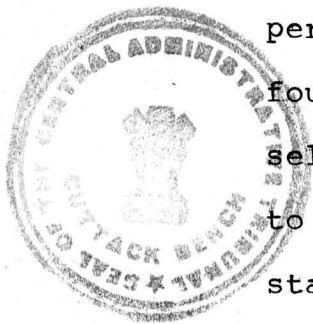
6. As earlier noted private respondent no.7 in OA No. 370 of 1999 is the applicant in OA No. 386 of 1999 and in his counter filed in OA No.370/99 he has repeated the averments and has taken the same stand as has been taken by him in OA No. 386 of 1999. It is therefore not necessary to repeat the same. Similarly, private respondent no.4 in OA No.386 of 1999 is the applicant in OA No. 370 of 1999. He has filed no counter in OA No. 386 of 1999 but has enclosed certain orders and circulars which have been taken note of. In OA No. 554 of 1999 private respondent no.8 R.N.Pani has filed counter in which he has reiterated the averments which have been made by him in his OA. It is therefore not necessary to refer to these averments.

7. As regards the departmental respondents we have earlier noted that the entire controversy has been, to some extent, occasioned by contradictory orders passed by the Divisional Headquarters and Zonal Headquarters of SE Railway. The applicants in all the three cases have arraigned the officers of Zonal Headquarters and Divisional Headquarters as respondents. But on behalf of the departmental authorities counter has been filed only by the Divisional authorities. In spite of notice the Zonal authorities whose order of cancellation of the order of repatriation of R.N.Pani to his parent cadre has been challenged in OA Nos. 386 and 554 of 1999 have not filed any counter. It is also necessary to note that the stand taken by the Railway authorities at Divisional Headquarters is different from the stand of the officers of the Zonal Headquarters as is apparent from the orders issued



by the two authorities. The learned Senior Counsel for the departmental respondents has appeared for all the Railway authorities and on our questioning him on this point, he submitted that in spite of his efforts the Zonal authorities have not filed any counter in these cases. We have therefore only the counter of the Divisional authorities before us and this is indicated below.

8. The departmental respondents of the Divisional office have filed counter in all the three cases taking the same stand with regard to this controversy. In view of this the counter filed by them in OA No.370 of 1999 has been referred to. In this counter it has been stated that R.N.Pani, the applicant in this case joined as Commercial Clerk on 15.10.1981 in the South Eastern Railway and was subsequently promoted to the post of Senior Goods Clerk in the scale of pay of Rs.1200-2040/- in a substantive capacity. He opted for the ex-cadre post of SRDI in the pay scale of Rs.1600-2600/-. At that time he was being utilised as Commercial Controller in Khurda Control Office. It has been stated that SRDI is an ex-cadre post and for filling up of the post, no written test was held. Only options were invited. Ten persons who opted for the post were interviewed and a panel of four names was prepared. The administration had a choice of selecting any of them to work as SRDI from the panel of four to work as SRDI. The panel was approved on 3.11.1989. It is stated that performance of the applicant as SRDI has not been satisfactory during the last six months of 1999. On the question of cadrisation of the post of SRDI it has been stated that the post has not been caderised and a bare reading of the



order dated 27.11.1998 would show that it has only been decided to open a channel of promotion to SRDI/RDI for further advancement with the Inspectorial staff of Commercial Department. Fromt his, the respondents have stated, it is clear that by this order only a channel of promotion was opened and the post of SRDI continues to be an ex-cadre post even now. It is stated that the order dated 27.11.1998 lays down that seniority (non-fortuitous service) as SRDI has to be taken into consideration for promotion of Commercial Inspector Grade-III in the pay scale of Rs.5000-8000/- for next promotion to Commercial Inspector Grade-II in scale of Rs.5500-9000/- (pre-revised Rs.1600-2600). From this it appears that the post of SRDI was not merged with the post of Commercial Inspector Grade-III in the scale of Rs.5000-8000/- and admittedly the applicant as SRDI was drawing a higher scale of pay of Rs.5500-9000/-. It is stated that for the purpose of getting next promotion to the scale of Rs.5500-9000/- seniority of the SRDI will be counted with those of Commercial Inspector Grade-III. Other than this the question of fixation of inter se seniority of SRDI vis-a-vis the Commercial Inspectors Grade-III does not arise. It is stated that the order of promotion of the applicant R.N.Pani makes it clear that the appointment is temporary and will not confer on him any right or claim for being retained in the post and he will retain his lien in his parent line of Goods Branch. That he has retained his lien in the parent cadre is proved by the fact that while he was continuing in the post of SRDI, he was considered for promotion in the Goods Branch and was promoted from the post of Senior Goods Clerk in the pay scale of Rs.1200-2040/- to the post of Head Goods Clerk in the pay scale of Rs.1400-2300/-, revised to Rs.5000-8000/-. It is also



stated that even if it is taken for argument sake that by the order dated 27.11.1998 caderisation has taken place, this can only have prospective effect and cannot meant caderisation of persons who have been appointed as SRDI much before issuing of this order. It is also stated that the avenues of promotion for Commercial Clerks/Commercial Inspectors to SRDI/RDI enclosed by the applicant at Annexure-3 show that Senior T.C./TTEs in the scale of Rs.1200-2040/- corresponding to revised pay scale of Rs.4500-7000/-, Senior Goods Clerk/Senior W.C/Senior Booking Clerks/Senior Parcel Clerks/Senior Enquiry Clerks in the pay scale of Rs.1200-2040/- corresponding to revised scale of pay of Rs.4000-6000/- and Senior Office Clerks in the scale of Rs.4500-7000/- are all eligible to opt for promotion to the ex-cadre post of SRDI/RDI in the pay scale of Rs.5000-8000/-. According to these respondents this goes to show that the ex-cadre posts have never been merged with the cadre of Commercial Inspectors and can have no application in the case of the applicant for consideration of his length of service (non-fortuitous) as SRDI by interpolating the seniority of Commercial Inspectors Grade-III. This interpolation would be applicable only to those who have been appointed/posted as SRDI as a regular measure and not as a temporary measure and can be only applicable to the holders of SRDI post in the pay scale of Rs.5000-8000/-. It is stated that as the post of SRDI was an ex-cadre post many persons senior to the applicant in his substantive grade did not opt for being appointed to the post. In case it is now construed that the said promotion of the applicant is a substantive promotion, then it will cause great injustice to his seniors. It is further stated that the applicant has been only



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repatriated to his parent line and to the post substantively held by him. This is not a reversion as such transfer is not penal in nature. These respondents have also denied the assertion of the applicant that the order of repatriation has not been received by him because he has enclosed a copy of the repatriation order along with his petition. It is also stated that even though the applicant was supposed to be on tour to Calcutta on 17.7.1999, from his representation it is clear that from 17.7.1999 he was at Khurda Road and met the Divisional Railway Manager. In the context of the above facts, these respondents have opposed the prayer of the applicant.

9. In the counters filed by these respondents in OA Nos. 386 and 554 of 1999 the same stand as above has been taken and it is not necessary to refer to these counters except to note that in the counter filed by these respondents in OA No.554 of 1999 they have contradicted themselves and have also contradicted the averments made by them in the counter to OA No.370 of 1999 by stating in paragraph 14 that R.N.Pani was selected for appointment to the post of SRDI on the basis of option and not on the basis of any written test and viva voce. In paragraph 9 of the same counter it has been mentioned that R.N.Pani was selected on the basis of his option and by appearing at an interview which has also been mentioned by them in the counter to OA No.370 of 1999.

10. We have heard Shri Manoj Mishra, the learned counsel for the petitioner R.N.Pani in OA No. 370 of 1999; Shri G.A.R.Dora, the learned counsel for Shri D.Gurudiah, the petitioner in OA No. 386 of 1999; and Shri Ananda Chandra for A.Bhagawati Rao, the petitioner in OA No.554 of 1999. These counsels have also made submissions in those cases where their clients are appearing as respondents



as mentioned earlier. We have also heard Shri Ashok Mohanty and Shri R.Ch.Rath, the learned panel counsels for the Railways on behalf of the departmental respondents and also Shri D.N.Mishra, the learned Standing Counsel(Railways) appearing for the departmental respondents in OA No.554 of 1999. Shri H.K.Mohanty, the learned counsel, has made submissions on behalf of R.N.Pani in OA No.386 of 1999. We have also perused the records. Shri Manoj Mishra, the learned counsel appearing for the applicant in OA No. 370 of 1999 has filed written note of submission with copy to the other side which has also been taken note of. The learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the case of S.I.Rooplal and another v. Lt.Governor through Chief Secretary, Delhi and others, (2000) 1 ATT (SC) 241, and the case of M.S.Bindra v. Union of India and others, AIR 1998SC 3058. The learned counsel for the petitioner in OA No.370 of 1999 has filed xerox copies of these decisions which have been gone through.

11. Before considering the rival submissions of the learned counsels of both sides, the admitted position can be noted. The admitted position is that the post of SRDI in Khurda Road Division is an ex-cadre post in the scale of Rs.1600-2600/-, now revised to Rs.5500-9000/-. It is also the admitted position that R.N.Pani, the applicant in OA No. 370 of 1999 was promoted and posted to the post in order dated 3.11.1989. At that time Shri Pani was a Senior Goods Clerk in the pay scale of Rs.1200-2040/- and was working as Commercial Controller in Khurda Control Room. The order appointing Shri Pani to the post of SRDI at Annexure-1 of OA No. 370 of 1999 clearly states that his promotion is temporary and will not confer on him any right or claim for retention in the post and confirmation therein and he will retain his present lien in

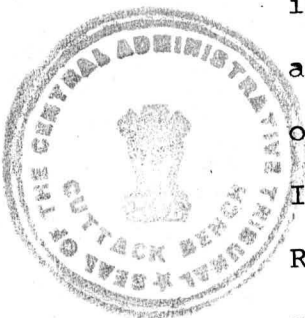


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the Goods Branch. It is also the admitted position that while he was working as SRDI he was promoted to the post of Head Goods Clerk in the pay scale of Rs.1400-2300/-, revised to Rs.5000-8000/-. Shri Pani's grievance is that he has been sent back to his parent cadre and to the post substantively held by him in his parent cadre as Head Goods Clerk in the order dated 16.7.1999 (Annexure-9 of OA No.370 of 1999). He has challenged this order on two grounds. The first ground is that the order has been preceded by a letter dated 13.7.1999 of Senior Divisional Commercial Manager expressing displeasure for his poor performance in the preceding six months. He has stated that this conclusion of his superior officer is not based on fact as is revealed by his explanation submitted in letter dated 25.7.1999. The second ground urged by him is that the post of SRDI has been encadred in the post of Commercial Inspector Grade-III and therefore he could not have been repatriated to his parent cadre. In support of this he has cited the order dated 20.7.1999 of the Chief Commercial Manager at Annexure-10 in which his order of repatriation has been cancelled. The first point to be noted in this connection is that R.N.Pani has been holding an ex-cadre post and nobody has a right to continue in an ex-cadre post. It is open for the departmental authorities to repatriate a person holding an ex-cadre post to his parent line. The order of repatriation does not show that repatriation is by way of punishment. In view of this, just because in letter dated 13.7.1999 certain deficiencies in his work were pointed out to him, would not make the order of repatriation punitive in character and this aspect of his contention is therefore held to be without any merit and is rejected.



12. The second limb of argument of the two counsels appearing on behalf of Shri R.N. Pani is that the post of SRDI has been encadred in the post of Commercial Inspector Grade-III in the order dated 27.11.1998 and as Shri Pani was holding the post of SRDI on 27.11.1998 he is deemed to have been encadred as Commercial Inspector Grade-III and therefore he cannot be repatriated to his parent line and to his substantive post of Head Goods Clerk. This is the main item of controversy in the present case. The departmental respondents have pointed out that in the order dated 27.11.1998 the post of SRDI has not been encadred but only a channel of promotion of SRDI/RDI in the scale of Rs.5000-8000/- has been opened to the post of Commercial Inspector Grade -II in the pay scale of Rs.5500-9000/-. For the purpose of appreciating the controversy it is necessary to refer to the order dated 27.11.1998 which has been enclosed in all the three OAs. The learned counsels for Shri Pani have urged that the post of SRDI/RDI has been encadred in all the Divisions of S.E. Railway and in Khurda Road Division this has not been given effect to and that is why the order dated 27.11.1998 was issued. The learned counsels for Shri Pani have not enclosed any order of the Railway Board clearly stating that the post of SRDI/RDI has been encadred with the post of Commercial Inspector Grade-III. He has filed certain circulars of the Railway Board which we have carefully perused and we have been unable to find out any circular which clearly provides for such encadredisation. In view of this, the only order which we have to refer to is the order dated 27.11.1998. The first sentence of this order states that in consultation with the recognised unions of the S.E. Railway it has been decided to open a channel of promotion to SRDI/RDI of the Commercial



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Department of the Divisions(emphasis supplied). It is further provided that consequent on the above decision, the revised avenue channel, i.e., promotion channel of Commercial Clerks and Commercial Inspectors of the Division duly tagged SRDI/RDI with Commercial Inspectors for further advancement is sent herewith for information, guidance and necessary action. The seniority (non-fortuitous service) in the grade of SRDI/RDI would be taken into consideration to determine the interse seniority in the category of Commercial Inspector Grade-III in the scale of Rs.5000-8000/- for their next promotion to the grade of Commercial Inspector, Grade-II in the scale of Rs.5500-9000/- and onwards. This has been issued by the Chief Personnel Officer (Commercial) with the approval of the Chief Commercial Manager and Chief Personnel Officer. We have referred to the detailed wording of this circular from which it is clear that this circular does not speak of encaderisation of the post of SRDI/RDI with the Inspectorial staff of the Commercial Department. Had it been the intention, then this order would have clearly stated that the post has been encaderised and the SRDI/RDI should be fitted in as Commercial Inspector Grade-II. On the other hand, it has been merely provided in the circular that a new channel of promotion of SRDI/RDI in the scale of Rs.5000-8000/- has been opened to the grade of Commercial Inspector Grade-II in the pay scale of Rs.5500-9000/-. On a plain reading of this circular it cannot therefore be said that the post of SRDI/RDI has been encaderised along with Commercial Inspectors Grade-III. All that has been done is to provide that SRDI/RDI in the scale of Rs.5000-8000/- will be entitled to be considered for promotion to the post of Commercial Inspector Grade-II in the scale of Rs.5500-9000/- and the manner of counting their seniority has also been provided which does not



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concern us in the present case even though the learned counsels for Shri D.Garudiah and Shri A.Bhagawati Rao have made elaborate submissions in this regard. It is not necessary to consider these submissions because it has not been averred by any of these three persons that they are going to be promoted to the post of Commercial Inspector Grade-II shortly and in the process of such promotion the seniority to be counted of Shri R.N.Pani has been wrongly counted. In view of the above, we hold that by the order dated 27.11.1998 the post of SRDI/RDI has not been encaderised and this contention of the counsels of the petitioner R.N.Pani is accordingly rejected.

13. There is also another ground on which this contention must be repelled. The order dated 27.11.1998 itself makes it clear that new avenue of promotion has been provided to SRDI/RDI in the scale of Rs.5000-8000/- for promotion to Commercial Inspector Grade-II in the scale of Rs.5500-9000/-. Shri R.N.Pani is an SRDI and was already enjoying the scale of Rs.5500-9000/-. The circular dated 27.11.1998 does not say that SRDI in the scale of Rs.5500-9000/- will be encaderised as Commercial Inspector Grade-II which is in a lower scale. Had it been the intention to caderise a post at a lower level, then the circular would have clearly mentioned this. The learned counsel for Shri Pani has referred to the decision of the Hon'ble Supreme Court in S.I.Rooplal's case(supra) where their Lordships of the Hon'ble Supreme Court have mentioned that the scale of pay is not the only criterion for considering equivalence between two posts. The other factors to be taken into consideration are nature and duties of post, responsibilities and power exercised by the officer holding the post, the extent of territorial and other charge held and responsibility discharged, and minimum qualification



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prescribed for recruitment to the post. That case relates to equivalence of Sub-Inspector of B.S.F. deputed to Delhi Police. In this case there is nothing in the pleadings of the parties that the duties and responsibilities, etc. attached to the post of SRDI are equivalent to the post of Commercial Inspector Grade-III. In view of the above, this decision of the Hon'ble Supreme Court does not go to support the case of Shri Pani. So in the resultant situation, our findings are that the post of SRDI has not been encadredised as Commercial Inspector Grade-III. Only a channel of promotion has been opened for each of them who are in the scale of Rs.5000-8000/- for promotion to the post of Commercial Inspector Grade-II in the scale of Rs.5500-9000/-. In view of the above finding, the order dated 20.7.1999 of the Chief Commercial Manager cancelling the order of repatriation which has proceeded on the assumption that the incumbents of the ex-cadre post of SRDI/RDI will be merged in the cadre of Commercial Inspector is held to be without any basis. In this order dated 20.7.1999 reference has been made to the order dated 27.11.1998 which we have already noted. Even in this order dated 20.7.1999 it is clearly mentioned that the incumbents of the ex-cadre post of SRDI in the scale of Rs.5000-8000/- will be merged in the cadre of Commercial Inspector. The applicant admittedly is in the scale of Rs.5500-9000/- and therefore this order dated 20.7.1999 having been issued on two wrong premises cannot be sustained and is accordingly quashed. Our second finding is that as the applicant Shri R.N.Pani is holding an ex-cadre post he can be repatriated at any time in terms of his order of appointment when such repatriation is not punitive in

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character. The decision of the Hon'ble Supreme Court in M.S.Bindra's case (supra) is based on clearly different facts where the officer was compulsorily retired on a review of his work and it was held by the Hon'ble Supreme Court that the Screening Committee did not have adequate material to come to an adverse finding with regard to the conduct and functioning of the incumbent.

14. In the result, therefore, OA No. 370 of 1999 is rejected and OA Nos. 386 and 554 of 1999 are partly allowed on the grounds indicated above. The prayer of the applicants in OA Nos. 386 and 554 of 1999 for declaring that the decision to count ex-cadre service experience of Shri R.N.Pani (the applicant in OA No.370 of 1999) for his further promotion in the Commercial line is illegal, is rejected because no order has yet been passed by the departmental authorities to count such experience towards further promotion of Shri Pani. The interim order dated 30.7.1999 in OA No.370 of 1999 and the interim order dated 9.8.1999 in OANo.386 of 1999 stand vacated. We also note that in respect of the interim orders some of the petitioners had approached the Hon'ble High Court of Orissa. We make it clear that the above order regarding vacation of the interim orders passed by us will naturally be subject to whatever orders the Hon'ble High Court have passed in the matter. There will be no order as to costs.

3. 8. 2000
(G.NARASIMHAM)
MEMBER(JUDICIAL)



(SOMNATH SOM)
VICE-CHAIRMAN