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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 70 OF 1999

Cuttack, this the 29th day of June, 2001

Fakira Samal .....

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 Tribunal or not? No .

(G. NARASIMHAM)

MEMBER (JUDICIAL)

*Somnath Sam*  
(SOMNATH SOM)  
29.6.2001  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 700F 1999  
Cuttack, this the 29th day of June, 2001

CORAM:

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

.....

Fakira Samal, aged 55 years, son of late Sauri Samal,  
Vill-Madhara, P.S-Mutunga, District-Dhenkanal, working as  
Khalasi Helper, S.E.Railway, Cuttack,

..... Applicant

Advocates for applicant - M/s P.V.Ramdas  
P.V.B.Rao

Vrs.

1. Union of India, represented by General Manager,  
S.E.Railway, Garden Reach, Calcutta-13.
2. Assistant Engineer, Central S.E.Railway, Cuttack.
3. Senior D.P.O., S.E.Railway, Khurda Road, Khurda.
4. Divisional Manager, S.E.Railway, Khurda Road, Khurda.
5. Kuna Khan, Masson Grade-III, S.E.Railway, Gorakhnath,  
S.E.(P.Way) GRKN, PO-Nalibar, Jagatsinghpur.
6. Golakh s/o Sundarsan Khalasi Helper, S.E.(W), Cuttack,  
S.E.Railway.
7. Rama s/o Siva, Khalasi Helper, S.E.(W), Cuttack,  
S.E.Railway.
8. Mayadhar Ojha, ECR Grade-III, S.E., P.Way, Gorakhanath,  
P.O-Nalibar, Jagatsinghpur

..... Respondents

Advocates for respondents - M/s D.N.Misra  
S.K.Panda  
C.R.Misra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for  
a direction to the respondents to give him promotion to the  
post of Mason Grade-III with effect from the date his  
juniors were promoted with all consequential benefits.

2. The applicant's case is that he was  
on 24.6.1970  
initially appointed as Gangman/and was promoted as Khalasi  
Helper on 25.9.1986 and has been continuing in the same

post. His juniors have been promoted to the post of Mason. The applicant has stated that in Permanent Way Unit where the applicant is working there is no post of Khalasi and there are only four posts of Khalasi Helper. He has stated that he was initially appointed as Gangman on 24.6.1970 and was confirmed against a Permanent Way cadre post. All other persons placed above the applicant in the seniority list of 1997 came to the cadre post later and were confirmed and as such he is the seniormost though in the seniority list at Annexure-1 he has been shown as junior. He has further stated that though his designation is Khalasi Helper right from 1982, he is officiating as Mason and is continuing as such. There are regular vacant posts of Mason. His juniors have been promoted, but his case has been ignored. He has further stated that one Kameswar Pradhan and Kishore Moharana, whose names did not find place in the seniority list, have been given promotion to the post of Mason on 13.1.1995. He has made representation but without any result. It is also stated that in letter dated 1.2.1999 respondent nos.6 and 7 were called to appear at the trade test for promotion to the post of Mason Grade-III, but the applicant was not called. He has also stated that respondent nos.5 and 8 have already been promoted to the post of Mason Grade-III in the year 1995. In the context of the above he has come up in this petition with the prayer referred to earlier.

3. Respondents in their counter have stated and this has not been denied by the applicant in his rejoinder that the applicant was not initially appointed as Gangman. He initially joined on 24.6.1970 as a Substitute

Gangman in the pay scale of Rs.775-1025/- and was later regularised in the same grade. The departmental respondents have also contested the averment of the applicant that there is no post of Khalasi and there are only four posts of Khalasi Helper in Permanent Way Unit. They have stated that Permanent Way Unit has four posts of Khalasi and one post of Khalasi Helper in the pay scale of Rs.750-940/-. The departmental respondents have stated that the applicant, who was working as Gangman in the scale of Rs.775-1025/-, has been posted as Khalasi Helper in the lower pay scale of Rs.750-940/- with effect from 24.1.1979 as the applicant requested for the same and thereafter his seniority was maintained as Khalasi Helper and not as Gangman. The next higher grade was that of BTM in the pay scale of Rs.800-1150/- and after promotion to BTM, seniority is maintained categorywise and Sub-Division-wise. The applicant while working as Khalasi from 24.1.1979 was promoted to the post of BTM/Khalasi Helper in the pay scale of Rs.800-1150/- with effect from 25.9.1986 in the same Unit and his seniority has been rightly fixed as BTM/Khalasi Helper from 25.9.1986. The post of Artisan Grade-III in the pay scale of Rs.950-1500/- is filled up only from the seniority list of BTM/Khalasi Helper and the applicant would be considered when he will become eligible as per his seniority. They have also contested the averment of the applicant that he is working as Mason right from 1982. They have stated that he is working as Mason Helper in the pay scale of Rs.750-940/- and the man who is senior to him has been posted in the regular post. The respondents have also stated that Kameswar Pradhan and Kishore Moharana have been promoted rightly and there has

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been no irregularity. It is further stated that the applicant is not the seniormost Khalasi Helper and therefore his case cannot be considered for promotion as Mason. Whenever he will be eligible as per seniority to be considered for promotion, his case will be considered. They have also stated that whenever he has been allowed to officiate in higher grade vacancy as Mason he has been provided with higher pay scale for officiating as Mason and therefore he cannot have any grievance. On the above grounds, they have opposed the prayer of the applicant.

4. The applicant in his rejoinder has relied on the endorsement made by Senior Section Engineer (Permanent Way) on his representation at Annexure-4 and he has stated that on the basis of this endorsement he should have been called to the trade test. The other averments made by the applicant in his rejoinder are repetition of the averments made by him in the O.A.

5. Though notices were issued, the private respondents did not appear or file counter.

6. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have perused the records. At our direction the learned Standing Counsel (Railways) has filed the seniority list which has also been perused.

7. The first point to be noted from the pleadings of the parties is that in this OA the petitioner has not asked for re-fixation of his seniority. He has enclosed a seniority list at Annexure-1 and has stated that all the persons above him in this seniority list are junior to him. He has not indicated when this seniority list was

published. But in any case as he has not challenged the seniority list, his contention that he is the seniormost amongst Khalasi Helpers cannot be accepted.

8. The second point to be noted is that the respondents have denied the assertion of the applicant that from 1982 he has been working as Mason. The departmental respondents have stated in their counter that he has been promoted as Khalasi <sup>Helper</sup> in the pay scale of Rs.800-1150/- on 25.9.1986 and this is also the endorsement of the Senior Section Engineer on which the applicant relies. The applicant has also not denied the assertion of the departmental respondents that on promotion to BTM/Khalasi Helper the seniority list is maintained categorywise and Sub-Division-wise. We find from the seniority list circulated on 26.2.1986, which has been furnished by the departmental respondents, that he is the seniormost person in the Helper scale. The second aspect of the controversy is whether he has been working as Mason from 1982. The departmental respondents have stated in their counter that he has been working as Khalasi Helper. But for short periods he has worked as Mason and for those periods he has also been given the higher scale of pay of Mason. From the order dated 5.8.1987, enclosed by the respondents, we find that from January 1982 till January 1986 in different months for certain days the applicant has worked as Mason and in this order he has been allowed acting allowance for those periods. From this it is clear that during these periods he has worked as Mason on an acting or officiating basis. This would not entitle him to be considered for regular promotion to the post of Mason. The applicant has not denied the averment made by the departmental respondents that persons senior to him have been promoted

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as Mason. In any case, according to the averment of the applicant himself in paragraph 4.8 of the OA, Kuna Khan (respondent no.5) and Mayadhar Ojha (respondent no.8) have been promoted to Mason Grade-III in the year 1995 and the applicant has come up in this petition only in 1999. He, therefore, cannot be allowed to make a grievance of promotion of these two persons. As regards Golakh, s/o Sundarsan (respondent no.6) and Rama s/o Siva (respondent no.7), we find from the seniority list at Annexure-1 that names of these two persons are at serial nos. 20 and 17 respectively whereas the name of the applicant is against serial no.38. In view of this, we do not find any illegality on the part of the departmental respondents to call respondent nos. 6 and 7 for trade test as according to the seniority list both of them are much senior to the applicant. In view of the above, we hold that the applicant is not entitled to be considered for promotion to Mason Grade-III over the head of his seniors on the basis of his officiating as Mason for short periods as mentioned earlier. He has to be considered for promotion as Mason Grade-III in accordance with his seniority and when his turn comes.

9. In consideration of the above, we hold that the applicant is not entitled to the relief claimed by him in the Original Application which is accordingly rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

29.6.2001  
VICE-CHAIRMAN

AN/PS