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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 142 OF 2000
Cuttack, this the 16th day of March, 2001

Gobardhan Swain 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
16.3.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....
Gobardhan Swain, aged about 36 years, son of late Chema Swain, presently working as Khalasi Helper, Bahanagabakar Railway Station, At/PO-Bahanaga, District-Balasore.

.....
Applicant

Advocates for applicant - M/s Biswajit
Mohanty-I
S.Patra
P.K.Majhee

Vrs.

1. Union of India, represented through General manager, South Eastern Railways, GardenReach, Calcutta, West Bengal.
2. Divisional Railway Manager (P)
Kharagpur Division,
South Eastern Railway,
Kharagpur,
West Bengal.
3. Divisional Signal Telecom Engineer, Micro Wave, Kharagpur, Kharagpur Division, South Eastern Railway, Kharagpur, West Bengal.
4. Section Engineer (Telecommunication), Microwave Maintenance, South Eastern Railway, Bhadrak, At/PO/District-Bhadrak... Respondents

Advocates for respondents-Mr.D.N.Mishra
Standing
Counsel
(Railway)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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Int his Application, the petitioner has prayed for direction to the respondents to regularise his service as Wireless Tele Maintainer and to pay him the salary of such post for the period he had been made to work as Wireless Telecom Maintainer (WTM) along with overtime allowance. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed a rejoinder. We have heard Shri Biswajit Mohanty,

the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents.

2. The applicant's case is that he was appointed as a Khalasi in 1988 and later on he was redesignated as Khalasi Helper. He has all along been working at Bahanaga Bazar Railway Station. The applicant has stated that he was put to work as WTM and he has been working as such all along. He was maintaining and signing Battery Register, In-built Register, Wireless Log Book, Power Plant Register and Humidity Register for all these years. He has stated that at Bahanaga Bazar Railway Station there is no leave reserve or rest giver category person so far as WTM personnel are concerned and therefore sometimes he has been forced to work as WTM even for twenty-four hours without payment of higher allowance. Though he has represented for regularisation of his service as WTM and for allowing him the scale of pay of the post of WTM, this has not been done. He has further stated that his service has all along been satisfactory and a number of posts of WTM are lying vacant and because of this he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant has all along been working as Khalasi Helper and he has never been asked to work as WTM. The applicant is a Khalasi Helper and as such he had to take readings of Battery, In-built Meters, etc. and during the course of discharge of his duties as such he might have made entries in this regard in these Registers but that does not confer on him any right to get regularised in the post of WTM. They have further stated

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that Bahanagabazar Microwave Station is functioning on intermittent roster with 12 hours duty in a day and with one day rest in a week. Accordingly, the applicant, who was working as Khalasi Helper in this Station, was also allowed to work availing the above benefit and no more than that. No work beyond the rostered hours has been allotted to the applicant and he was also given weekly rest. They have stated that the post of WTM is a Group-C skilled artisan post and 50% of these posts are filled up by promotion. The applicant is in semi-skilled grade and for promotion to the post of skilled grade he has to clear the trade test. The applicant was called to the promotional test for Technician Grade-III, redesignated as WTM/Gr.III, and such a test was conducted on 23.10.1998. The applicant appeared at the test but failed. The respondents have enclosed the result of the trade test issued on 7.1.1999 at Annexure-R/1 showing that the applicant had failed in the trade test. They have stated that passing of trade test is mandatory for promotion to Group-C post from Group-D semi-skilled. They have further stated that as the applicant had never worked as WTM, the question of payment of salary and overtime allowance does not arise. On the above grounds, they have opposed the prayer of the applicant.

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4. In his rejoinder, the applicant has stated that the Registers are to be maintained by WTM and as he has maintained these Registers, it is proved that he has worked as WTM. He has also stated that from the Wireless Log Book, it is clear that he has taken charge from different WTM's whose names have been mentioned. He has stated that these persons were never regularly posted at Bahanagabazar Railway Station. They came when the

regular WTM's posted at Bahanagabazar Station or the applicant went on leave. He has also stated that he was not aware that he had failed in the test. The result was never intimated to him and he came to know of his failure only when Annexure-R/1 was filed. The rules provide for giving systematic training to semi-skilled personnel ,but the applicant was never given such training. The two persons who passed in the trade test were non-matriculate whereas the applicant is a matriculate. He has also stated that one R.C.Behera who had failed in the trade test along with him has been allowed to work as regular WTM after he has passed in a trade test to which the applicant was not called.

5. The learned counsel for the petitioner has relied on the decision of the Orissa Administrative Tribunal in the case of K.C.Mishra v. State of Orissa, 89(2000) CLT(AT) 26, and the decision of the Hon'ble Supreme Court in the case of Bhagwati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371. We have perused these two decisions.

6. The first point for consideration is whether the applicant has worked as WTM at Bahanagabazar Railway Station. The applicant has stated that he has worked as WTM from 1988 till date. The respondents have denied the same. In support of his contention, the applicant has stated that he had made entries in all the concerned registers. He had also filed a Misc. Application calling for these records. But as the respondents have not specifically denied that the applicant has made entries in the concerned registers, it was not considered necessary to call for these records and the prayer for calling for

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the records was rejected. The respondents have stated that the applicant is a Khalasi Helper and during course of discharge of his duties he has to take readings of Battery, In-built Meters, etc. They have stated that in course of discharge of his duties in case the applicant has made such entries, that will not confer on him any right to the post of WTM or to get regularised in the post of WTM. The respondents have stated and the applicant has not denied that the post of Khalasi Helper is in semi-skilled category whereas WTM is in skilled category. According to the rules, which have been filed at Annexure-R/2, Rule 187 deals with promotion to skilled categories. This rule provides that semi-skilled artisans and basic tradesman are eligible for promotion to skilled grades if they pass the prescribed trade test against 50% quota set apart for promotion. The respondents have stated that the applicant was called to the trade test in which he appeared but failed. They have enclosed the order dated 7.1.1999 in which the applicant along with 5 others failed and only two persons passed the test. The applicant has stated that this order was not intimated to him. We find that this order at Annexure-R/1 has been issued on 7.1.1999 in respect of the trade test held on different dates on 21.9.1998, 23.10.1998 and 30.11.1998. In the memo of this order there is also an endorsement that entry regarding result of the trade test should be made in the service record of the staff concerned. In view of this, it cannot be held that the stand of the respondents that the applicant failed in the trade test is incorrect. It is also to be noted that the applicant in his petition has

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not made any mention about the fact that he did appear in the trade test on 23.10.1998 which must be within his knowledge. Thus, he has suppressed this fact. As the rules provide for promotion of semi-skilled artisans to 50% posts of WTM, now redesignated as Technician Grade-III, only in case they pass the trade test, the applicant cannot claim that he should be regularised even though he has not passed the trade test. In Bhagwati Prasad's case (supra) the Hon'ble Supreme Court have held that practical experience would always aid a person to effectively discharge his duties and once appointment has been made and a person has been allowed to work for a considerable length of time, it would be hard and harsh to deny him the benefit of confirmation on the ground that they lack prescribed qualification. This decision deals with question of confirmation and does not deal with promotion moreso when such promotion is predicated on passing the trade test. Bhagwati Prasad's case (supra) does not, therefore, lend any support to the petitioner's case.

In K.C.Mishra's case(supra) Orissa Administrative Tribunal held that when an employee is discharging duties of a post carrying higher scale of pay, he should be allowed to draw the scale of pay attached to the post for the period he discharged the duties of the higher post. In this case the applicant has not shown any record that he was asked to perform the duties of WTM. He has stated and the respondents have not denied that he has made entries in the concerned registers. But as the respondents have stated that as Khalasi Helper as a part of his duties he had to take readings and enter the same in the concerned registers and, therefore, simply by the fact that the applicant had made entries in the concerned registers, it

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cannot be held that the applicant had discharged the duties of the higher post of WTM. As such he is not entitled to the pay scale of the post of WTM. As he has not passed the trade test, obviously he cannot be regularised in the post of WTM. The two prayers of the applicant are therefore held to be without any merit and are rejected.

7. In his rejoinder the applicant has stated that a person, who had earlier failed in the trade test as per the order at Annexure-R/1, was later on called to appear at a trade test and on passing the trade test, that person is going to be appointed as WTM. As this averment of the applicant has been made in the rejoinder, the respondents have not had any opportunity to reply to this averment. But in any case with reference to this averment we direct the respondents that in case the other person, i.e., R.C.Behera has been called to a trade test and in case the applicant has not been called to such trade test, then they should call the applicant to a trade test within a period of 90 days from the date of receipt of copy of this order and decide on the question of his promotion to the post of WTM on the basis of his performance in the trade test.

8. In the result, therefore, the Original Application is disposed of in terms of the observation and direction as above. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

16th March, 2001/AN/PS

Somnath Som
(SOMNATH SOM)
16.3.2001
VICE-CHAIRMAN

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