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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.163/2000

Cuttack, this the *24th* day of July, 2004

Kartikewar Mishra

.....

Applicant

Vrs.

Union of India & Others

.....

Respondent


FOR INSTRUCTIONS

(1) Whether it be referred to the Reporters or not ?

NO

(2) Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

NO


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.163/2000

Cuttack, this the *28th* day of July, 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

&

HON'BLE SHRI M.R. MOHANTY, MEMBER (J)

Kartikeswar Mishra, aged about 62 years, son of late Nilambar Misra, retired Deputy Superintendent, N-3/155 IRC, Nayapalli, Bhubaneswar 15, Dist.Khurda Applicant

Vrs.

1. General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2. Divisional Railway Manager, South Eastern Railway, Khurda Road Division, At-Khurda Road, P.O.Jatni, Dist.Khurda.
3. Sr.Divisional Personnel Officer, South Eastern Railway, Khurda Road, Division, At-Khurda Road, P.O.Jatni, Dist.Khurda

..... Respondents.

Advocates for the applicant - M/s K.C.Kanungo & S.Behera

Advocates for the respondents - M/s P.K.Mishra & M.K.Pati.

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Kartikeswar Mishra has filed this Original Application for a direction to be issued to the Respondents to declare him

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suitable for promotion to the post of Station Superintendent with effect from the date officials junior to him in service got promotion to the post of Station Superintendent and to allow him arrears of pay and other consequential benefits.

2. The case of the applicant, who has retired from service with effect from 31.12.1995, is that the Respondent-Railways had in 1993 restructured the Groups C and D categories of posts including those of Station Master and Assistant Station Master. For enhancing the promotional avenues for the staff the restructuring of the cadres was made as per the cadre strength as on 1.3.1993. The serving employees in Groups C and D were placed in higher grades as a result of restructuring according to the ratio prescribed for this purpose in the Railway Board's letter dated 21.7.1993. Whereas this restructuring exercise was to be completed immediately on receipt of the Estt.Sl.No.13/93 dated 5.2.1993, in S.E.Railway this exercise was kept in abeyance for three years by order of the Chief Personnel Officer (Annexure R/2). As a result, the applicant got the benefit of promotion to the next higher grade

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of Deputy Station Superintendent with effect from 1.3.1993 by an order dated 23.1.1996, i.e., after his retirement. However, between 1.3.1993 and 31.12.1995 (i.e., the date of his retirement) there were vacancies in the grade of Station Superintendent and consequently many of his juniors got the benefit of higher grade because they were in service. His grievance is that although he was given the benefit of promotion to Deputy Station Superintendent even after his retirement, he was not given the benefit of next higher grade, i.e., Station Superintendent, although there were vacancies available for this purpose. On the strength of these facts, he has approached the Tribunal for relief.

3. The Respondents have admitted the facts of the case. They have, however, stated that as the applicant had superannuated prior to the date of actual implementation of the restructuring scheme for Station Master/Assistant Station Master cadres with effect from 23.1.1996, he could not get the benefit of promotion to the post of Station Superintendent. They have further stated that in terms of the Estt.Sl.No.13/93 the existing classification of the posts covered

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by the restructuring orders as selection and non-selection, as the case may be, remained unchanged. However, the Railway Board permitted, vide para 4 of Estt.Srl.13/93, that vacancies existing on 1.3.1993 even in respect of selection post may be filled up only on scrutiny of service records and confidential reports without holding any written or viva voce test. This modified selection procedure was decided by the Ministry of Railways as a one time exception by special dispensation. However, all the vacancies arising from 2.3.1993, it was laid down at para 4.3 of the said Est.Srl. would have to be filled up by normal selection procedure. Accordingly, the applicant could be given the benefit of higher grade of the Deputy Station Superintendent as that vacancy was available as on 1.3.1993 and no written test or viva voce was required to be held for the purpose of selection and therefore, the applicant though had retired was considered for promotion and on being found fit on the basis of his service records he was given the benefit of higher grade. But for promotion to the grade of Station Superintendent, as the vacancy in the said grade arose only from 2.3.1993 for

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which the Respondents had to follow the normal procedure, i.e., written test and viva voce, and as the applicant was not available on duty when the D.P.C. meeting took place on 22.1.1996, his case could not be considered for ante-dated promotion.

4. We have heard the counsel for both sides and have also perused the records placed before us. The applicant has filed rejoinder and also a written note of argument which have been perused by us.

5. The short point to be answered in this O.A. is, whether the applicant is entitled to be considered for promotion to the grade of Station Superintendent against a vacancy, which arose between 1.3.1993 and 31.12.1995. The learned counsel for the applicant has strenuously submitted that the restructuring exercise was to be carried out by all concerned immediately on receipt of the instructions dated 5.2.1993. But by issuing a telegram (Annexure R/2), the restructuring process was kept in abeyance for about 3 years which resulted in denial of legitimate expectation for promotion to higher grade of the applicant and many others. The

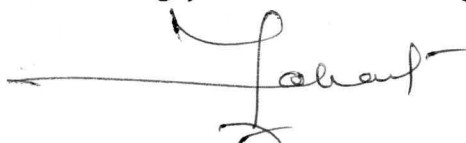
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Respondents have not denied the fact of delay in completing the restructuring process. The Respondents have submitted that the applicant could not be considered for promotion to the post of Station Superintendent because in January 1996 he was not available to participate in the selection process. The allegation of the applicant is that he has been deprived of his legitimate right to promotion. The law is, however, well settled that an employee has a right to be considered for promotion but does not enjoy any right to promotion. The Respondents have not denied that there were vacancies in the grade of Station Superintendent for filling up by promotion before the date of retirement of the applicant. But for certain administrative reasons they had decided not to fill up the vacancies arising between 1.3.1993 and 22.1.1996. Such a decision was taken by the executive on administrative reasons and it is not within the jurisdiction of the Court to interfere in the matter. It is for the Railways to decide which posts are to be filled up and when and also how those posts are to be filled up. In answering the plea of the applicant that his junior having been



promoted to the grade of Station Superintendent, he also should have been promoted, we would like to observe here that seniority in a particular cadre does not entitle a public servant for promotion to higher post unless he fulfills the eligibility conditions prescribed by the relevant rules. It has been held by the Apex Court in the case of *R.Prabha Devi v. Government of India*, AIR 1988 SC 902, that a person must be eligible for promotion having regard to the qualifications prescribed for the post before he or she can be considered for promotion. Seniority will be relevant only amongst persons eligible for promotion to a particular grade. The post of Station Superintendent being a selection post and that one has to come out successful through written test and viva voce and as the applicant was not available to take the eligibility test, he cannot make a claim for promotion to the grade of Station Superintendent. It has also been held by the Apex Court in *K.Jagadeesan v. Union of India*, (1990) 2 SLR 59, that qualification for promotion to a particular post is to be determined by the Government and unless the requirement is

totally irrelevant and unreasonable, it cannot be said to be bad in law. The present case cannot be categorized by us either irrelevant or unreasonable. Thus, having regard to the facts and circumstances of the case, we are of the view that the administration having taken a conscious policy decision to keep the restructuring order in abeyance thus acting within its inherent power and as the applicant in the meantime had retired and therefore, could not pick up the eligibility conditions required for consideration for promotion to the grade of Station Superintendent, we are unable to accede to his prayers made in this O.A. which is accordingly dismissed being devoid of merit. No costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN