

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

C.A.No. 38 of 2000.
Cuttack, this the 28th day of July, 2000.

DR. BIDHU BHUSAN SAMANTA & OTHERS. APPLICANTS.

-Versus-

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
28.7.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 38 OF 2000.

Cuttack, this the 28th day of July, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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1. Dr. Bidhu Bhusan Samanta,
Aged about 36 years,
Son of Dr. D. K. Samanta,
Resident of Tihidi,
PS: Tihidi,
Munsifi/Dist. Bhadrak,
At present posted as Divisional
Medical officer, SE Railway Hospital,
Khurda Road, PS: Jatni, Munsifi/Bhubaneswar,
Dist: Khurda, Orissa.
2. Dr. Rajendra Kumar Behera, Aged about 36 years,
Son of Ratnakar Behera, At: Patnasahi, Po: Gelpur,
PS/Munsifi/Dist: Bhadrak, at present posted as
Divisional Medical officer, S. E. Railway,
Hospital Kharagpur, Po/PS: Kharagpur, West Bengal.
3. Dr. Kalikinkar Chanda, Aged about 36 years,
Son of Bankim Ch. Chanda, At/Po: Jaleswar,
Munsifi/Dist: Balasore, at present posted as
Divisional Medical officer, S. E. Railway,
Hospital Adra, Po/PS: Adra, West Bengal.
4. Dr. Subrat Kumar Mishra, Aged about 36 years,
Son of K. C. Mishra, 33/Dharma Vihar,
PS. Khandagiri, Munsifi: Bhubaneswar, Dist: Khurda,
at present posted as Divisional Medical officer,
S. E. Railway, Hospital, At/Po/PS: Kharagpur,
West Bengal.
5. *Jm.* Dr. Satish Ch. Pradhan, Aged about 35 years,
Son of Gobinda Ch. Pradhan, At: Amolapara,
PS: Angul, Dist: Angul, at present posted as
Divisional Medical officer, S. E. Railway
Hospital, At/Po/PS: Waltior, Andhrapradesh.
6. Dr. Sangeeta Sundar Ray, Aged about 35 years,
Wife of Dr. S. Pradhan, At: Amolapara,
PS/Munsifi/Dist: Angul, at present
posted as Divisional Medical officer,
S. E. Railway Hospital, At/Po/Waltior,
Andhrapradesh.

..... APPLICANTS.

- VERSUS -

1. Union of India represented by the Secretary in the Ministry of Railways, Rail Bhawan, New Delhi-1, Munsifi-City Civil Court, New Delhi.
2. The Chairman, Railway Board of Rail Bhawan, New Delhi-1, Munsifi-City Civil Court, New Delhi.
3. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, Munsifi-City Civil Court, Calcutta-, West Bengal.
4. Divisional Railway Manager, South Eastern Railways, Khurda Road, PO/PS: Jatni, Munsifi-Bhubaneswar, Dist: Khurda, Orissa. : Respondents.

By applicant : M/s. S. C. Ghosh, S. Ghosh, P. C. Das, Advocates.

By the Respondents: M/s. S. L. Patnaik, Md. Arif, S. Nayak, Additional Standing Counsel (Railways).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application, under section 19 of the Administrative Tribunals Act, 1985 6(six) applicants have prayed for quashing the order dated 1.3.1999 (Annexure-3) promoting three of the applicants to Senior Scale from the post of Asst. Divisional Medical officer to the Post of Divisional Medical officer w.e.f. 1.3.1993 as also the order dated 14.10.1999, at Annexure-5 rejecting the representation of applicant No. 1, 2 & 3 for giving them promotion to Senior scale from the date of completion of four years of service as Asst. Divisional Medical officer. Second prayer is for a direction to the Respondents to promote the applicants to Sr. scale of pay from the date of completion of four years of regular service as ADMO. They have also claimed interest on the financial dues which accrued to them and were wrongfully withheld from them.

S. Som.

2. Respondents have filed counter opposing the prayers of Applicants. It is not necessary for the present purpose, to go into too many facts of this case. The pleadings made by the applicants in their original Application and the Respondents in their counter, would be referred to, while considering the submissions made by learned counsel for both sides.

3. We have heard Mr.S.C.Ghose, learned Counsel for the Applicants and Madam S.L.Patnaik, learned Additional Standing Counsel appearing for the Respondents and have also perused the records.

4. Prior to hearing of the matter, we had directed the learned Additional Standing Counsel to produce the letter dt. 23.1.1990 which has been referred to in circular dated 15.11.1991 enclosed by the Respondents at Annexure-R/1 of the counter. Accordingly, learned Additional Standing Counsel has produced the circular and which has also been taken note of. These 6(six) applicants are Doctors and they have stated that they joined service on the following dates:

Applicant No.1	-	9.11.1992
No.2	-	4.1.1993
No.3	-	30.1.92
No.4.	-	16.8.93
No.5.	-	29.7.93
No.6.	-	29.7.93.

J Som.

Respondents in their counter have admitted that these applicants have joined as ADMo in the year 1992-93 but the exact dates of their joining have not been indicated by the Respondents in their counter. Respondents have admitted that these petitioners were promoted to Sr. scale w.e.f. 1.3.1999 and 28.5.99. Neither of the parties have indicated the actual dates of promotion to the Sr. scale of these six applicants but in any case for the present purpose, actual dates of promotions are not very much material because the grievance of the applicants is that they

should have been given promotion to Senior scale on completion of four years of service but they have been given promotion to Senior scale much thereafter. From the above, it is clear that the factual aspect of the matter is not in dispute. The sole question for consideration is whether the petitioners are entitled to be given promotion to Senior scale on completion of four years of service as ADMO. The first point is to be noted in this connection is that in Circular dated 10.6.63, at Annx-R/2 enclosed to the counter, it has been mentioned that such promotion from ADMO to DMO can be given by interchanging the posts from ADMO to DMO. This in fact would mean that for this promotion, there should not be any availability of posts and on completion of four years of service, an ADMO can straightway be promoted to the post of DMO by interchanging the post from ADMO to DMO. The circular dated 23.1.1990 of the Railway Board lays down that in supersession of the instructions Ministry of Railways have decided that Junior scale officers of ADMOs should be promoted to Senior scale as DMO/SMO on completion of four years of regular service as ADMO in order of seniority, subject to rejection of the unfit. It is submitted by learned Addl. Standing Counsel that in this case on completion of four years of service, all the papers of the applicants had to be collected and these had to be put up before the DPC and all these took time and therefore, promotion order came in March and May, 1999. Applicants have pointed out in their petition and this has also been admitted by the Respondents in their counter that in case of two other persons even though promotion order has been issued much after the date of promotion, the promotion order was given effect to from the date of completion of four years. One of the petitioners had represented to the Departmental Authorities for

J. J. M.

dating back his promotion to the date when he completed four years of service in the Junior scale but this has been rejected on the ground that as promotion is subject to elimination of unfit, such promotion can be given effect to only from the date the DPC approves the promotion and the panel is approved. This position has also been clarified by the Railway Board in a Circular which has been enclosed by the Respondents to the counter. As the promotion is subject to elimination of unfit, it goes without saying that before such promotion the service records of the petitioners have to be considered and those who have adjudged unfit can not be given promotion merely by virtue of completing four years of service. Having said this, it has to be noted that it is not open to the Departmental Authorities to sit over the matter indefinitely and take the question of promotion after so many years and thereafter stating that this promotion is only from the date when the panel is approved. Since the promotion is to be considered as per the instructions of the Railway Board on completion of four years it is obvious that shortly after or even before completion of four years of service, the case of promotion of Jr. scale officers have to be considered and their suitability have to be adjudged. Unfortunately in this case records of service are not before us and it is also not open for the Tribunal to

S. J. M. adjudge their suitability. In view of this, we dispose of the matter with a direction to the Respondent No. 3 i.e. General Manager, South Eastern Railway, to convene a review DPC and adjudge the suitability of each of the applicants on the date they have completed four years of service in the junior scale and in case they are found suitable, they should be given promotion with effect from the date they have completed four

years of service in the Junior Scale. It is also ordered that they shall also be entitled to consequential financial benefits. Such process of reconsideration of the cases of the applicants for promotion should be completed within a period of 90 (ninety) days from the date of receipt of a copy of this order and the financial benefits to which such of the applicants who are promoted w.e.f. completion of four years would become entitled should be paid to them within a period of another sixty days thereafter.

5. Petitioners in this original Application have asked for payment of interest on the financial benefits which would accrue as a result of this order. We have considered this aspect carefully but we find that in this case Respondents have proceeded under a wrong understanding of the Railway Board's circular and there is no intention to deprive the applicants of their legitimate dues. Under the circumstances, prayer for payment of interest is disallowed.

6. In the result, the O.A. is allowed with the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28.7.2000

KNM/CM.