

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.437 OF 2000

Cuttack this the 26 day of Sept, 2001

Praffula Kumar Gochhayat

.....

Applicant

Versus



Union of India through the General Manager,
S.E.Railway 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 Central Administrative Tribunal or not ? *No*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.9.2001

26.9.2001
(G.NARASIMHAM)
MEMBER (J)

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ORIGINAL APPLICATION NO.437 OF 2000
Cuttack this the 26th day of Sept., 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
&
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (J)

1. Prafulla Kumar Gochhayat, aged about 48 years, son of Batakrushna Gochhayat, working as Sheet Metal Worker, Gr.I in the Office of the Workshop Manager, Carriage repair Workshop, South Eastern Railway, At.Mancheswar, P.O.Mancheswar Railway Colony, Bhubaneswar -17, District: Khurda.

By the Advocates

..... Applicant.
Mr.Satrughan Das

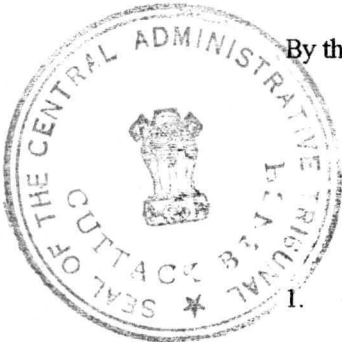
Versus

1. The Union of India through the General Manager, South Eastern Railway, Gardenreach, Calcutta-43.
2. Chief Workshop Manager, Carriage repair Workshop, South Eastern Railway, At: Mancheswar, P.O. Mancheswar Railway Colony, Bhubaneswar 17, Dist- Khurda.
3. Pitabas Nayak, S/o D.Nayak, Sheet Metal Worker Master Crafts, Man.
4. Bijay Kumar Bhuyan, S/o Dibakar Bhuyan, Painter Gr.I.

Both of Sl.No.3 & 4 are working in the Office of the Chief Workshop Manager, Carriage Repair Workshop, South Eastern Railway, At:Mancheswar, P.O.Mancheswar Colony, Bhubaneswar-17, Dist: Khurda.

By the Advocates

..... Respondents.
M/s Ashok Mohanty
R.Ch.Rath



ORDER

G.NARASIMHAM, MEMBER (JUDICIAL): Applicant who is serving in Gr.I cadre as Sheet Metal Worker under Chief Workshop Manager, Carriage Repair Workshop, South Eastern Railway, Bhubaneswar (Respondent No.2) filed this application on 18.9.2000 to regularise his post of high skilled Gr.I w.e.f 1.3.85 by counting his service period prior to cut off date 1.1.88; to quash Annexure-1/A dated 14.8.2000 calling private Respondents 3 Pitabas Naik and 4 Bijay Kumar Bhuyan and 4 others for the selection test to the post of J.E.Gr.II (W.S) in the scale of Rs.5000-8000/- against 25 per cent departmental quota.

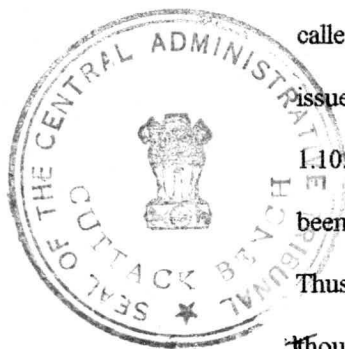
2. There is no dispute that Carriage Repair Workshop of South Eastern Railway at Mancheswar, Bhubaneswar started functioning in the year 1981. It became a fullfledged and a separate unit on 1.1.88. Most of the staff of other Divisions and Units of South Eastern Railway came over to this Workshop on public interest keeping their lien in the parent divisions/units. In Chief Personal Officer letter dated 9.11.87 (Annexure R/2) it was made clear that the staffs were came over the Workshop on transfer will lose their lien in the parent unit unless they express their willingness in writing to go back to the parent unit after 1.1.88. In letter dated 3.7.84 (Annexure R/1) it was also made clear that the inter se seniority of the staff transferred/recruited in the Workshop will be based on the length of non-forfeiture service in the grade on the cut off date and till the cut off date the transferred staff will retain their lien in their parent department. Applicant and the private Respondents came over to Workshop from different departments of the South Eastern Railway. As mentioned under Annexure R/4 the following is the comparative service particulars of the applicant and respondents:

COMPARATIVE SERVICE PARTICULARS

	Sri Pitabasa Naik, SMW Gr.I Respondent No.3	Sri B.K.Bhuyan, Painter Gr.I Respondent No.4	Sri P.K.Gochhayat,SMW Applicant
1.	Date of birth: 18.1.50	25.12.52	17.7.52
2.	Date of Apptt. 18.9.71	10.11.76	13.4.72

3.	Capacity of Apptt.: Sub Khalasi	Sub Khalasi	Sub Khalasi
4.	Reported at MCS(W/S): 1.9.82 as Skilled Fitter	15.3.82 (as Skilled writer)	11.03.82
5.	Promoted as Skilled: 01.8.78 Gr.III(Regular)	02.5.79 (Skilled)	01.10.77
6.	Promoted to SMW Gr.II: 01.6.86(Regular)	Painter Gr.II 1.8.84 (adhoc) 1.1.88(Regular)	Fitter 1.9.84(adhoc) SMW1.1.88(Regular)
7.	Promoted to Gr.I SMW: 1.3.85(Regular) As per Hon'ble Tribunal order in O.A. 191/92.	Painter Gr.III.4.86 (Regular) in terms of CAT's order in O.A.191/92.	01.3.85(Adhoc) 01.10.92(Regular)

3. By the time application was filed, applicant and private respondent are in Gr.I cadre. The case of the applicant is that he is senior to Respondents 3 and 4 and as such he should have been called to face the written test for selection to the post of J.E-II (W.S). In Annexure-1 dated 24.3.94 issued by the Workshop Manager, Mancheswar under serial -8 and regularised in that cadre w.e.f. 1.10.92. By virtue of the order of this Tribunal in O.A.191/92 Respondent No.2 was shown to have been promoted to Gr.I on regular basis on 1.3.85 and Respondent No.4 on 3.4.86 (vide Annexure R/4). Thus in O.A. applicant challenges his promotion on adhoc basis on 1.4.85 in order dated 24.3.94 , though in the prayer portion there is no specific prayer to that effect, yet in para-1 he clearly mentioned that the challenges the order of Respondent No.2 passed on 24.3.94 showing him to have been regularised in Gr.I w.e.f.1.10.92. Though he should have been regularised in that cadre on 1.3.85.
4. Private Respondents though duly noticed had neither entered appearance nor filed any counter. The department in their counter vehemently opposed the Original Application with various grounds.
5. On 20.9.2000 when the Original Application was listed first time. While issuing notices on the Respondents, we kept upon question of limitation of maintainability to be considered later.
6. In the rejoinder the applicant reiterated his stand that he is senior to private respondents.
7. We have heard counsel on record.



8. As per the materials available on the record, the applicant may become senior to private respondents if in order dated 24.3.94 respondent No.2 (Annexure-1) he was shown to have been promoted to Gr.I cadre on regular basis on 1.4.85 instead of on ad hoc basis. Though the private respondents and others similarly situated and affected by the description of their ad hoc promotions, filed several original applications and obtained relief from this Bench, the applicant did not approach this Bench. For the first time on 18.9.2000 i.e., more six and half years of the order passed under Annexure-1, he moved this Tribunal through this application. The application is therefore clearly barred by the limitation U/s 21 of the Administrative Tribunal Act. Reiterating the decision in S.M. Gaikwad reported in (1995) 30 ATC 635, the Apex Court in Ramesh Chandra Sharma Vrs Udham Singh, reported in AIR 1999 Supreme Court 3837 observed that Tribunal was not right in deciding the original application on merits overlooking this statutory provision U/s 21 of the AT Act, when there was no application for condonation of delay. Admittedly in this application the applicant had not sought condonation of delay by filing an application as required under Rule 8(4), of CAT(Procedure) Rules 1987. Hence this Original Application is dismissed as barred by time, without needing any discussion on merits regarding the inter se seniority among the applicant and 2 private respondents.

9. Even the prayer for quashing Annexure 1/A is not maintainable in as much as other 4 persons besides the 2 private respondents called for the written test, being affected parties have not been impleaded as Respondents.

10. In the result, the O.A. being barred by limitation is not maintainable, and is dismissed.
No Costs.



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.9.2001

26.9.01
(G.NARASIMHAM)
MEMBER (J)