

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

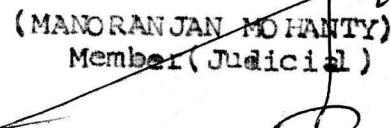
Original Application No. 77 of 2000
Cuttack, this the 27th day of February, 2004.

Arjun Kumar Giri. Applicant.
- Versus -
Union of India & Ors. 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? Yes


(B.N. SOM)
Vice-Chairman


(MANORANJAN MOHANTY)
Member (Judicial)

27/02/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 77 of 2000
Cuttack, this the 27th day of February, 2004.

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER(JUDICIAL).

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Arjun Kumar Giri,
Aged about 51 years,
S/o. Udinatha Giri,
At: Aghiria, Po: Anko (Rupsa),
Ps: Rupsa, Dist. Balasore,
at present working as Khalasi,
under the P.W.I. Rupsa,
District-Balasore. Applicant.

By legal practitioner: M/s. K. P. Mishra, J. K. Khandayatray,
S. Dash, Advocates.

-Versus-

1. Union of India represented through its
Chief Personnel Officer, South Eastern Railway,
Garden Reach, Calcutta-43.

2. Divisional Manager,
South Eastern Railway,
At/Po: Kharagpur,
Dist: Medinipur,
State: West Bengal.

3. Senior Divisional Engineer(South),
South Eastern Railway,
At/PO: Kharagpur, Dist. Midinapur,
State: West Bengal.

4. Assistant Engineer,
South Eastern Railway,
Balasore, Orissa.

Respondents.

By legal practitioner: Ms. C. Kasturi, Counsel for Railways.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant, a Khalasi under the South Eastern Railway, has prayed in this Original Application under section 19 of the Administrative Tribunals Act, 1985 for (a) direction to the Respondents to refix the pay of the Applicant in the pay scale of Rs.800-1150/-w.e.f.16.11.1993(i.e. the date on which the Applicant was posted as a Helper as against one Sri Deepak Ghosh) with all consequential service and monetary benefits; and (b) to direct the Respondents to treat the Applicant as a Senior Khalasi/Helper (with the pay scale of Rs.800-1150/-) and, thereby, direct the Respondents to allow promotion (to the Applicant) to the post of Gr.III Painter w.e.f. the date on which his juniors were promoted to the said post.

2. Short facts of the case are that while the applicant was working as Senior Gangman in the scale of Rs.800-1150/-, the Applicant represented for his transfer/posting as Sr.Khalasi/Helper in the scale of pay of Rs.800-1150/- in the vacancy caused due to death of one Dipak Ghosh. But instead of posting him as such, the Applicant was down-graded and posted as Khalasi in the scale of Rs.750-940/-under PWI, Rupsa. When he was not allowed to appear the test (for the post of Artisan Gr.III, pursuant to Annexure-4) he made several representations (under Annexure-5 series) for allowing him to appear the test for promotion and, as neither any reply was given to him on his representations; nor he was allowed to participate in the Test for the above post, he has filed

this Original Application with the above noted prayers.

3. Respondents have filed their counter contesting the averments made in the Original Application. It has been stated that the Applicant made representation on 27.07.1992 for his transfer and posting as Sr.Khalasi in other cadre;but as this prayer is not sustainable(in view of Board's circular under Annexure-R/1 dated 1.10.97), the grievance of the Applicant was not considered.However, the Applicant again approached for his transfer(with option to accept lower scale of pay and bottom seniority in the new cadre) on 23.4.1993;which was considered by the competent authority and the applicant was posted as Khalasi with the initial scale of pay (of Rs.750-940/-) under PWI at Rupsa, vide order dated 18.10.1993.Accordingly, the Applicant,having accepted the offer reported to duty as Khalasi on 6.11.1993 with the initial pay of Rs.940/- in the time scale of pay of Rs.750-940/-.It has been submitted by the Respondents that as the consideration for promotion to the post of Painter Gr.III in the scale of Rs.950-1500/- is made from among the eligible staff continuing in the scale of Rs.800-1150/- and as the applicant was holding the post of Khalasi in the scale of Rs.750-940/-,he was rightly not allowed to appear the test for the post of Painter Gr.III.Lastly, it has been submitted in the counter that the Applicant having opted for such transfer and posting with the condition to accept the lower scale and bottom of principle(and having accepted the same from 1993) he is estopped under the law to agitate the same at this belated stage.

J

4. In absence of the Applicant and with the aid and assistance of Ms.C.Kasturi, Learned Counsel appearing for the Respondents/Railways, we have perused the materials placed on record and heard her.

5. In order to come to a positive conclusion as to whether the Applicant had ever opted for accepting such lower post with lower scale, we have directed the learned counsel for the Respondents to produce the representation, basing on which such an order was passed, but learned counsel for the Respondents was not able to produce the same. However, she has produced (through Memo dated 23.1.2004) two orders (one is of dated 17.2.1993 and the other is of 14.6.1993) which shows that the immediate authority of the Applicant had recommended for his transfer and posting to the lower post of Khalasi by basing on the representation (of the Applicant) dated 23.4.1993. On the other hand, it is seen under Annexure-1 that the Applicant had sought for his transfer and posting as Sr.Khalasi/Helper in the vacancy caused due to the death of one Dipak Ghosh. Therefore, it is not possible to come to any positive finding in absence of the representation of the applicant dated 23.4.1993 that he had actually opted. But fact remains that the Applicant had accepted his lower posting in the lower scale from 1993 without any objection. Thereafter, he had also not made any representation for redressal of his grievances in that regard. He has also not challenged in this

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Original Application(filed on 03.02.2000) the order of his reversion and posting. In this view of the matter, we are not inclined to quash his transfer and posting (under Annexure-2 dated 18.10.1993); but at the same time, we are inclined to hold that the pay fixation as made under Annexure-3 dated 26.11.1993 is not sustainable in the eye of law; as even though the Applicant has been posted to a lower post on his own option, he is entitled to get pay protection in the lower post. As such, the Respondents are hereby directed to protect the pay of the Applicant(which he was last drawing in the higher post, before his reversion) from the date of his reversion and fix his pay notionally in the lower post till the filing this O.A. (i.e. on 3.2.2000) and, thereafter, actual benefits should be allowed to him.

6. As regards the prayer of the Applicant for promotion (from the date on which his admitted juniors were promoted to the promotional post of Gr.III Painter) neither he has made his so-called juniors as parties nor has disclosed the date of the promotion of his said juniors, relying on the seniority list. Respondents have also clearly stated that since the Applicant was in the lower scale, he was not eligible to appear the test. In view of this, we find no merit in this claim; which is accordingly rejected.

By *J*

7. In the result, with the above noted observations and directions, this Original Application is allowed in part. No costs.


B.N. SOM
VICE-CHAIRMAN


Manoranjan Mohanty
27/02/84
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)