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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 326 OF 2001
Cuttack this the 13th day of February/03

P.V.V. Satyanarayana ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Ys*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Ys.*

[Signature]
13.02.03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.362 OF 2001
Cuttack this the 13th day of February/03

CORAM:

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

P.V.V. Satyanarayana, aged about 35 years,
S/o. Shri P. Kameshwara Rao,
Junior Engineer (W)/Grade-I, Office of the
Deputy Chief Engineer (C)/Designs,
South Eastern Railway, Qr.No.C-65G
B.D.A. Rental Colony, S.E. Railway Project
Complex (P.O) Bhubaneswar

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Applicant

By the Advocates

M/s. G.A.R. Dora
G.R. Dora
J.K. Lenka

-VERSUS-

1. Union of India through its Secretary,
Ministry of Railway, Railway Board,
New Delhi
2. General Manager, South Eastern Railway,
Garden Reach, Calcutta
3. Chief Personal Officer, South Eastern Railway,
Garden Reach, Calcutta
4. Chief Administrative Officer (Construction)
South Eastern Railway, Bhubaneswar
5. A.R. Jena, Assistant Engineer,
C/o. General Manager, South Eastern Railway
Garden Reach, Calcutta

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Respondents

By the Advocates

Mr. D.N. Mishra
M/s. B.K. Sharma
I. Mohanty (Res. 5)

ORDER

MR. B.N. SOM, VICE-CHAIRMAN: Applicant, Shri P.V.B. Satyanarayana
Son of P. Kameswar Rao has filed this Original Application
under Section 19 of the A.T. Act, 1985, challenging the
order dated 10.4.2001 passed by the General Manager (P),

S.E.Railway (Annexure-8) rejecting his prayer to extend him the benefit of empanelment at par with the applicants empanelled in pursuance of the direction of this Tribunal ^{rendered} in Original Application No.128/96.

2. The sole point^{as} for adjudication in this Original Application is whether the applicant had five years of regular service in the scale of Rs.1400-2300/- as on 1.11.1994 or is eligible for appointment to the higher post of Assistant Engineer(for short A.E.N.) Group-B from the Grade of Work Mishtry, later on renamed as Inspector of Works, Gr.III (for short I.O.W.).

3. The facts of the case are as follows.

The applicant was given temporary appointment in the grade of Work Mishtry in the scale of Rs.1400-2300/- with effect from 15.10.1988 (Annexure-1) and, on successfully completion of probation, was regularised with effect from 14.4.1989 as per the order vide Annexure-A/3. In February, 1995, the Respondents called for applications from intending candidates for filling up of 30% vacancies in the departmental quota of A.E.N., laying down eligibility criteria of five years regular service (non-fortuitous as on 1.11.1994) in the grade of Rs.1400-2300/-. The applicant applied for appearing in the written test, called to the written test held on 12.11.1994. He passed the test by securing more than 60% marks, but he was not called to the interview on the ground that it was a mistake to have called him for written test, as his service from 1988 to December, 1992 was fortuitous.

4. The learned counsel for the applicant

Shri G.A.R.Dora has drawn our attention to Tribunal's judgment in O.A.No.128/96 (disposed of on 4.8.1998), where similarly placed 12 temporary Work Mishtries had challenged the decision of the Respondents in treating their service from different dates in November, December, 1988 and one from February, 1989 to 17.12.1992 as fortuitous and hence had not completed five years regular service to be eligible for appointment under 30% quota vacancies of A.E.N. The Tribunal ordered "we hold that the service rendered by the petitioners from the dates of their regular appointment as temporary Work Mishtries on a regular basis on different dates as per the Annexure-A/7 series till 17.12.1992 is non-fortuitous service and, therefore, by 1.11.1994, they must be taken to have put in five years of non-fortuitous service in the scale of Rs.1400-2300/- and we hold that the petitioners are eligible to appear at the written test".

The said judgment of the Tribunal was challenged before the High Court of Orissa in O.J.C. No.14206/98. The Hon'ble High Court disposed of the Writ Petition by upholding the judgment of this Tribunal. Thereafter, the Respondents implemented the judgment of the Tribunal in respect of all the 12 applicants, who were earlier denied the opportunity to compete for promotion to the post of A.E.N., Group-B under 30% quota. The applicant's plea is that inspite of the judgment of this Tribunal, which settled the law in the matter and the ratio which was followed by the Mumbai Bench and the Bangalore Bench of this Tribunal was not made applicable to his case

when the latter approached the Respondents to call him for viva voce and declare his result. The learned counsel for the applicant also brought it to our notice that on his application to the Jabalpur Bench, the latter had directed the General Manager(P), S.E.Railway to give relief to him on the ratio of the judgment of this ^{Bench of the} Tribunal ^{rendered} in O.A.128/96. But surprisingly, the General Manager(P), SE Railway took the decision that his case was not covered under the above mentioned judgment. Aggrieved by this order, the applicant has approached this Tribunal.

5. On a perusal of the records placed before us and the judgment of this Tribunal ^{rendered} in O.A.128/96, we see that the case of the present applicant is exactly the same as one which was decided by this Tribunal in the aforementioned O.A. It was an error on the part of the General Manager(P), S.E.Railway to have observed, while disposing of the representation of the applicant at Annexure-A/7 that his case was not covered under the above mentioned judgment. Further, our notice had been drawn to Annexure-A/9 which is a letter dated 4.4.2000 from General Manager(P), S.E.Railway, by virtue of which the latter had approached the Railway Board for enlargement of Group B panel for the post of A.E.N. through Limited Departmental Competitive Examination against 30% vacancies in the year 1995-96. In the said letter, General Manager(P), S.E.Railway went into the background of what caused this litigation

in this case and referring to the judgment of this Tribunal submitted that in order to implement the judgment of this Tribunal, as confirmed by the Hon'ble High Court of Orissa and to render natural justice, the panel of candidates for promotion to A.E.N. dated 12.8.1996 had to be enlarged ^{by} from a list of candidates from 16 to 34 and also furnished the final panel of 34 by rearranging the names in order of merit where we found at Page 49 of Annexure-A/9 series; the name of the applicant appearing at Sl. No.32.

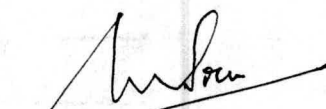
6. With the issue of this letter by General Manager(P), S.E.Railway to the Railway Board, the ~~disputed~~ matter should have come to a logical end.

We, therefore, heard Shri D.N.Mishra, learned counsel for the Railways. Shri Mishra submitted that the Respondents do not have anything to oppose ⁱⁿ the matter and that the relief sought by the applicant would be given to him, provided he had cleared the viva voce. In view of the aforesaid submission of Shri Mishra, the litigation should come to a close. We, therefore, set aside the impugned order of rejection dated 10.4.2001 (Annexure-A/8) and direct the Respondents to draw a curtain on this protracted litigation by appointing the applicant and others in the list of 34 candidates ^{as} given out at Page-49 of Annexure-A/7 series, if not already appointed to the posts of A.E.Ns against 30% vacancies in the year 1995-96, within a period of 90 (ninty) days from the date of receipt of this order, by completing all the formalities due to

be completed in this regard.

In the aforestated terms, this Original Application accordingly succeeds, leaving the parties to bear their own costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

Bjy/