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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 409 OF 2001  
Cuttack this the 21<sup>st</sup> day of Sept' 2004

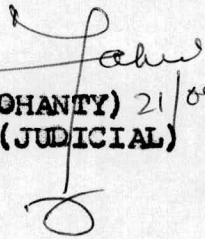
K. Adinarayan ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

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

  
(M.R. MOHANTY) 21/09/04  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

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CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 409 OF 2001  
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CORAM:

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

K. Adinarayan, aged about 56 years,  
Son of K. Venkanna, at present working as  
Train Lighting Fitter, Grade-II, Carriage  
Repair Workshop, South Eastern Railway,  
At/PO-Mancheswar, District-Khurda

... Applicant

By the Advocates

M/s. B.S. Tripathy  
M.K. Rath

- VERSUS -

1. Union of India represented through the  
General Manager, South Eastern Railway,  
Garden Reach, Kolkata-43
2. Chief Workshop Manager, Carriage Repair Workshop,  
South Eastern Railway, Mancheswar, Mancheswar  
Railway Colony, At/PO-Mancheswar, Dist-Khurda
3. Workshop Electrical Engineer, Carriage Repair  
Workshop, At/PO-Mancheswar Railway Colony,  
District-Khurda
4. Chief Workshop Manager (P), Carriage Repair  
Workshop, South Eastern Railway, Mancheswar,  
At/PO-Mancheswar Railway Colony, District-Khurda

... Respondents

By the Advocates

Mr. R.C. Rath, S.C.

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O R D E R

MR. B.N. SQM, VICE-CHAIRMAN: Applicant (Shri K. Adinarayan)  
at present working as Train Light Fitter, Gr. II, Carriage  
Repair Workshop, Mancheswar, has filed this Original  
Application seeking direction of this Tribunal to the  
Respondents-Railways to place his name in the seniority  
list with reference to the date of his promotion as  
Skilled, Gr. III with effect from 31.8.1984 and to grant

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him other benefits to which he is entitled to.

2. The grievance of the applicant is based on the following facts.

The applicant joined as Khalasi under the Railways on 22.5.1965 and was promoted as Khalasi Helper on 1.8.1978, whereafter on his option being exercised, joined at Mancheswar Workshop on its opening on 22.5.1984 as Khalasi Helper (Semi-skilled). He was promoted to the post of Train Lighting Fitter (in short TLF) Skilled Grade-III on ad hoc basis with effect from 31.08.1984. He passed a trade test on 22.8.1985 for the purpose of regularisation in Grade-III and also appeared at Grade-II trade test held on 29.10.1986, whereupon, he was promoted on ad hoc basis as Skilled Artisan, Grade-II with effect from 22.8.1987. He also appeared at. It has been stated by the applicant that result of the (Grade-II) trade test held on 29.8.1986 has not yet been published. Later on, the Respondents cancelled the trade test conducted for promotion to Grade-II vide their letter dated 19/27.4.1988 (Annexure-1). The said order of the Respondents at Annexure-1 was challenged by the applicant along with others before this Tribunal in O.A.No.180/88. The Tribunal, after considering the rival contentions, vide its order dated 6.4.1990 disposed of the O.A. by holding that the cancellation of the test already held was not sustainable and that the applicants must be given the benefit of their promotions. In pursuance of the said decision of the Tribunal, the Respondents published the seniority list in respect of Khalasi-Helpers (Semi-skilled) and Skilled

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Artisans, Gr.III of Electrical Department as on 1.1.1988 vide Annexure-3 dated 3.5.1991, wherein the name of the applicant was shown at Sl. No.2 of Khalasi Helpers(Semi skilled) although by then he had been promoted as Skilled Artisan, Gr.II on ad hoc basis since 22.8.1987. It has been submitted by the applicant that Respondent No. 2 vide his order dated 9.4.1992 promoted some of the Gr.II employees to Grade-I by ignoring his case. It is the case of the applicant that it was not proper on the part of the Respondents to publish the seniority list by taking into account the date of his promotion as Khalasi Helper at his parent unit and that this action of the Respondents runs contrary to the order dated 6.4.1990 passed by this Tribunal in O.A.No.180/88. Thus, the Respondents have committed gross irregularity in not fixing his seniority with effect from the date of his promotion to Skilled Grade-III, i.e., 21.8.1984 and thereby denied him his legitimate right of promotion to Grade-I. Hence this application.

3. The Respondents-Railways have, by filing a counter submitted that the Original Application is not maintainable in law and that <sup>it</sup> is barred by the law of Limitation as prescribed under Section 21 of the A.T. Act, 1985, inasmuch the cause of action for this application arose more than 12 years back. On the merit of the case, they have stated that the applicant has no case, because the inter se seniority of the staff transferred to Mancheswar Workshop was determined <sup>based</sup> on the length of non-fortuitous service in a grade on a particular cut off

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date. Till determination of the cut off date, the staff transferred to Mancheswar Workshop were allowed to retain their lien in the parent department. Prior to cut off date, the applicant was promoted to Skilled Grade-III and Skilled Grade-II on ad hoc basis with the condition that Mancheswar Workshop having not been declared as an independent unit at that time, for assigning seniority, the promotions so made will abide by the instructions contained in Para-311 of Indian Railway Establishment Manual (in short I.R.E.M.). The cut off date for fixing seniority of staff at Mancheswar on regular basis (both brought on deputation from other Units/Divisions of the Railways and those recruited directly at Mancheswar) was notified as 1.1.1988. Thereupon the staff including the applicant were given the opportunity to exercise their options to go back to their parent Units where their liens were being maintained prior to the cut off date. It is the plea of the Respondents that the applicant did not exercise his willingness to go back to his parent unit and accordingly, he was regularised at Mancheswar from the date of passing of the regularisation order. They have also submitted that the seniority list as on 1.1.1988 was published by taking into account the substantive status of the individuals in their parent units as on 31.12.1987, as per the policy decision notified by the Chief Personnel Officer vide his letter dated 9.11.1987 (Annexure-R/3). In terms of the said policy decision, the adhoc promotions of staff prior to cut off date were counted for determining seniority at Mancheswar Workshop and accordingly, the applicant

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cannot claim the benefit of his adhoc promotion to Grade-III and Gr.II on 31.8.1984 and 22.8.1987, respectively. Referring to Para-311 of IREM, the Respondents have submitted that the applicant having come from another unit, he is to accept seniority on the basis of his seniority position in the present cadre. By referring to Para-320 of IREM, they have submitted that non fortuitous service alone is counted for the purpose of assigning seniority in a new unit and non fortuitous service has been defined as service rendered after the cut off date of regular promotion in a unit. In the circumstances, the applicant's seniority was shown as Khalasi Helper as per his substantive status as on 31.12.1987 and his period of service on ad hoc basis in Grade-III and Gr.II cannot be taken into account for determining his seniority in the new unit, i.e., Carriage Repair Workshop, Mancheswar. The Respondents have also argued that the staff including the applicant were given opportunity to exercise their option to go back to their parent unit prior to cut off date, but the applicant did not exercise his willingness to go back to his parent unit. Hence, he was retained at Mancheswar Workshop and as per the policy announced by the Chief Personnel Officer in his letter referred to earlier, the seniority of the applicant was determined by ignoring his adhoc promotions that he had received after joining Mancheswar Workshop on transfer from his parent unit. They have also admitted that the benefit of ad hoc service prior to the cut off date for the purpose of seniority has been extended to those officials,

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who were parties in O.A.No.180/88. As the applicant was not a party in that O.A. his case was not considered. The Respondents have also pleaded that the provisional seniority list and promotion list had been drawn correctly basing on the policy decision and in compliance with the direction of this Tribunal in O.A.No.180/88 and in O.A.No.438/92, and therefore, they have denied that there was any arbitrariness or discrimination in the matter of determining seniority of the applicant.

4. We have heard the learned counsel for the parties and perused the records placed before us. We have also taken note of the decisions of this Tribunal in the O.A. Nos.180/88 (wherein applicant was a party) and O.A.No.438/92 (wherein applicant was not a party) filed by Ramesh Ch. Gauda and three others.

5. The Respondents have opposed the application on the ground of limitation. They have argued that the cause of action having arisen when the order of regularisation of service of the applicant was issued by the Respondents in the year 1984 or when the notice calling for options of the staff for <sup>their</sup> retention at Mancheswar Workshop was issued, i.e., on 7.4.1988, he cannot agitate the matter in the year 2001. Prima facie, there appears to be lot of force in the objection raised by the Respondents. The applicant in this O.A. has sought for relief to direct the Respondents to promote him as Skilled Artisan Gr.III with effect from 31.8.1984 by correcting the seniority list. The plea of the applicant is that the provisional seniority list of Khalasi Helpers as on

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1.1.1988 was published by the Respondents on 3.5.1991, showing his position at Sl. No.2 by stating that his position has been determined in compliance with the direction of this Tribunal in O.A.No.180/88 and his present ad hoc status as Skilled Artisan, Gr.II was also indicated therein. Thereafter, while he was awaiting further order of the competent authority regularising his service in Gr.II, the Respondents, vide their Office order dated 27.1.2000(Annexure-6) notified the revised seniority position in respect of two of his juniors, viz., S/Shri J.N.Dash and B.Bhaskar Rao to the effect that their seniority in Gr.III to be counted with effect from 31.8.1984 instead of 23.12.1984 and accordingly, their position in the seniority list of Gr.II to be revised with effect from 3.5.1991. This order was issued by the Respondents in compliance of the order of this Tribunal in O.A.No.438/92. Since the applicant came to know of this order only after issue of Annexure-6 on 27.1.2000, he could come up in this O.A. for redressal of his grievance only thereafter. He has also submitted that during pendency of the O.A.No.438/92, Shri Bhaskar Rao as well as the applicant and others were regularised provisionally with effect from 23.12.1994 in Skilled Gr.III vide Office order dated 23.12.1994, wherein Shri Bhaskar Rao was shown junior to him.

6. Having regard to the submissions made by the learned counsel of both the sides on the question of limitation, we are of the view that the objection raised by the Respondents in their counter is of no avail as the Respondents

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by issuing office order dated 27.1.2000(Annexure-6) have given fresh cause of action to the applicant as by virtue of that order similarly situated persons have been given the benefit of non-fortuitous service in exclusion of the applicant and therefore, we hold that there is substance in the grievance ventilated by the applicant requiring intervention of this Tribunal and by no stretch of imagination it could be construed that the application is hit by laches or limitation.

7. On the merit of the case, the Respondents have made two fold arguments, firstly, that they had determined the seniority of the staff transferred to Mancheswar Workshop based on the length of non-fortuitous service in a particular grade prior to cut off date and secondly, that the applicant having not exercised his option to go back to his parent unit prior to the cut off date, he could not be regularised prior to 1991 nor could he be granted seniority with reference to the period of his adhoc service. The learned counsel for the applicant disputed this contention of the Respondents. To resolve the controversy, we had called for a copy of the notice calling option from the staff for reversion to their parent unit. On a perusal of the notice dated 7.4.1988 issued for the purpose, we find that this averment made by the Respondents in their counter in this regard (Page-3 of the counter) is patently incorrect. To make it more conspicuous, the relevant portion of the notice is extracted hereunder.

"... In these circumstances, if any staff

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is willing to go back to his parent department he should submit his option within 30 days from the date of publication of seniority list on Notice Board, thereafter no option will be entertained. The staff those who were recruited at Mancheswar Workshop need not submit any option to this effect".

8. Thus a plain reading of the notice would make it clear that only those who wanted to go back to their parent unit were to inform Respondent No.2 to that effect. In this case, as admitted by both the sides, the applicant had not furnished any such option. That being the fact of the case, it is strange how the Respondents could argue, as they have done in their counter that "as the applicant did not exercise his willingness to go back to this parent unit", he was retained at Mancheswar Workshop on his will and suffered in terms of service benefits. This was clearly a wrong treatment of the case, which has to be cured sooner or later. In other words, the applicant having not expressed his willingness to go back to his parent unit in terms of the notice dated 7.8.1988, was entitled to service benefits offered to other staff/lien holders absorbed in Mancheswar Workshop. We would like to observe here that in determining seniority of the lien holders, who came on transfer to Mancheswar Workshop on its inception were to be transferred, as admitted in their policy dated 22.12.1980 (Annexure-R/1) (Para-4), in administrative interest the Respondents were under obligation to give them the benefit of service from the day they joined the Respondents Organisation. Further, this question was agitated before this Tribunal

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in O.A.Nos.180/88 (wherein the applicant was also a party), 271/89, 388/89 and 341/89 (decided on 24.12.1991), 373/91 (decided on 3.12.1993) and O.A.No.438/92 (decided on 16.12.1999) wherein this Tribunal had the occasion to clearly lay down the law in this regard. The present application is an off shoot of the decision of this Tribunal in the earlier OAs and is clearly covered by our earlier decisions. The principle decided by us in O.A. No.180/88 was that the service condition cannot be changed retrospectively unless the circumstances are so compelling and demanding and that the order of the Respondents cancelling the test already held was found to be bad in law; that the applicants should be given the benefit of promotion according to availability of post in the grade to which they were promoted. In O.A. No.438/92, this Tribunal held, keeping in view the common order dated 24.12.1991 in O.A.Nos.271/89, 388/89 and 342/89 and placing reliance on various decisions including that of the Apex Court that the service of officials in each of the intermediate grades of Skilled Grade-III and Skd. Gr.II could count for seniority in that particular grade. This judgment was challenged by the Railways before the Apex Court in SLP(Civil) No.11695-97 of 1992, which was dismissed. Accordingly, the four applicants in O.A. No.438/92 were allowed to count their seniority in Gr.III with effect from 31.8.1984, i.e., the date of their promotion to this grade, and direction was given to correct the seniority list accordingly.

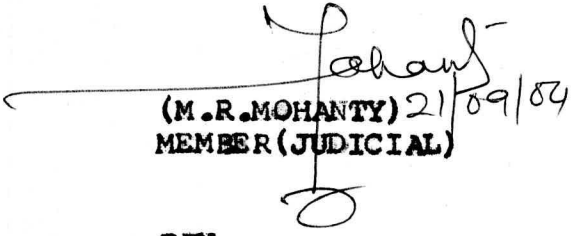
9. The Respondents in their counter have admitted


that they restricted the implementation of the judgment of this Tribunal in O.A.No.438/92 only in respect of the applicants therein and thus issued the order dated 27.1.2000(Annexure-6). However, such a decision taken by the Respondents is contrary to law established in this regard. The learned counsel for the applicant has correctly drawn our notice to the following case laws:

- i) M.Vasu v. Union of India & Ors.  
( 1993 (2) SLJ (CAT) 44 (Ernakulam)
- ii) P.K.Rangachari v. Union of India & Ors.  
(1993) 24 A.T.C. 884 (Madras)
- iii) B.N.Nagarajan & Ors. vs. State of Mysore  
and ors (air 1966 SUPREME COURT,1942  
(V. 53 (295)
- iv) K.I.Shephard vs. Union of India & Ors.  
(1988 SC 686 (Para-19)
- v) K.C.Sharma vs. Union of India & Ors.  
1998 (1) AISLJ 54

10. While disposing of O.A.No.438/92, we had enunciated the principle of determining seniority of the lien holders at the Respondents organisation and not that we had decided an individual case of seniority, based on the law governing the ground, and although the applicant could not contest the S. L. P., the Respondents were duty bound to apply the ratio of an earlier judgment that the service rendered by the officials of Mancheswar Workshop, who had come on transfer from other units, on their absorption in the permanent cadres of the Workshop with effect from 1.1.1988 were entitled to count the period of adhoc service for the purpose of seniority and this principle has to be uniformly applied to all the officials who remained with them from 1.1.1988.

11. For the reasons as aforesaid, this O.A. succeeds, leaving the parties to bear their own costs.

  
(M.R. MOHANTY) 21/09/84  
MEMBER (JUDICIAL)

  
( B.N. SGM )  
VICE-CHAIRMAN

BJY