

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 410 of 2001  
Cuttack, this the 13<sup>th</sup> day of February, 2004.

Prabhata Bihari Mohapatra. .... Applicant.  
-Versus-  
Union of India & 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

*B.N.Som*  
(B.N.SOM)  
VICE-CHAIRMAN

*Manoj Mohanty*  
13/02/04  
(MANOJ RANJAN MOHANTY)  
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 410 of 2001  
Cuttack, this the 13th day of February, 2004

C O R A M:

THE HONOURABLE MR.B.N. SOM, VICE-CHAIRMAN

A N D

THE HON'BLE MR.M. R. MOHANTY, MEMBER(JUDICIAL)

....

Prabhata Bihari Mohapatra,  
Aged about 37 years,  
S/o. Kulamani Mohapatra,  
Resident of Tirtol,  
At/PO: Tirtol,  
Dist: Jagatsinghpur,  
presently working as Chief  
Estimator in the office of  
Chief Engineer(Construction)  
Headquarters, South Eastern Railway,  
B H U B A N E S W A R.

.... Applicant.

By legal practitioner: M/s.S.K.Das, S.Swain, Advocates.

:Versus:

1. Union of India represented through  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta-1.

2. Chief Personnel Officer,  
South Eastern Railway,  
Garden Reach, Calcutta.

3. Chief Engineer, South Eastern Railway,  
Garden Reach, Calcutta. ....

Respondents.

By legal practitioner: Mr.B.Pal, Sr.counsel  
and

Mr.D.N.Mishra, Counsel for Rlys.

10

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O R D E R

MR. MANO RANJAN MOHANTY, MEMBER (JUDICIAL) :-

Not granting the Applicant promotion (to the post of AEN, Group B, with consequential benefits) was the subject matter of challenge in this Original Application in an earlier litigation (O.A. No. 235/1999) U/s.19 of the Administrative Tribunals Act, 1985 and the said matter was disposed of on 20-11-2000, with the following directions:

"xx xx xx. We dispose of this O.A. with a direction to the Respondent Nos. 1 & 2 that the case of the Applicant should be considered in the light of action taken in the case of K. Prabhakar Rao and our observation and direction above in case, on the basis of his performance in the viva-voce, he is required to be empanelled, then a proposal should be sent by the Respondents to the Railway Board to consider the case of the Applicant for empanelment and appointment to a Gr.B post of AEN in keeping with his medical standard".

The Respondents/Railways challenged the said order of this Tribunal before the Hon'ble High Court of Orissa in a Writ application (OJC No. 2099/2001); which was disposed of on 28-03-2001 with the following observations and directions:-

"Mr. Pal is right in his legal submission that no mandamus can be issued to an authority to decide any issue on the basis of a case which was disposed of on concession or showing some kind of indulgence. Therefore, if K. Prabhakar Rao's case has been decided on some concession or by way of indulgence, it cannot be treated as a precedent and the Opposite Party No. 1's case cannot be disposed of by following K. Prabhakar Rao's case. If the provision of Rule 206.2 of the Indian Railway Establishment Manual was followed and K. Prabhakar Rao's case was disposed of on

the basis of the said Rule, Opposite party No.1 is available to be considered in the light of that case".

After the disposal of the Writ Petition by the Hon'ble High Court of Orissa, the case of the Applicant was examined and rejected by the Respondents under Annexure-12 dated 31.7.2001 with the following reasonings:-

"Para 206.2 of Chapter II Section A of the IREM, Vol.1-Revised Edition, 1989 dealing with medical fitness of employees selected for promotion to Gr.B reflect the position so contained in Board's letter No.E(GP)80/2/8 dated 16.12.1983 (copy enclosed). The provisions of this letter has been completely changed by issue of Board's letter No.E(GP)80/2/8 dated 31.10.1991 (copy enclosed) which is in supersession of the instructions contained in the letter dated 16.12.1982. Therefore, with effect from 31.10.1991 the provisions of Board's letter dated 31.10.91 have replaced the provisions of para 206.1 of Chapter II Section A of IREM. As per the Board's letter dated 31.10.1991 only those candidates who passed the prescribed medical standard only should be called for viva-voce, and those who do not pass the prescribed medical standard should not be permitted to Gr.B even on adhoc basis.

In the light of Board's instructions vide letter dated 31.10.1991, the promotion of Shri K.P. Rao as AEN by SE Railway vide order dated 20.6.1997 was without authority and a mistake. xx xx.

In view of the position indicated in para-4 above, the fact of promotion of Shri Rao which was contrary to Board's instructions of 31.10.1991 and therefore against para 206.2 of IREM amended thereby and without authority, cannot be taken as a precedent to decide the case of Shri Mohapatra in his favour. xx xx".

While challenging the above order in the present Original Application under section 19 of the Administrative Tribunals Act, 1985, it has been submitted by the Applicant that the order of rejection is not as per the directions of the Hon'ble High Court of Orissa and, hence, the Applicant is entitled to get the promotion. It has been submitted that

since the grievance of the Applicant lies on the basis of the provisions of para 206.1(basing on which another person was given promotion), the order of rejection stands contrary to the decisions of the Hon'ble High Court of Orissa.

2. Respondents have filed their counter reiterating the stand taken by them in the impugned order and by repeating the fact basing on which the order of rejection under Annexure-12 was passed.

3. We have heard learned counsel appearing for both sides and perused the materials placed on record. The crux of the matter is that as to whether basing on the directions of the Hon'ble Court of Orissa, referred to above, the case of the Applicant has been considered for promotion to the next higher post. It is seen that the Hon'ble High Court of Orissa categorically observed as under:-

"If the provision of Rule-206.2 of the Indian Railway Establishment Manual was followed and K.Bhabhakar Rao's case was disposed of on the basis of the said Rule, Opposite party No.1 is available to be considered in the light of that case".

Neither in the order of rejection, nor in the counter, it has specifically been said by the Respondents

14  
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that the provision of Rule 206.2 has been followed(or not) while giving promotion to Shri K. Prabhakar Rao. Rather it has been pointed out that the promotion of Shri Rao was contrary to Board's instructions dated 31.10.1991 and, therefore, against para 206.2 of IREM as amended therby.

On interpreting the order of rejection passed by the Respondents, it *prima facie* shows that, though they have followed the para 206.2 of IREM, while giving promotion to Shri Rao, the same was against the amendment carried out on 31.10.1991 to the para 206.2 of IREM.

4. In view of the above, we hold that the orders of the Hon'ble High Court of Orissa, have, properly, not been complied with and therefore, we have no hesitation to hold that the order of rejection under Annexure-12 dated 31.7.2001 is not sustainable in the eye of law and the Applicant is entitled for consideration for promotion to AEN Group -B post retrospectively, as per the directions of the Hon'ble High Court of Orissa; which the Respondents should do within a period of 90 days from the date of receipt of a copy of this order. We order accordingly.

5. In the result, this original Application is disposed of. No costs.

(E.N.SOM)  
VICE-CHAIRMAN

*Manohar*  
13/02/2004  
(MANOJAN MOHANTY)  
MEMBER(JUDICIAL)