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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.459 OF 2001
Cuttack this the 4th day of October, 2004

Lakhan

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Applicant(s)

- VERSUS -

Union of India & Ors.

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*

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04.10.04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Sub
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.459 OF 2001
Cuttack this the 4th day of October 2004

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)
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Lakhan, aged about 53 years, son of Mohan,
at present working as Fitter Grade-III,
Carriage Repair Workshop, South Eastern
Railway, At/PO-Mancheswar, Bhubaneswar,
District - Khurda

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Applicant

By the Advocates

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

- VERSUS -

1. Union of India represented through its
General Manager, South Eastern Railway,
Garden Reach, Kolkata-43
2. Chief Workshop Manager (P), Carriage
Repair Workshop, South Eastern Railway,
At/PO. Mancheswar, Dist: Khurda
3. Asst. Personnel Officer, Carriage Repair
Workshop, South eastern Railway,
At/PO-Mancheswar, Dist: Khurda

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Respondents

By the Advocates

Mr. C.R. Mishra, A.S.C.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: This Original Application
has been filed by the applicant (Lakhan) assailing the
action of the Respondents in fixing his seniority as Fitter
Skilled Grade-III with effect from 1.3.1991 instead of
1.5.1985, i.e., the date of his adhoc promotion to that
grade and thereby, he has been deprived of his promotion
to Grade-I. The impugned seniority list is at Annexure-4.
It is in this background the applicant has prayed for

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quashing the seniority list vide Annexures-3 and 4 to the O.A. with direction to Respondents-Railways to fix his seniority with effect from 1.5.1985, the date on which he was promoted on adhoc basis to the post of Fitter, skilled Grade-III and to grant him consequential benefits thereon.

2. Respondents-Railways have filed their counter opposing the prayer of the applicant.

3. We have heard the learned counsel of both the sides and perused the materials placed before us.

4. Shorn of unnecessary details, it would suffice to note here that in recent past this Bench, in O.A.No. 409/01 - disposed of on 21.9.2004 (K.Adinarayan v. Union of India & Ors.) has laid down the principle of determining seniority of the employees who joined Carriage Repair Workshop at Mancheswar in its very inception from different wings of the Railways having exercised their options. Admittedly, the employees who had approached the Tribunal in earlier round of litigations for the purpose of counting their seniority, in pursuance of the direction of this Tribunal, their seniority has been fixed with reference to their promotions on adhoc basis in Carriage Repair Workshop and not from the cut-off date as fixed by the Railways-Respondents, i.e., 1.1.1988. It would be sheer discrimination if the applicant is deprived of the benefit of counting his adhoc service in Carriage Repair Workshop even though had he not approached the Tribunal earlier.

With regard to the question of limitation,

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as raised by the Respondents, we would like to quote the decision of the Hon'ble Supreme Court in the case of K.C.Sharma v. Union of India & Ors. (reported in 1998 (1) SLJ 54) wherein their Lordships have observed that application filed by similarly placed persons should not be rejected on the ground of limitation. Having regard to the above law as laid down by the Hon'ble Supreme Court, the plea of limitation is hardly a matter in so far as the present O.A. is concerned and therefore, the same is rejected.

There is no doubt that the Respondents-Railways have treated the matter of determining seniority of the employees in the Carriage Repair Workshop, Mancheswar, individually. In other words, what we mean to say is that, those who had approached the Court/Tribunal, they were allowed to count their seniority with reference to their adhoc service in the respective grades, but those who had not, were left out of consideration. This action of the Respondents is subject to judicial scrutiny, being violative of Articles 14 and 16 of the Constitution. In our considered view the authorities in the Railways should have wisely used their discretion in so far as compliance of the direction of this Tribunal in the matter of fixation of seniority, as the Tribunal while deciding an individual case had laid down the principles of fixation of seniority, by giving due regard to adhoc promotion in the Carriage Repair Workshop. Viewed from this angle, it would be against the canons of law if

the applicant herein is left out of the benefit of counting his adhoc promotion/service in Carriage Repair Workshop, Mancheswar, singularly.

For the foregoing, while setting aside the impugned seniority list under Annexures-3 and 4, we direct the Respondents-Railways to recast the fresh/ revised seniority list having regard to his adhoc promotion as Fitter, Skilled Grade-III with effect from 1.3.1985 and to grant him further benefits to which he will be entitled to.

In the result, the O.A. succeeds. No costs.

for 04.10.84
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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

BJY