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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 618 OF 2001
Cuttack this the 17th day of Dec. 2004

Sk. Tahur ... Applicant(s)

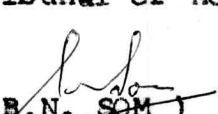
- VERSUS -

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 *ye.*
of the Central Administrative Tribunal or not ?


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 618 OF 2001
Cuttack this the 17th day of Dec. 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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Sk. Tahur, aged about 51 years,
S/o. late Sk. Gulab, resident of At/
PO = Majhiarabasti, PS-Balipatna
Dist-Khurda presently working as
Driver Grade-I under Chief Engineer (Con)-II,
Bhubaneswar Unit, At/PO-Chandrasekharpur
Dist-Khurda

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Applicant

By the Advocates

M/s. P. Jena
S. Jena
S. Das
P. K. Sahoo

- VERSUS -

1. Union of India represented by the General Manager, S.E.Rly., Garden Reach, Calcutta-43
2. Chief Administrative Officer (Con.) S.E.Rly., Personnel Department, At/PO-Chandrasekharpur Bhubaneswar, Dist-Khurda
3. Deputy Chief Personnel Officer (V), S.E.Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. Chief Engineer (C), S.E.Railway, At-Chandrasekharpur Bhubaneswar, Dist-Khurda
5. Md. Usman, Driver Grade-I, CPM(RE) Visakhapatnam

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Respondents

By the Advocates

Md. S. R. Pattnaik

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O R D E R

MR. B. N. SOM, VICE-CHAIRMAN: Sk. Tahur (applicant),
presently working as Driver, Gr. I under Chief Engineer
(Con) II, Bhubaneswar Unit has filed this Original
Application being aggrieved by the promotion granted
to Md. Usman as Driver, Gr. I with effect from 18.8.1998,
although he was regularised as Driver, Gr. III with
effect from 4.4.1984, whereas the applicant was

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regularised as Driver, Gr.III with effect from 2.4.1973. He has, therefore, approached the Tribunal seeking direction to be issued to the Respondents-Railways to regularise his service as Driver, Gr.II with effect from 24.12.1984 and to promote him as Driver Gr.I with effect from 19.12.1992 with consequential financial benefits.

3. The case of the applicant in a nut shell is that he was regularised as Group D (PCR) with effect from 1.4.1973, promoted to the post of Driver, Gr.III with effect from 2.4.1973, further promoted to Gr.II with effect from 24.12.1985 and thereafter promoted on ad hoc basis to Grade-I with effect from 19.2.1992 (Annexure-2). However, the Respondents issued a seniority list of Drivers on 8.8.2000 (Annexure-4) wherein it was disclosed the position of Respondent No. 5 at Sl. No.2 as Driver, Gr.I and the name of the applicant at Sl. No.2 as Driver, Gr.III although the date of promotion/regularisation in Gr.III of the Res. No.5 was made much later than that of the applicant and although the applicant was officiating on ad hoc basis in Gr. I from February, 1992, the Res. 5 although ~~was~~ promoted to Gr.II on regular basis with effect from 12.6.1998 was granted promotion to Gr.I with effect from 18.8.1998. The applicant had immediately on publication of the said seniority list filed his representation before Res. 3 vide his letter dated 17.8.2000 (Annexure-5) pointing out that the position of Res.5 had been wrongly shown in the seniority list violating the conditions laid down in that regard in Estt. Sl. No.61/98 dated

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14.5.1993. This representation was followed by reminders vide Annexures-8 and 9, but without any result. As his grievance has not been redressed, the applicant has filed this O.A. seeking reliefs as referred to above.

4. The Respondents-Railways have admitted the facts of the case. However, they have opposed the O.A. on the ground that the relief sought by the applicant is misconceived as the Res.5, was originally appointed under Chief Engineer, Visakhapatnam whereas the applicant belongs to C/O Construction, Bhubaneswar and therefore, he could not compare his case with Res.5. They have, however, stated that Res.5 was regularised as Vehicle Driver, Gr.II with effect from 12.8.1998 and as Driver, Gr.I with effect from 18.8.1998 as there were vacant posts in those grades under Chief Project Manager/Visakhapatnam Unit prior to 14.5.1993. It is their contention that prior to 14.5.1993, P.C.R. cadre operated unit-wise and hence, the Res.5 and the applicant were belonging to two different units and therefore, the applicant's contention that Res.5 is junior to him is not correct; because, the seniority groups and units of working were different till 14.5.1993. The Respondents have also admitted that Res.5 was promoted to Gr.II retrospectively.

5. We had heard this matter by listing it on more than one occasion. On the last date, the learned counsel for the applicant was not present nor was there any formal request for adjournment made on his

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behalf nor did the applicant appear in person. We are also constrained to note here that we have not received adequate assistance from the learned counsel for the Respondents on the query made by the Tribunal for the effective adjudication of the matter. We had, therefore, to delve into the records placed before us to find out the genuineness of the grievance of the applicant.

6. The grievance of the applicant is that Res. 5 although was promoted to Gr.III and II of Drivers' cadre, ^{later than Res. 5} he was given regular promotion as Driver, Gr.I earlier than the applicant and thereby, Res. 5 became senior to him. The applicant's grievance is also that as he has been officiating as Driver, Gr.I from 19.2.1992, Res.5 could not have been regularised as Driver, Gr.I in preference to him. It has been submitted by the applicant that with effect from 14.5.1993 PCR cadre was declared as a floating cadre and COP/GRC was declared as the cadre controlling authority of the PCR unified cadre. In the circumstances, in the year 1998, when certain posts in Gr.I were to be filled up, the official Respondents were duty bound to consider the cases of officials in Driver, Gr.II, like the applicant, who ^{was} ~~were~~ regularised as Driver, Gr.II earlier than Res.5. The official Respondents have not disputed that the applicant was regularised in Grade-II with effect from 24.12.1985 and that he was officiating on ad hoc basis from 19.2.1992 and also that Res. 5 was regularised in Gr.II with effect from 12.8.1998 and as Driver, Gr.I with effect from 18.8.1998. They have also admitted that with effect from 14.5.1993, P.C.R. posts

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became an unified cadre. This being the fact of the case, we are unable to accept the proposition made by the Respondents that the applicant and Res.5 being originally belonging to two different units, i.e., one belonging to C.P.M., Visakhpatham and the applicant belonging to CPM, Bhubaneswar, the applicant has no case to ventilate his grievance. Such an averment on the part of the Respondents-Department could be legally valid if the event had taken place prior to 14.5.1993 when the P.C.R. cadre was a decentralised cadre and seniority was being maintained unit-wise. But with effect from 14.5.1993, when P.C.R. cadre was declared as unified cadre and COP/GRC was notified as the cadre controlling authority, the Respondents were obliged under law to prepare a consolidated seniority list of all the officials in Gr.III, II and I on the basis of length of service and consider the officials for further promotion according to those seniority lists. It appears that the Respondents have done nothing of that type. We would like to make it clear that after unification of the cadre with effect from 14.5.1993, it was not open to the Respondents to consider any individual for promotion by treating the vacancies unit-wise. Such an action was patently without the sanction of law and therefore, the same is not sustainable.

7. Having regard to the facts and circumstances of the case and the law position on the subject, we hereby direct the Respondents to carryout a review D.P.C. of Driver Gr. I after preparing the seniority list of

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Drivers, Gr.II on the basis of length of service (on regular basis). Resultantly, we quash the seniority list published by DCPO/CON/P/BBS/PCR/Regularisation/Drivers/227/05563 dated 8.8.2000 and declare the promotion/appointment of Res.5 as Driver, Gr.I on regular basis, null and void.

8. The Respondents are directed to comply with the direction as indicated above within a period of 120 days from the date of receipt of this order.

9. With the observations and direction as made above, this O.A. is disposed of. No costs.

17/12/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Suba
(B.N. SOM)
VICE-CHAIRMAN

BJY