

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION No.154 OF 2003.

Cuttack, this the 2nd day of March, 2005.

SUBASH CHANDRA MISHRA. APPLICANT.

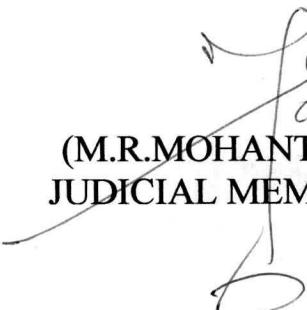
-VERSUS-

UNION OF INDIA & OTHERS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No.
2. Whether it be referred to all the Benches of the CAT or not? No.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
JUDICIAL MEMBER

20/03/05

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C O R A M

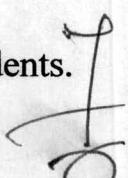
THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY,JUDICIAL MEMBER

SUBASH CHANDRA MISHRA, Aged about 36 years,
S/o. Late Lokanath Mishra,At- Bhagabanpur Sasan,
PO- Haldia,PS/Dist- Khurda,at present woring as
Junior Clerk,Office of the Deputy Chief Divisional
Manager(Claims), Bhubaneswar, Dist.KHURDA. Applicant.

By legal practitioner-M/s.Gopinath Padhi,K.C.Rajgur
Mohapatra,Advocates.

-Versus-

1. Union of India,represented by its General Manager,S.E.Railway,
Garden Reach, Kolkata-43, West Bengal.
2. Divisional Railway Manager, South Eastern Railway,
Khurda Division,Khurda Road,At/Po-Khurda road,
Dist.- Khurda.
3. Senior Divisional Personnel Officer,South Eastern Railway,
Khurda Road,Po-Khurda Road,Dist.Khurda,Orissa.
4. Senior Divisional Mechanical Engineer,South Eastern Rly.,
Chakradharpur,Dist.Singhbhum(Jharkhan).
5. Senior Divisional Personnel Officer,
South Eastern r Railway,Chakradharpur,
Dist.West Singhbhum(Jharkhand). Respondents.



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O R D E R

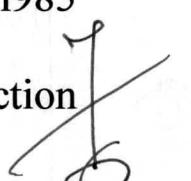
MR. MANORANJAN MOHANTY, JUDICIAL MEMBER:-

Subash Chandra Mishra, Applicant in this Original Application was initially appointed as Diesel Assistant in the Chakradharpur Division of erstwhile South Eastern Railways on 30.11.1990 in the scale of pay of Rs. 950-1500/- Thereafter, he was promoted to the post of Goods Driver in the scale of pay of Rs. 1350-2200/- w.e.f. 28.11.94 under Annexure-3. Then the Applicant opted to come on transfer to the South Eastern Railways of Khurda Road Division which prayer of the Applicant was acceded to by the competent authority and he was transferred to the new Division on reversion to his initial grade of Diesel

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Assistant in the scale of Rs.950-1500/- under Annexure-4 ; where he joined on 07.09.1995 and his pay was fixed at Rs. 1330/- (instead of Rs.1350/-which he was getting in the Chakradharpur Division) for the reason that he had not worked for two years in Driver Category. After absorption in Khurda Road Division, he was sent for Spl. Medical Examination, in May,1996 and was declared unfit in A-1 but fit in C-1 by the Medical Board. After Medical decategorisation, he was screened and approved for alternate absorption as Jr. Clerk in the pay scale of Rs. 950-1500/- (RPS) and was posted in Sub-claims Office, at Bhubaneswar against an existing vacancy (under Annexure-5) where he joined ,as such, on 11.09.1996.In the circumstances, being aggrieved by the action of the Departmental Authorities (in not protecting his pay in the lower scale at the stage of Rs.1350/- in the scale of Rs.950-1500/- i.e. the basis pay he was drawing in the scale of pay of Rs.1350-2200/- prior to reversion) he has approached this Tribunal, under section 19 of the Administrative Tribunals,Act,1985 with prayer to direct the Respondents to allow him pay protection



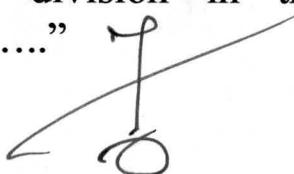
in higher grade as per last pay certificate (issued by Chakradharpur Division) from the date of joining in Khurda Road Division and also to pay all arrears after making necessary calculations within a stipulated period.

2. Respondents, in their counter, while not disputing the above factual aspects of the matter, have clarified that the applicant's pay has been protected at Rs. 1350/- by allowing him 30% pay element which is admissible to medically decategorised running staff in case of their absorption in non-running category. It has also been explained that he has been given Rs.15/- as P.P. Thus, it has been submitted by the Respondents that there was no irregularity in fixing the pay of the applicant in the category of Diesel Assistant / while fixing the pay on absorption as Junior Clerk. It has further been stated by the Respondents that as the Applicant did not complete 24 months of service in the promotional grade(of Goods Driver in the pay scale of Rs. 1350-2200/-) prior to his inter-divisional transfer to a lower grade; as per the Estt. Sl.224/99, he is not entitled the pay

protection as claimed by him. Therefore, the Respondents have emphasized that in view of the position of the rules, the Applicant has no grievance to be redressed.

3. We have heard learned counsel appearing for both sides and perused the materials placed on record. Learned counsel for both sides have reiterated their above noted respective stands during the oral hearing of the matter. Similar disputes as that of the present case, came up for consideration before this Tribunal in O.A. Nos. 742, 743, 744, 745, 746, 792, 793 of 1995 and 195 of 1996 disposed of through a common order dated 12.08.1996. After considering the facts and circumstances and various provision of rules, this Tribunal held as under:-

..... Thus, it is clear that the Applicants cannot be denied protection on the ground that they were holding the higher posts on ad-hoc basis. I would therefore, allow the claim and direct the Respondents to protect the Applicants' pay as last pay certificate issued by their respective division in the manner discussed....."



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4. Having regard to the point decided in the above mentioned cases, we have examined the matter further. It is the case of the Respondents that in terms of Estt. Sl.No. 224/99 since the Applicant did not complete 24 months of service in the higher grade at Chakradharpur Division ,prior to his inter divisional transfer , his pay in the lower post could not be protected. On a careful perusal of the relevant provisions of the Estt. Sl.224/99, we are of the view that the same has got no application to the case of the Applicant. In the instant case, the Respondents having accepted the request of the Applicant for inter divisional transfer, they can not, at this stage, turn back and say that it is because he (Applicant) had not completed 24 months of his service in the higher grade at Chakradharpur Division, his pay could not be protected (on Inter Divisional Transfer to Khurda Road Division) by application of provisions of the Estt.Sl.No.224/99. It is to be noted that the Applicant faced transfer during 1995 (and was found medically de-categorised during September, 1996) and, the Estt.Sl.No.224/99 having been issued

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during 1999, the only objection that the Applicant did not complete 24 months in promotional/higher post is of no avail in favour of the Respondents; which is hereby over ruled.

5. For the reasons discussed above, this Original Application is disposed of and the Respondents are hereby directed to re-examine the grievances of the Applicant (pertaining to grant of protection of his pay) in the lower grade and if he is entitled to any differential arrear, then that amount should be calculated and paid to the Applicant. The entire exercise should be completed within a period of 180 days from the date of receipt of a copy of this order by the Respondents.


(B.N.SOM)
VICE-CHAIRMAN


02/03/05
(M.R.MOHANTY)
JUDICIAL MEMBER