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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.165 OF 2002
Cuttack this the 12th day of October, 2004

Chunuram Behera ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

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

[Signature]
(M.R. MOHANTY) 12/10/04
MEMBER (JUDICIAL)

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.165 OF 2002
Cuttack this the 12th day of October, 2004

CORAM:

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

Chunu Ram Behera, aged about 67 years,
Son of late Dhananjaya Behera,
At-Kumbharsahi (Bidanasi)
PO-Abhinaba Bidanasi, P.S. Bidanasi
District-Cuttack

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Applicant

By the Advocates

M/s. J.K. Nayak
N.R. Routray

- VERSUS -

1. Union of India represented by the General Manager,
South Eastern Railway, Garden Reach, Kolkata-43,
West Bengal
2. The Divisional Railway Manager, South Eastern
Railway, Khurda Road, PO/PS-Jatni, Dist-Khurda
3. The Senior Divisional Personal Officer,
South Eastern Railway, Khurda Road, PO/PS-Jatni,
Dist-Khurda
4. The Chief Personal Officer, South Eastern Railway,
Garden Reach, Kolkata-43, West Bengal

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Respondents

By the Advocates

Mr. D.N. Mishra, S.C.
Mr. R.C. Rath, S.C.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicant (Shri Chunu Ram Behera) a retired railway servant has filed this Original Application under Section 19 of the A.T. Act, 1985, seeking the following reliefs:

- 1) to grant him pensionary benefits consequent upon the implementation of the decision of the Tribunal in O.A.No.317/89;

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- ii) to grant him the benefit of periodical increments with effect from 29.12.1988 till the date of his retirement, i.e., 30.6.1995;
- iii) fixation of his seniority as a result of implementation of the order of the Tribunal referred to above; and
- iv) payment of interest on account of delay in payment of retirement dues.

2. This is the third round of litigation by the applicant to secure his service benefits. He had earlier approached this Tribunal in Transferred Application (in short T.A.) No.298/86 and in O.A.No.317/89. By virtue of the order passed by the Tribunal in T.A.No.298/86, the applicant was allowed to continue in the post of Travelling Ticket Examiner Incharge with consequential benefits to which he was entitled to. By virtue of the order passed in O.A.No.317/89, he was allowed to count his seniority by taking into account the entire period of his continuous service in the grade of Travelling Ticket Examiner, Grade-A from the date he was first promoted and he was allowed to appear at the selection test for the post of Chief Ticket Inspector. In pursuance of the said order, the Respondents allowed him to appear in the selection test of Chief Ticket Inspector and he was promoted from the date his juniors were promoted. However, his selection was made provisional and subject to the disposal of the S.L.P., which the Respondents had filed before the Apex Court. The appeal was finally dismissed by the Apex Court on 1.5.1995, whereupon, his appointment/promotion was confirmed, and accordingly, it has been submitted by the applicant that his seniority and salary should have been fixed with effect from 29.12.1988.

3. The grievance of the applicant is that although the Respondents had refixed his pay but one Shri D.J.S.Rao, who was his immediate junior, continued to draw more pay than him at the stage of Rs.2060/- in the scale of Rs.2000-3200/-. It is in this background, the applicant has come up in this O.A. seeking relief as referred to above.

4. The Respondents have denied all the allegations and averments made in the application. The facts of the case, however, are not in dispute. They have submitted that in obedience to the direction of the Tribunal (at Annexure-3 to the O.A.) the applicant was called to the selection test and on being found successful was empanelled for promotion to the post of Chief Ticket Inspector in the scale of Rs.2000-3200/- vide O.M. dated 1.11.1989. The promotion was made effective from 29.12.1988, i.e., the date on which his immediate junior Shri D.J.S. Rao was promoted to that post. They have further submitted that the pay of the applicant was fixed in the higher grade on proforma basis and actual monetary benefits were given to him from the date of shouldering higher responsibility. They have further submitted that Shri D.J.S. Rao was drawing pay at the stage of Rs.2060/- in the scale of Rs.2000-3200/-. They have stated that by virtue of adhoc promotion and subsequent regularisation with effect from 29.12.1988 in the post of Chief Ticket Inspector, Shri Rao was drawing more pay than the applicant. It is their plea that had the applicant any grievance with regard to pay disparity at that point of time, he should have represented to the authorities immediately and/or move the Court of Law for redressal and that he has not

specifically mentioned as to how his pay was wrongly fixed. They have also submitted that as on 01.01.1988 the applicant was drawing Rs.1850/- in the scale of Rs.1600-2660 and on his promotion to the post of C.T.I. with effect from 29.12.1988, his pay was fixed at Rs.2000/- in the scale of Rs.2000-3200/-. They have also submitted that there is no stage of Rs.2150/- in the scale of Rs.2000-3200/- and therefore, it is the applicant, who should explain as to how his pay should have been fixed at Rs.2150/-.. Respondents have also disclosed that the applicant's pay was fixed at Rs.2000/- on 29.12.1988 notionally and actual monetary benefit was granted to him from 26.11.1991. He was granted annual increments on 1.12.1989, 1.12.1990 notionally and actual incremental benefit was granted from 1.12.1991, 1.12.1992, 1.12.1993, 1.12.1994 raising his pay to Rs.2060/- and 2120/- notionally and Rs.2180, Rs.2240, Rs.2300/- and Rs.2375/- actually thereafter. The last pay drawn by him was Rs.2375/- and his retirement dues were calculated on that basis.

4. We have heard the learned counsel of both the sides and perused the records placed before us.

The applicant has filed a rejoinder also.

5. The applicant has been relentlessly submitting representations before the competent authorities for raising his pay at par with his immediate junior, Shri D.J.S. Rao. In his rejoinder the applicant has brought to the notice of the Tribunal, ^{the pay disparity} by stating that "though the scale of the applicant has been fixed in the scale of Rs.2000-3200/- with effect from 29.12.1988, his immediate junior was, however, drawing Rs.2860/- (basic pay) which was

more than the applicant. The applicant should also have been paid the same. The figure Rs.2150/- in Paragraph 4.19 should be read as Rs.2060/-. From the above it would appear that the applicant is in a state of utter confusion in so far as stepping up of his pay is concerned. Somewhere he has demanded that ~~his~~ pay should have been raised to Rs.2060/- in the scale of Rs.2000-3200/- and somewhere else he has quoted the figure Rs.2150/-, and, finally, in the rejoinder, he has claimed the stage of Rs.2860/-. The time scale of pay being Rs.2000-60-2300-75-3200/-, it is doubtful whether there would be any stage in the scale at Rs.2860/-. Similarly, there is no stage at Rs.2160/- in the scale of Rs.2000-3200/-. From this it would appear that the applicant has failed to make his grievance credible at all.

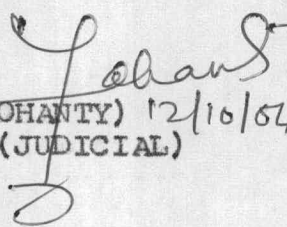
7. However, we recognise [REDACTED] his grievance that his pay fixed by the Respondents was not exactly at par with Shri D.J.S.Rao. This has also been admitted by the Respondents in their counter when they have stated that Shri Rao was drawing more pay than the applicant on account of his officiating in the higher post on ad hoc basis. Obviously, the applicant could not have the benefit of ad hoc service as his seniority/promotion was the subject matter of litigation. As the Tribunal, after going through the case of the applicant had found that he was entitled to count his continuous period of officiation for the purpose of seniority, and his seniority and pay should be fixed with reference to the date of promotion of his immediate junior, we have no doubt to declare that he is entitled to stepping up his

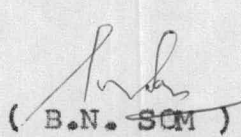
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pay at par with his immediate junior, viz., Shri D.J.S. Rao granting him the notional benefit of pay fixation by counting ad hoc promotion, as done in respect of Shri Rao. Accordingly, this O.A. succeeds to the extent indicated above. The Respondents are, therefore, directed to extent the benefit of stepping up pay of the applicant at par with Shri D.J.S.Rao and give him consequential financial benefits by way of refixation of his pay from December, 1988 till the date of his retirement and if necessary to refix his pension and pensionary benefits as due and admissible.

However, there shall not be any order as to costs.


(M.R. MOHANTY) 12/10/84
MEMBER (JUDICIAL)


(B.N. SGM)
VICE-CHAIRMAN

BJY