

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 03 of 2004
Cuttack, this the 21st day of Jan' 2005

Ullash Chandra Sahoo

..... 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 ? Yes

J.K. Kaushik
(J.K. KAUSHIK)

JUDICIAL MEMBER

B.N. Soman
(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 03 of 2004
Cuttack, this the 27th day of Jan' 2005

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER

...

Ullash Chandra Sahoo aged about 34 years s/o Sri Charan Sahoo working as Jr.Clerk under Sr.Divisional Electrical Engineer(General), E.Co.Railway, Khurda Road at present residing at 8 Jharpada, P.O.Gudipur Matiapara, Dist.Puri, PIN-752050.

..... Applicant

Advocates for the applicant

..... Mr. Achintya Das

Versus-

1. Union of India service through General Manager, E.Co.Railway, Chandrasekharpur, Bhubaneswar.
2. Chief Personnel Officer, E.Co.Railway, Chandrasekharpur, Bhubaneswar.
3. Divisional Railway Manager, E.Co.Railway, Khurda Road, P.O. Jatni, Dist.Khurda, PIN-752 050.
4. Sr.Divisional Personnel Officer, E.Co.Railway, Khurda Road, P.O.Jatni, Dist.Khurda, PIN-752 050.
5. Smt.Sushree Mohanty, Sr.Clerk under Sr.Divisional Electrical Engineer(G), E.Co.Rly, Khurda Road, P.O. Jatni, Dist.Khurda.

..... Respondents

Advocates for the Respondents

..... Ms.S.L.Pattnaik

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O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN: S Shri Ullash Chandra Sahoo at present working as Junior Clerk under Sr. Divisional Electrical Engineer(General) has filed this O.A. alleging non-implementation of the provisions of Rule 304 of Indian Railway Establish-

ment Code (IREC in short) Volume I(1985 Edition) and Para 1301 of Indian Railway Establishment Manual Volume I.

2. He has, therefore, made a prayer to issue direction to the Respondents to consider his case for promotion to the post of Senior Clerk in the scale of Rs. 4000-6000 from the date his juniors were promoted as Sr.Clerk w.e.f. 13.2.03 taking into account his service prior to being medically decategorised on 3.4.03, as per Rule 304(1) of IREC and paragraph 1301 of IREM.

3. The admitted facts of the case are that the applicant was appointed initially as Number Taker (TNC in short) in the scale of Rs. 3050-4590 on 20.4.98 (Annexure-A/3). In course of his service he appeared for the test held on 13.3.03 for promotion to the post of Senior Number Taker (Sr.TNC in short) in the scale of Rs. 4000-6000. At the time he was also referred for periodical Medical Examination on 3.4.03 and was declared unfit in 'Aye Three' category but fit in 'Bee Two'. On his medically decategorisation, he was posted as Jr.Clerk in the scale of Rs. 3050-4590 under Sr.Divisional Electrical Engineer, Khurda Road. His submission is had he not been medically decategorised, he would have been promoted to Sr.TNC grade (Rs. 4000-6000) and, therefore, the Respondents are obliged to accommodate him in the Electrical Division as Sr.Clerk. In support of his claim, he has referred to the cases of promotion of one Smt.Sushree Mohanty (Res.No.5) who was appointed as a Jr.Clerk on 22.9.98 but promoted to Sr.Clerk w.e.f. 13.2.03 and another person, namely, Sfi R.P.Parija who had joined

as Jr.Clerk on 10.7.2000 was also promoted as Sr.Clerk in Electrical Division from that date.

4. Respondents have opposed the O.A. on the ground that it is devoid of merit as it is not maintainable either in facts or in law. They have also alleged that the applicant has mis-interpreted the facts. Their submission is that under the Rules made in this regard for protection of the interest of the employees who are medically de-categorised, rules provide that they should be given pay protection by adjusting them in alternative post carrying identical pay-scale or if no post is available for this purpose, the pay is to be protected by creating a supernumerary post, and, secondly, that the official should be granted full service benefits, that is, their length of service in the earlier post will be treated as continuous with that in the alternative post. The Respondents have submitted that they have complied both these conditions in that they have given him equivalent scale of Rs.3050-4590 as Jr.Clerk and they have also given him the benefit of his past service as TNC in fixing seniority as Jr.Clerk in Electrical Department. With regard to the comparison made by the applicant with the service benefits given to Res.No.5 and another Sri R.P.Parija, they have pointed out that both these officials were already promoted from the post of Jr.Clerk to Sr.Clerk in Electrical Department in the scale of Rs. 4500-7000 w.e.f. 13.2.2000 vide Annexure-A/8, whereas on the crucial date of promotion of Res.No.5 and another, the applicant was working as TNC which is equivalent to Jr.Clerk in Operating Department. In other words, the

applicant is entitled to a post in the cadre of Jr.Clerk in Electrical Department whereas the Res.No.5 and another were already working in Sr.Clerk grade. The Res.No.5 and another were promoted as Sr.Clerk on 13.2.93, but the applicant was posted as Jr.Clerk in Electrical Department only on 4.7.93 and therefore there cannot be any comparison between the Res.No.5 and the applicant, and, therefore, the grievance ventilated by the applicant in this regard is misconceived.

5. We have heard the Ld.Counsel for both the parties and perused the records placed before us.

6. The sole argument of the applicant in support of his claim is that while working as TNC, his name was included in the panel(Annexure-A/10) of successful candidates for promotion of the post of Sr.TNC in the scale of Rs.4000-6000 which he would have got had he not been medically declassified. He has, therefore, contended that the Respondents should have taken into account the fact of his passing selection test and should have considered his case for promotion as Sr.Clerk in the Electrical Department.

7. The Respondents have stoutly rebutted the arguments of the applicant. We find lot of force in their submission. Over and above the fact that the Res.No.5 and another were given promotion as Sr.Clerk(date of declaration of results is 11.2.93) earlier than the declaration of the results of suitability test for promotion to the post of Sr.TNC(2.5.93), and the actual date of promotion of Res.No.5 and another being 13.2.93. We find that the applicant was found medically unfit in 'Aye Three' vide Medical Superintendent in charge,

Khurda Road report dated 4.4.93 before the publication of results of suitability test which was held on 13.3.03. In other words, Res.No.5 and another had moved into the cadre of Sr.Clerk well before the publication of suitability test result for the applicant. That apart, the pay-scale of Sr.Clerk in the Electrical Department is found to be Rs.4500-7000 whereas the pay-scale of Sr.TNC is found to be in the scale of Rs.4000-6000, that is a superior post than that of Sr.TNC for which he was found suitable.

8. In the circumstances, we see no force in the prayer made by the applicant that the Respondents should have considered his case for promotion to the grade of Sr.Clerk (Electrical Department) at par with the Res.No.5 and another, on the basis of his clearance of suitability test for promotion to the post of Sr.TNC. We have no hesitation to say that as the Sr.TNC post is not equivalent/analogous to the post of Sr.Clerk, we see no merit in this O.A. which is accordingly dismissed. No costs.

J.K. KAUSHIK
(J.K. KAUSHIK)
JUDICIAL MEMBER

B.N. SORI
(B.N. SORI)
VICE-CHAIRMAN

SAN/