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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A. NO. 83, 113 and 114 OF 2004

Cuttack, this the 17th day of November, 2005.

B.K.PANDA & OTHERS. APPLICANT

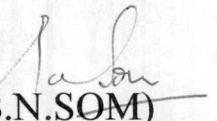
VERSUS

UNION OF INDIA & ORS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes.

7. Whether it be circulated to all the Benches of CAT? Yes.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.83, 113 and 114 OF 2004

Cuttack, this the 17th day of November, 2005

C O R A M:-

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

1. B.K.Panda, aged about 39 years, son of Sri Rama Ch.Panda, working as Head Clerk under Sr. Divisional Commercial Manager, E.Co. Railway, Khurda Road at present residing at Mahamayasahi, PO. Sakhigopal, Dist Puri, PIN- 752d 014.
2. P.K.Satpathy, aged about 34 years, son of late B.D.Satapathy, working as Head Clerk under Sr. Divisional Commercial Manager, E.Co. Railway, Khurda Road at present residing AT/PO-Kudiary, Dist.Khurda, PIN-752 050.
3. T.V.Rao, aged about 51 years, son of late Ramaya working as Head Clerk under Sr. Divisional Commercial Manager, E.Co.Railways, Khurda Road at present residing at Qrs.No.B-II/C, Traffic Colony, Khurda Road, PO-Jatni, Dist.Khurda, PIN – 752 050.

..... APPLICANTS.

For the Applicants: Mr. Achintya Das, Advocate.

VERSUS

1. Union of India service through General Manager, E.Co.Railways, Chandrasekharpur, Bhubaneswar.



2. Chief Personnel Officer, S.E.Railway, Garden Reach, Kolkata-43.
3. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO-Jatni, Dist. Khurda, PIN-752 050.
4. Sr. Divisional Personnel Officer, E.Co. Railway, Khurda Road, PO. Jatni, Dist.Khurda, PIN – 752 050.
5. Shri J.B.Mohapatra, Head Clerk under Sr. Divisional Commercial Manager, E.Co. Railway, Khurda Road, Po. Jatni, Dist. Khurda, PIN- 752 050.
6. Sri Akrura Pradhan, Office Supdt. II , under Sr. Divisional Commercial Manager, E.Co. Railway, Khurda Road, PO.Jatni, Dist. Khurda, PIN- 752 050.

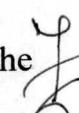
..... RESPONDENTS.

For the Respondents. : Mr. B. Pal, Sr. Counsel.
Mr. O. N. Ghosh, Advocate
M/S. R.K.Kar & M. Bhanja,(for Res.5)

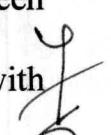
O R D E R

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

B.K.Panda the Applicant No.1 herein, joined the Railways as a **Senior Clerk** of Chakradharpur Division of South Eastern Railways on **09.06.1992** and, on his own request, he came on Inter-Divisional transfer to Khurda Road Division on **18-04-1995**. P.K.Satapathy the Applicant No.2, joined the Railways as a **Junior Clerk** of Khurda Road Division of said South Eastern Railway on **11.04.1989**. Applicant No.3 (T.V.Rao) joined the Railway Service as **Junior Clerk** of Khurda Road Division on 08.01.1980. Respondent No.5 (**Shri J. B.Mohapatra**) initially joined the



Railways as a **Junior Clerk** of Chakradharpur Division on **01.07.1988** and subsequently, came on Inter-Divisional transfer to Khurda Road Division on **01-10-1990** and Respondent No.6 (**Akrura Pradhan**) joined the Railways as a Junior Clerk of Khurda Road Division on **12.08.1988**. For filling up of the vacancies of Sr. Clerks (to the extent of 13 1/3% of total posts fell vacant during the period from 01-04-1985 to 31-03-1988), the Railway Recruitment Board at Bhubaneswar conducted a competitive examination (from amongst the serving graduate Junior Clerks) and Khurda Road Division (now in E. Co. Railways) sent the names of 17 candidates for appearing the said examination. But the Chief Personnel Officer, however, rejected names of three candidates (including the candidature of Respondent No.5 Shri J.B.Mohapatra) from the said list; as they were not serving graduates as on 31.03.1988. Respondent No.6 (Akrura Pradhan) was, however, allowed to sit in the said examination by showing his date of initial appointment as **12.08.1985** (instead of **12.08.1988**) and he, having been found successful in the said examination, was granted promotion as a Sr. Clerk on **25-01-1990**. Respondent No.5 (J.B.Mohapatra), in normal course, was also promoted as a Senior Clerk on 26-10-1995 and he was placed below the Applicant No.2 Shri P.K.Satapathy. Having come to know that Respondent No.6 Akrura Pradhan, (who was junior to him in the rank of Jr. Clerk) has already been promoted as Sr. Clerk on 25.1.1990, the Respondent No.5 along with



similarly placed persons, filed O.A.No. 125/94 in this Tribunal claiming seniority in the grade of Sr. Clerk over Shri Pradhan. Since during the pendency of the said Original Application, the Applicants therein, got promotion to the rank of Senior Clerk (under 66 2/3% quota), this Tribunal in its order dated 02-05-2000 directed the Respondents-Railways to place the name of those Applicants above Shri Akrura Pradhan, the Respondent No.6 of the present Original Application. While the matter stood thus and, when the names of Applicants did not figure in the list prepared by the Sr. Divisional Personnel Officer of Khurda Road Division for formation of Group B Panel (for the post of Assistant Commercial Manager against 30% vacancies in Commercial Department through L.D.C E) under Annexure-A/8 dated 29-01-2004, Applicants preferred representation (to the General Manager, E.C. Railways/General Manager, S.E. Railways under Annexure-A/9 dated 13-02-2004) being aggrieved by the said action/inaction of the Respondents-Railways and when they failed to get any redressal of their grievances from the Department, they have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayers to direct the respondents to recast the seniority of Sri Akrura Pradhan (R-6) and Sri J.B.Mohapatra (R-5) as Senior Clerk according to their actual date of appointment as maintained in the Railway records and as per the Railway Board's directives issued from time to time and if necessary, to set aside

the Office Order Nos. 76/2001 dated 27.09.2001 (Annexure-A/6) and 7/2002 dated 05.02.2002 (Annexure-A/7).

2. Respondents-Railways, by placing a counter on record, have disclosed that the Applicants are all seniors to the Respondent Nos. 5 and 6. It has also been disclosed that Respondent No.6 was erroneously considered (due to typographical error in recording the date of his appointment) as his date of appointment was not falling between 1.4.1985 to 31.3.1988; whereas the Respondent No.5 was not correctly considered by the Head Quarters Office and that Respondent No. 6, who is admittedly junior to the Applicants was wrongly considered and promoted as Sr. Clerk, (as per the directions rendered by this Tribunal in O.A. No. 125/1994) thename of Respondent No. 5 was placed above the Respondent No.6. Respondents-Railways have also denied the allegation of the Applicants as made in this Original Application, that the amended seniority position has not been circulated to them.

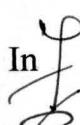
3. Individual Respondent Nos. 5 & 6 have also filed their counters separately stating therein that since they were not at fault nor there are fault in any of the action of the Respondents-Railways, they should not be made to suffer that too, at this belated stage.

4. We have heard Mr. Achintya Das, Learned Counsel appearing for the Applicants, Mr. B. Pal, learned Senior Counsel (assisted by Mr.O.N. Ghosh), for the Railways and Mr. R.K.Kar, learned counsel



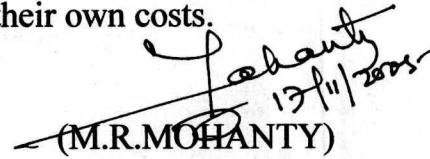
appearing for the Respondent No.5 and perused the materials placed on record.

5. Learned counsel appearing for the parties have reiterated the stands taken in their pleadings and we do not think it necessary to repeat the same in view of the settled position of law that where junior supersedes his senior; by the wrong committed by the Departmental Authorities, the Senior has a right to be considered/shown above him. In the instant case, it is not in dispute that though the Respondent No.6 was not eligible, he was considered by the Respondents-Railways for promotion to Sr. Clerk earlier than Respondent No.5; which was subsequently rectified by the interference of this Tribunal. Now it is also not in dispute that the present Applicants are senior to both the Respondent Nos. 5 and 6 (so far the date of appointment is concerned) both as Jr. Clerk and Sr. Clerk. While delivering the orders in OA No. 125 of 1994 (supra), this Bench of the Tribunal had exhaustively dealt into the matter and we have gone through it. We find no logic or grounds to allow the Applicants to suffer for the mistakes committed by the Respondents-Railways. In this view of the matter, we direct the Respondents to show the names of the Applicants above the names of Respondent Nos. .5 and 6 in the grade of Sr. Clerk and, accordingly, they may be permitted, if they are other wise eligible, to appear in the LDCE for formation of Group B panel as notified by the Respondents under Annexure-A/8. In



any event, the entire exercise should be completed within a period of ninety days from the date of receipt of a copy of this order. With the above, these OAs are allowed. Parties to bear their own costs.


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)
13/11/2005