

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.443 & 444 OF 2004

Cuttack this the 17th day of Nov'2005

IN O.A.No.443/2004:

K. MarandyApplicant(s)

-VERSUS-

Union of India & Ors.Respondents

IN O.A.No.444/204

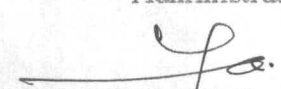
B.Laxmi Narayan ... Applicant(s)

-VERSUS-

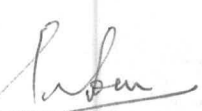
Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(M.R.MOHANTY)
MEMBER(JUDICIAL)

17/11/05


(B.N.SOM)
VICE-CHAIRMAN

72
75

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.443 & 444 OF 2004

Cuttack this the 17th day of NOV' 2005

CORAM:

THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

...
IN O.A.NO.443/2004

Kunaram Marandy, aged about 64 years, Son of late Jayaram Marandy, residing at Telkundi, PO: Rangiam, Dist-Mayurbhanj

IN O.A.NO.444/2004

Sri B.Laxmi Narayan aged about 61 years, Son of late B.Krishna Rao, residing at Plot No. N-6/65, I.R.C.Village, PO-Nayapalli, Bhubaneswar-751015

...Applicants (in both the O.As)

By the Advocates:

M/s.P.K.Nayak
B.P.Nayak

-VERSUS-

1. Union of India represented through General Manger, East Coast Railway, Chandrasekharpur, Bhubaneswar
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar
3. Senior Divisional Personnel Officer, East Coast Railway, At/POKhurda Road, Jatni, Dist-Khurda
4. Chief Personnel Officer, S.E.Railway, Garden Reach, Kolkata

...Respondents (in both the O.As)

By the Advocates:

Mr.P.C.Rath, A.S.C.

ORDER

MR.B.N.SOM, VICE-CHAIRMAN:

Since the issue to be

decided in O.A.Nos.443 and 444 of 2004 is one and the same arising out of

e

common cause of action, we order that this common order will govern both the cases mentioned above. For the sake of convenience, we may as well deal with the facts and circumstances of the O.A.No.443/2004.

2. Heard the learned counsel for the parties and perused the materials placed on record.

3. Shri Kunaram Marandy (applicant in O.A.No.443/2004) has come in the 2nd round of litigation in this O.A. Earlier, he had visited along with others this Tribunal in O.A.No.706/97 which was disposed of on 11.2.2000 observing that the Respondents "are bound to grant all consequential service benefits to the applicant within 60 days from the date of receipt of this order". As a result of this order the applicants therein were granted regular promotion to the grade of Telecom Inspectors from the year 1972 and 1973 vide Annexure A/2. Thereafter, the applicants moved a Contempt Petition No.55/2001, which was disposed of on 25.03.2003, with the following direction.

"The case of the applicants requires consideration by the Respondents for which the applicants need to represent to the Respondents to get such benefits... If it is a fact that the juniors of the applicants have been given further promotion with effect from May, 1995, then the cases of the applicants require consideration by the Respondents for which the applicant need to represent to the Respondents".

4. In pursuance of the said direction, the Chief Personnel Officer, S.E.Railway, Respondent No.4, by his order dated 25.2.2004 considered the representations of the applicants. In his order he disclosed that in pursuance of the order of the Tribunal the applicants were regularized in Gr. III with effect from 11.12.1972 and 14.3.1973 and given proforma promotion to Gr.II with effect from 1.1.1984. However, they could not be given the benefit of any

LB

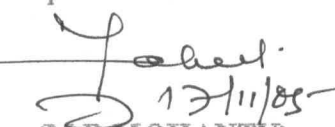
further promotion to Gr. 1 or above, although the officials junior to them had been promoted on the ground that the post of TCI/Section Engineer was a selection post and the applicants having been retired were not available for going through the selection test. It is against this order the applicants have approached this Tribunal in the instant O.As.

5. The Respondents have opposed the application. However, in their counter they have merely repudiated the argument put forward by the Chief Personnel Officer while disposing of the representations filed by the applicants in pursuance of the order dated 25.3.2003 of this Tribunal that the applicants having retired were not available for being put through the positive act of selection or they could not face any Selection Board, and therefore, it was not feasible to grant them further promotion to the post of TCI (I) or higher. We are, however, not impressed by the argument of the Respondents as contained in the counter or arguments advanced before us by the learned counsel for the Respondents. From the facts of the case it is clear that the applicants were denied promotion in time on account of the fact that the date of regular promotion in Gr.III was not fixed properly by the Respondents. The date of their appointment on regular basis in Gr.III had to be ante dated to 1972-73 only after intervention of the Tribunal in O.A.No.706/97 and the order to that effect was issued only in the year 2001 on 11.4.2001, i.e., while the applicants had retired from service. Not only that, their notional promotion to Gr.II with effect from 1.1.1984 was also issued only on 11.4.2001 and pensionary benefits revised and paid to the them accordingly. On our query, the learned counsel for the applicant submitted that promotion to Gr.II of TCI also requires positive act of selection. This submission made by the learned

L

counsel for the applicant was not contested by the learned counsel for the Respondents. On the fact of the case as stated above, we fail to understand how the Respondents on the one hand could give pro forma promotion to the applicant to TCI, Gr.II, but refused promotion to Gr.I. As the entire process of correcting the regular service of the applicant took place only after his retirement, it is not only futile, but also improper on the part of the Respondents to deny the legitimate service benefits to the applicant. That being our finding, we have no hesitation to order that the applicant is entitled to notional promotion to TCI, Gr.I with effect from the date 15.5.1995 when Mr.Prabir Babu (whose date of appointment to Gr.II being 2.3.1984) was appointed to Gr.I in the scale of Rs.6500-10,500/-. After giving notional promotion to the applicant in the TCI, Gr.I, the Respondents will also re fix his pension in the scale of TCI, Gr.I and pay him the consequential financial benefits on retirement.

6. With these observations and direction, both the O.A.s are disposed of. No costs.


17/11/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN