

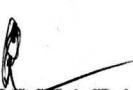
**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 1307 OF 2004
Cuttack, this the 15th day of December, 2009

Sri Hadu Naik..... **Applicant**
Vs.
Union of India & Others **Respondents**

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(C. R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOS. 1307 OF 2004
Cuttack, this the 15th day of December, 2009

CORAM:

**Hon'ble Mr. Justice K. Thankappan, Member (J)
Hon'ble Mr. C.R. Mohapatra, Member (A)**

.....
Sri Hadu Naik, aged about 43 years, S/o- Sri Bhakari Naik, At-Saheb Bangalapara, Behind K.D. Jallan Hospital, At/P.O.Khetrarajpur, P.S./Dist-Sambalpur, at present working as Commercial Controll Officer, East Coast Railway, Sambalpur Division, At/P.O/Dist-Sambalpur.

..... **Applicant**

**By the Advocate(s)..... M/s. B.N. Samantray,
G.N. Mishra, P. Jena.**

Vs.

1. Union of India represented thorough it's General Manager, East Coast Railway, Bhubaneswar, At/Po-Bhubaneswar, Dist-Khurda.
2. Chief Personnel Officer, East Coast Railway, Bhubaneswar, At/Po-Bhubaneswar, Dist-Khurda.
3. Divisional Traffic Manager, East Coast Railway, Sambalpur Division, At/Po/Dist-Sambalpur.
4. Divisional Commercial Manager, East Coast Railway, Sambalpur Division, At/Po/Dist-Sambalpur.
5. Divisional Railway Manager, East Coast Railway, Sambalpur Division, At/Po/Dist-Sambalpur.

..... **Respondents**

By the Advocate(s)..... Mr. B.K. Mohapatra

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O R D E R
(Oral)

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

The applicant, at present working as Commercial Control Officer, East Coast Railway, Sambalpur Division has filed this Original Application challenging surrender of post in Commercial Department of Sambalpur Division at Annexure-A/2 dated 20.08.2004 and corrigendum issued thereon subsequently as per Annexure-A/3 dated 01.09.2004 and in this background, he has prayed for the following:-

“ ...The Notificatoion and its Corrigendum under Annexures-2 and 3 relating to surrender of posts in Commercial Deptt. may be quashed.

And the respondents may be directed to reconsider the entire matter of surrender of posts in the Commercial Deptt.

And the Respondents be directed to consider the case of the applicant for promotion as per their assurance under Annexure-1 respectively from March, 2002.”

2. The facts as revealed from the O.A are that the applicant was appointed as Commercial Clerk on 12.01.1988 and after successful completion of training, he joined under Bilaspur Division and has been serving in Sambalpur Divsision w.e.f. 27.08.1992. In course of time he was promoted as Senior Goods Clerk w.e.f. 11.12.1998 and as Head Goods Clerk w.e.f. 23.02.2001 to the scale of Rs.5000-8000/- According to him, under the relevant rules he was

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to be promoted to Goods Supervisor in the next pay scale of Rs.5500-9000/- after completion of one year service as Head Goods Clerk, i.e., during March, 2002 he being a candidate belonging to Scheduled Caste Community. According to him, he preferred representation through the recognized Association claiming promotion, based on which the Senior Divisional Traffic Manager, by his letter dated 05.02.2002 (Annexure-A/1) assured that his seniority and promotion would be considered and decided within three months. While the matter stood thus, the Railways introduced the policy of cadre restructuring of Commercial Department w.e.f. 01.11.2003. As per the said policy, cadre restructuring of the commercial Department has to be made after consideration of financial implication under the "Matching Saving" principle. The applicant is aggrieved by the surrender of two posts of Goods Supervisor and one post of Chief Goods Clerk in Sambalpur Division due to erroneous application of the principle of Matching Saving, which in effect has put a spanner on his promotional prospects.

3. The ground urged by the applicant in support of his case is that the aforesaid action of the Railway authorities is arbitrary and being violative of Articles of 14 & 16 of the Constitution, the Tribunal should intervene in the matter.

4. This O.A. was admitted and notice issued in order dated 26.06.2008, though the O.A. was filed before this Tribunal on 11.04.2004. However, in pursuance of

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notice, the Respondents have filed counter opposing the prayer of the applicant, to which no rejoinder has been filed.

5. None appeared for the applicant when called. This being a matter of 2004, we did not feel it proper to adjourn this matter any further. Therefore, we heard Shri B.K. Mohapatra, Ld. Counsel for the Respondents and perused the materials on record. In the counter filed, the Respondents have submitted that due to non-availability of vacancies in the year 2002-2003, no selection was conducted for the post of Goods Supervisor in the scale of Rs.5500-9000/- and as soon as vacancies were created in the year, 2004, selection was conducted and the applicant was promoted to the post of Goods Supervisor as per office order dated 29.09.2004 (Annexure-R/4). The surrender of posts is with a view to facilitating Matching Saving within the scope and meaning of restructuring policy which is within the discretion of administration subject to administrative convenience.

6. We have considered the pleadings of the parties. At the out-set we would say that the cadre restructuring policy at Annexure-A/2 and corrigendum at Annexure-A/3, by the implementation of which the applicant is aggrieved and has approached this Tribunal came to be issued on 20.08.2004 and 01.09.2004, respectively, whereas soon thereafter the applicant has been promoted to the post of Goods Supervisor w.e.f. 29.09.2004 (Annexure-R/4), and if so, the applicant could not have any grievance in so far as surrender of the

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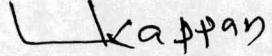
post of Goods Supervisor is concerned. However, this fact of his promotion as Goods Supervisor, applicant has intentionally and deliberately withheld from the Tribunal even though this O.A. has been filed on 12.10.2004, i.e., after such promotion. Be that as it may, what all we understand, the grievance of the applicant in the O.A. is his non-promotion to the post of Goods Supervisor during March, 2002, when he completed one year service as Head Goods Clerk. In this connection, it is to be noted that the applicant has not produced any representation agitating his grievance before the competent authority, but only based his claim on Annexure-A/1 dated 03.05.2002 which is a letter addressed to the Divisional Secretary, AISCTREA / SBP Division/ Sambalpur issued by Sr. Divisional Traffic Manager, Sambalpur, containing the minutes of informal meeting held on 02.05.2002 with Sr. DTM/SBP, wherein it was decided to examine the seniority and promotion of the applicant by the Personal Branch within three months.

7. From this it is clear that the seniority position of the applicant was not determined as on the date of Annexure-A/1 and by this it is axiomatic that unless and until the seniority position of an incumbent is determined, he cannot be considered for promotion. The applicant has also not produced any seniority list in the grade of Head Goods Clerk for determination by the Tribunal as to whether by March, 2002 he was due for promotion to the post of Goods Supervisor and/or any junior to him has been promoted. The

applicant has also not produced any document that despite the existence of vacancy of Goods Supervisor during March, 2002, Respondents had not considered him for promotion.

8. For the reasons discussed above, we hold that the impugned Annexures-A/2 and A/3 issued in the year 2004 do not in any way stand in the way of the applicant for promotion to the post of Goods Supervisor inasmuch as his grievance for such promotion is w.e.f. March, 2002, which is much prior to the cadre restructuring policy and/or the surrender of posts in question. This apart, we hold that the applicant has not approached this Tribunal with clean hands. In the result, the O.A. is dismissed. No costs.


(C. R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER