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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

OA NO. 852 of 2005 Cuttack, this the 24th day of October, 2008

Rabi Narayan Nayak

Applicant

Versus

Union of India & Ors.

Respondents

FOR INSTRUCTIONS

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

2. Whether it be circulated to all the Benches of the CAT or not?

(JUSTICE K. THANKAPPAN) MEMBER (JUDICIAL) (C.R.MOHAPATRA) MEMBER (ADMN.)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK

O.A.No.852 of 2006

Cuttack, this the 2/44 day of October, 2008

CORAM:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
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THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Rabinarayan Nayak, aged about 40 years, Son of Braja Bandhu Nayak, a permanent resident of Village-Tikipada, Po-Chanahatta, PS-Balipatna, Dist.Khurda, presently working as Head Telephone Operator, Office of the Chief Signal & Telecom Enineer, East Coast Railway, Bhubaneswar, Dist. Khurda.

.....Applicant

Legal practitioner

: M/s. Biswajit Mohanty-I, S.Patra, P.K.Majhee, A.Panda, Counsel.

- Versus -

- 1. Eastern Railway represented through its Genral Manager, Fairlee place, Calcutta.
- 2. General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
- 3. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
- 4. Sr.Divisional Signal and Telecom Engineer, East Coast Railway, Khurda, Khurda Road, Jatni, Dist. Khurda.
- 5. Sr.Divisonal Personnel Officer, Khurda, East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
- 6. Sri D.P.Singh, at present working as Chief Telephone Operator, Office of the Sr. Divisonal Signal and Telecom Engineer, East CoAST Railway, Khurda, Khurda Road, Jatni, Dist. Khurda.

....Respondents

Legal Practitioner : Mr.T.Rath, Counsel.



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ORDER

MR. C.R.MOHAPATRA, MEMBER (A):-

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Applicant, working as head Telephone Operator, Office of the Chief Signal & Telecom Engineer, East Coast Railway, Bhubaneswar by filing this Original Application U/s.19 of the A. T. Act, 1985 has sought the following relief:

- (i) The impugned order dated 04.03.2005 under Annexure-4 passed by the respondent no.5 may be quashed by declaring the same as illegal;
- (ii) Respondents may be directed to give effect to order Dt. 07.12.2004 under Annexure-3 by declaring the applicant senior with effect from Dt.11.07.1997;
- (iii) The applicant may be declared promoted to the next higher grade from the date the applicant became entitled or on which the respective post became vacant, whichever is later;
- (iv) The respondents may be directed to give all the arrear service benefits thereafter including arrear differential salary and other appropriate increments;
- (v) And, this Hon'ble Tribunal may pass any suitable/appropriate order in favour of the present applicant, in view of the facts and circumstances of the case."
- 2. Respondents have filed their counter explaining the detailed circumstances as to why there was dislocation leading to filing this OA. Applicant has also filed rejoinder to the counter filed by the Respondents,
- 3. Heard respective parties and perused the materials placed on record. During the hearing Learned Counsel appearing for the Respondents by filing a letter dated 27.03.2008 addressed by Assistant



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Personnel Officer of the Office of the Divisional Railway Manager (P), E.C. Railway, Khurda Road has brought to the notice of this Tribunal that as the prayers made in this OA have already been redressed departmentally, this OA is rendered infructuous. This was vehemently opposed by the Learned Counsel for the Applicant by stating that though the applicant was given seniority and promotion retrospectively but his pay has been fixed notionally. In view of the above, the only question that is now to be decided as to whether the Applicant is entitled to arrear salary in the promotional post retrospectively. In this connection, it is profitable to note the contents of the letter dated 27.03.2008 filed by Learned Counsel for the Respondents which is as under:

"In our counter, we have stated that the Applicant as Hd. Telephone Operator (Hd.T.O) at HQ/BBS on 14-7-03. The decision for maintaining T.O. cadre of HQ/BBS along with Divisional TO cadre of this Division was taken by HQ/BBS & letter dt.09-9-04 was communicated to this office.

Administrative decision was taken to interpolate the name of Sri Nayak in the respective of Hd.T.O. & Office Order to this extend was issued vide this O.O. No. 7/07 dt.15-02-2007, a copy of which is enclosed. Before interpolation of seniority of the Applicant restructuring of T.O. cadre in this Divn. Was implemented & 03 staff was given up-gradation benefit as Chief T.O. in scale: Rs.5, 500-9,000/- (RSRP) w.e.f. 01-11-03. Though the name of the Applicant was interpolated above the name of Sri Subala Behera, Junior to him, the Applicant got promotion to the post of Ch. T.O. in Scale: Rs.5, 500-9,000/- (RSRP) w.e.f.01-11-03 on proforma basis and the actual monetary benefit from the date of shouldering higher responsibility vide this O.O. No. 56/07 dt.18-7-07. The same Order has been issued following the rules circulated through E.Co.



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Rly.'s Estt.Srl.No.ECoR/Pers/R/Restructuring/26 dt.13-3-06. Copy of the same is enclosed for ready reference."

- 4. Learned Counsel for the Applicant has submitted that notional fixation of pay on retrospective promotion is bad in law. Had he been given his rightful promotion when his juniors were allowed, like the latter he would have drawn higher emoluments. Since for the mistake of the Department he was not allowed to shoulder higher responsibility so as to enable him to get higher pay, on rectification of such mistake, he is entitled to actual monetary benefits instead of notional fixation of his pay on the revision of the seniority and consequently promotion to next higher post retrospectively. As such, he is entitled to get the actual financial benefits in the promotional post retrospectively.
- So the other hand Learned Counsel appearing for the Respondent-Railway has submitted that there has been no wrong in the decision making process in fixing his pay notionally on the retrospective promotion of the Applicant which was also in accordance with the provisions of para 228 of IREM. In this connection he has also drawn our attention to the decision of the Hon'ble Apex Court in the case of Union of India and another v Tarsem Lal and others, (2007) 1 SCC (L&S) 63 wherein, placing reliance on an earlier decision of the said Court in the case of Virender Kumar v Avinash Chandra Chadha, (1990) 3 SCC 472 and the provision of para 228 IREM, the Hon'ble Apex Court reversed the order of the Tribunal confirmed by the Hon'ble High Court

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of P&H directing payment of actual financial benefits from the date of the retrospective promotion to the Applicant therein. Accordingly, he has opposed the stand of the Applicant.

- 6. We have given our anxious consideration to the submissions made by the parties and perused the materials placed on record. In view of the provisions laid down in para 228 IREM which has got approval of the Hon'ble Apex Court in the case of Tarsem Lal (supra), no arrears shall be payable on retrospective promotion to higher post, as the employee concerned did not shoulder the duties and responsibilities of the higher post.
- 7. Above being the position of Rules and Law, we find no wrong in the decision making process of denying the Applicant actual financial benefits on his retrospective promotion to the higher post. Hence, this OA stands dismissed by leaving the parties to bear their own costs.

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(JUSTICE K. THANKAPPAN) MEMBER (JUDICIAL) (C.R.MOHAPATRA) MEMBER (ADMN.)

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