

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK
ORIGINAL APPLICATION NO.66 OF 2006
Cuttack this the 23rd Day of July, 2009

Lakhan Applicant

-VERSUS-

Union of India and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK
ORIGINAL APPLICATION NO.66 OF 2006**

Cuttack this the 23rd Day of July, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND
THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Lakhan, aged about 58 years, Son of Mohan at present working as Fitter, grade II, Lifting Section, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, District-Khurda

... Applicant

By the Advocates: M/s. B.S. Tripathy, M.K. Rath, J. Pati

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, At/PO-Chandrasekharpur, District-Khurda
2. The Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, At/PO-Mancheswar, District-Khurda
3. The Workshop Personnel Officer, East Coast Railway, Carriage Repair Workshop, At/PO-Mancheswar, Bhubaneswar, District-Khurda
4. Sri B.N. Mallick at present working as Fitter, grade I, Mill Wright, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda
5. Sri M.C. Bhoi, presently working as Fitter, Grade I, Mill Wright, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar, Dist-Khurda

... Respondents

By the Advocates: Mr. R.C. Rath

ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

1. Applicant, at present working as Fitter, Gr.II in Lifting Section under Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar, has filed this Original Application seeking the following relief:



- 510
- a) To pass appropriate orders directing the respondents to promote the applicant to the post of Technician, Grade I w.e.f. the date of his juniors so promoted.
 - b) To pass appropriate orders directing the respondents to pay the applicant the arrear dues consequent upon his fixation of seniority and promotion to the post of Technician, Grade II and I, to which he is entitled; and
 - c) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow the Original Application with costs”.

2. It is the case of the applicant that earlier he had approached this Tribunal claiming fixation of his seniority as Fitter Skilled Grade – III and as per order dated 4.10.2004, while setting aside the impugned seniority list, this Tribunal directed the Respondents to recast the fresh/revised seniority list having regard to ad hoc promotion of the applicant as Fitter, Skilled Grade-II with effect from 1.3.1985 and grant him further benefits to which the applicant would be entitled to. Pursuant to the said order, it is stated that the Respondents, as per Annexure-A/2 dated 16/20.12.2004 fixed the seniority of the applicant in Technician, Gr.III (instead of Skilled Fitter, Gr.III) with effect from 1.5.1985 and at the same time, seniority of private Respondent Nos. 4 and 5, who are junior to



him, was fixed in Grade III with effect from 1.5.1985 and 5.3.1987 respectively, whereafter, according to applicant, as per Office Order dated 2.5.2005 (Annexure-A/3) his seniority in Technician, Grade II was fixed with effect from 12.10.1991 on pro forma basis whereas the seniority of private Respondent Nos. 4 and 5 was fixed in Grade III with effect from 27.11.1992. It is stated that the Respondent-Department promoted private Res. 4 and 5 to Gr.I with effect from 1.3.1993 by ignoring the applicant, who is senior to them. The applicant to this effect has annexed at Annexure-A/4 a comparative statement showing his seniority position vis-à-vis private Res. 4 and 5. In this background, the representations made by the applicant having not yielded any fruitful result, this Original Application has been filed with the prayer, as quoted above.

3. Respondent-Department have filed their counter resisting the claim of the applicant. In their counter filed, it has been stated by the Respondent-Department that pursuant to order dated 4.10.2004 of this Tribunal in O.A.No.459/01, the seniority of the applicant (UR) has been revised and assigned correctly at par with his immediate junior UR staff Shri R.C.Mishra, Fitter, Gr.III at Sl. No.21 and immediate senior Sri B.N.Mallick (SC) Opposite Party No.4 at Sl. No.20 (i.e., between Sl. No.20 and 21) taking substantive status of the staff (Fitter – MW) as on 31.12.1987 in



5/12
the seniority list published vide No.CRW/MCS/P-118/Seniority/Fitter (MW)/Gr.III/226 dated 24.1.2001, having regard to order of this Tribunal in another O.A.No.95/92. It is stated that according to seniority list published vide No.226 dated 24.2.2001 and Office Order dated 16/20.12.2004, Sri B.C.Mallick (SC) (Res. No.4) is senior to the applicant. They have also stated that in the said seniority list Sri M.C.Bhoi (SC), who is junior to the applicant has been promoted to the post of Fitter Gr.I against the vacancy meant for reserved category as per Estt.Srl.No.135/97. It has been submitted that as soon as the next vacancy would arise for UR staff, the applicant will be promoted to the post of Fitter, Gr.I.

4. Private Respondent Nos. 4 and 5 have neither entered appearance nor filed any counter. Applicant has also not filed any rejoinder refuting the contentions raised by the Respondent-Department.

5. We have heard Shri B.S.Tripathy, learned counsel for the applicant and Shri R.C.Rath, learned counsel appearing on behalf of the Respondent-Railways and perused the materials on record.

6. At the outset, we would like to observe that the applicant has approached this Tribunal without exhausting the departmental remedies available to him under the relevant service rules. Though




he has averred in the Original Application that no action having been taken on his representations, the applicant has approached this Tribunal, yet, copy of any such representation has not been annexed to the present O.A. On this ground alone, the Original Application is liable to be dismissed.

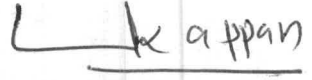
7. On the merits of the matter, admittedly, private Respondent Nos. 4 and 5 belong to reserved category and have been promoted against the quota meant for that category. In other words, even if the applicant is presumed to be senior to private Respondent Nos. 4 and 5, by no stretch of imagination, he could be promoted, the reason being an unreserved category candidate can never be promoted against the vacancy meant for reserved category and so is the peculiarity involved herein in so far as promotion of private Respondent No.5 is concerned. In this backdrop, it is to be noted that the applicant has not produced any document showing his seniority position above Respondent No.4, although the Respondent-Department have admitted the seniority of the applicant over Res.5. Be that as it may, since the Respondent-Department have, in their counter, submitted that soon after the next vacancy arose, the applicant would be promoted to Fitter, Gr.I, the inescapable conclusion that only could be drawn is that there



being no vacancy in UR category, the applicant can never be promoted.

8. For the foregoing discussions, we hold that the applicant has not been able make out a case for any of the relief sought for. The O.A., apart from being not maintainable, is without merit and the same is dismissed accordingly. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER