

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.602 of 2006
Cuttack, this the 11th day of May, 2009

Nanda Hembram Applicants
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.)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.602 of 2006

Cuttack, this the 11th day of August, 2009

C O R A M:

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

A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Nanda Hembram, aged about 56 years, son of Mukura Hembram, (Sr.Trolleyman) at present posted as Head Trackman under S.E. (P.Way)/E.C.Rly/Barang, Dist. Cuttack.

.....Applicant

Advocate for Applicant: M/s. N.R.Routray,
S.Mishra

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekhrpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager (Engg), Khurda Road Division, East Coast Railway, At/Po/Ps-Jatni, Dist. Khurda.
3. Senior DPO, Khurda Road Division, East Coast Railway, At/Po/Ps-Jatni, Dist. Khurda.
4. Sr. Divisional Engineer (Coordination), Khurda Road Division, E.C.Railway, AT/Po/Ps-Jatni, Dist. Khurda.
5. Asst. Divisional Engineer, East Coast Railway, Bhubaneswar, At/Po-Ashok Nagar, Town-Bhubaneswar, Dist. Khurda.
6. Section Engineer (P.Way), E.Co.Railway, Barang, At/Po-Barang, Dist. Cuttack.

....Respondents

Advocate for Respondents: Mr. R.S.Bhera

O R D E R

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

Applicant is a Sr.Trolleyman presently posted as Head Trackman under S.E.(P.Way), E.Co.Railway, Barang.
His grievance is that while he was working as Sr. Trolleyman

he was posted as Sr. Trackman by an order dated 11.11.2000. He represented for his transfer back to the post of Sr. Trolleyman because persons, who were retained in the post of Sr. Trolleyman though juniors to him, meanwhile got promoted to the post of M.T. Driver w.e.f. 18.01.2006. Alleging non-consideration of his case for promotion to the post of M.T. Driver, and promotion of his juniors, he submitted representation. During the pendency of the said representation he approached this Tribunal in OA No. 203 of 2006. In order dated 07.03.2006, this Tribunal disposed of the aforesaid OA by directing the Respondents to take a decision on the pending representation of the applicant within a period of sixty days. As it appears, the Respondents rejected the representation and communicated the result thereof to the applicant vide letter under Annexure-A/10 dated 19.06.2009. Being aggrieved by the said order of rejection he has filed this second round of litigation praying to quash the order of rejection under Annexure-A/10 with further direction to repatriate the applicant to his parent unit as Sr.Trolleyman and promote him to Tech. M.T. Driver Gr.III with effect from the date his juniors were promoted to the said post from the post of Sr. Trolleyman.

2. Respondents filed their counter by stating that after being promoted the Applicant has been working as Sr.Trolleyman with effect from 15.02.1990. As the performance of the Applicant in the post Sr.Trolleyman was not upto the mark in the interest of public service, he was

taken to the post of Sr.Trackman without having any loss of seniority or pay. Besides the scale of pay of Sr.Trackman and Sr. Trolleyman is one and the same. They have also denied to have received any such representation dated 29.12.2000 of the Applicant. As regards the promotion, it has been stated that in order to fill up six numbers of Technical Motor Trolley Driver Grade III in Khurda Road Division out of the departmental promotion quota, notification was published inviting applications from eligible employees working in feeder grades. But the Applicant did not avail of the opportunity by making any application to be considered along with others. As such selection was conducted out of the applications received pursuant to the advertisement and accordingly the posts were filled up. Accordingly, the Respondents opposed the prayer of the Applicant.

3. Heard the rival submissions of the parties and perused the materials placed on record. Prima facie, it appears that this OA is not at all maintainable being hit by the provision that in one application there cannot be two different and distinct prayers; because in this OA the Applicant has made two prayers one for repatriation to his former post and the other one is for promotion. Both the prayers are different and distinct. Besides the above, none of the so called juniors have been made as party. Worst is the situation that the applicant sought direction for his promotion without making any application pursuant to the notification. It is also seen that the transfer of the applicant

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to the post of Sr. Trackman was without any loss of seniority or pay as both the posts carries the same scale and that the transfer or change of the post was necessitated in public interest due to the inability of the applicant to satisfactorily perform the duties attached to the post of Sr. Trolleyman. It is not the case of the applicant that such transfer and posting of the applicant to the post of Sr. Trolleyman was in any way adversial to him nor do we notice any such thing. The submission of the applicant that presuming that his application may not be entertained as he was working as Sr. Trackman he did not apply pursuant to the notification and as such, when his juniors were considered the case of applicant ought to have received due consideration. In law there is no question of presumption. The post was filled up by way of positive act of selection. Since the applicant did not respond to such notification he lost his right.

4. Viewed the matter from any angle, this OA is bound to be dismissed and is accordingly dismissed by leaving the parties to bear their own costs.

Thankappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Chakraborty

(C.R. MOHAPATRA)
MEMBER (ADMN.)

K.m.p.s