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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION Nos. 608 & 609 OF 2006
CUTTACK, THIS THE 10th DAY OF September, 2009

CORAM :

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

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Shri Jagannath Prasad Padhi, aged about 38 years, S/o-Late Pratap Ch. Padhi, At-Railway Colony, P.O./P.S.-Jatni, Dist-Khurda. Presently working as Guard under Khurda Road, Division of East Coast Railway.

...Applicant (In O.A.No. 608/06)

Shri P.K.Ransingh, aged about 42 years, S/o-Late Nabaghana Ransingh, of Vill/PO. Kudiary, P.S. -Jatni, Dist-Khurda. Presently working as Guard under Khurda Road, Division of East Coast Railway.

...Applicant (In O.A.No. 609/06)

By the Advocates

M/s. Bimbisar Dash, J. Dash, C.Patra.

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Rail Vihar, Bhubaneswar, Dist. Khurda.
2. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road. At/PO Jatni, Dist. Khurda.
3. Sr. Divisional Operation Manager, Khurda Road, East Coast Railway, At/PO Jatni, Dist. Khurda.

...Respondents

By the Advocates - Mr. P.C.Panda

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ORDER

Shri Justice K. Thankappan, Member (J)

Since both the applicants are similarly situated and have prayed for the same relief, arising out of a common cause of action, both the O As. are being dealt and disposed of by this common order. For the sake of convenience, the facts, as set out in O A. 608/06 are being discussed hereunder.

2. Applicant at present working as Guard under Khurda Road Division of East Coast Railway has moved this Tribunal seeking the following relief:

"A. The Original Application may be allowed.

B. The services of the applicant may be taken into account against the post of goods guard w.e.f. 1.1.94 and he may be given seniority accordingly.

C. The Respondents may be directed to allow the applicant to appear in the test for the post of passenger guard."

3. The applicant was appointed as Signaller in the year 1993 in the Operating Department and was promoted as Sr. Signaller in the year 1994. According to him, it was due to closure of the Operating Department, the applicant was declared surplus as per order dated 14.06.1995 and was redeployed as Guard in the corresponding scale of Sr. Signaller with effect from 1.1.94. While the matter stood thus, as per Annexure-A/2 dated 2.8.2006 in order to draw up a panel for



filling up of 33 vacancies of Passenger Guard in the scale of Rs. 5000-8000/- after conducting written test, a list containing the names of 93 candidates, who were coming within the zone of consideration was published. The applicant having not found his name amongst those eligible persons to take the examination made a representation dated 14.08.2006 (Annexure-A/4) requesting the authorities to include his name in the list of eligible candidates and to ask him for appearing at the test. This having not been responded, the applicants moved this Tribunal in the present O.As. seeking the relief as quoted above.

4. This matter came up on 24.08.2006 for admission, when this Tribunal while directing notice to the Respondents, issued an interim order to the effect that one post of Passenger Guard should not be filled up without the leave of the Tribunal.

5. It is the case of the applicant that persons at Sl. No. 36-93 in Annexure-A/2 having been appointed as Goods Guard much later than him, his name should have been found place in the eligibility list, he being senior to those candidates and in this respect, he has urged his service as Goods Guard should have been taken into account w.e.f. 1.1.1994. In this connection the applicant has based his claim on clause-V of Master Circular No.22 dealing with seniority of staff rendered surplus on redeployment.

6. Per contra, the Respondents by filing their counter have stated that on being declared surplus, the applicant was adjusted as

Goods Guard on ad hoc basis in the intervening period without passing A-2 medical category as well as Goods Guard training and as such he was not given seniority. They have stated that passing of medical examination A-2, and Goods Guards training are mandatory as the post of Goods Guard belongs to safety category and this is how the applicant was assigned seniority only after he was given the independent charge after completing all such formalities. In other words, they have stated that successful completion of goods guard training and passing A-2 medical category are the pre-requisite conditions for a guard to be absorbed and/or appointed.

7. Applicant has ^{also} ~~not~~ filed ^{any} rejoinder to the counter.

8. We have heard Mr. B. Dash, Ld. Counsel for the applicants and Mr. P.C. Panda, Ld. Counsel for the Respondents in both the O.As. and perused the materials on record. Having regard to the rival submissions, the point that emerged for consideration is whether the applicant has been given full seniority as envisaged in clause-V of Master Circular 22-Seniority of staff rendered surplus on redeployment. In order to determine the point in issue, it is worthwhile to throw light on the date(s) when exactly the applicant was declared surplus, passed A-2 medical category and successfully completed the Goods Guard training. Annexure-R/3 dated 4.3.1996 speaks as under

"The following staff of Signallers category have been utilised as Goods Guard in Scale Rs 1200-2040/- RPS w.e.f. 1906-95 as approved by the ADM/KUR on ad hoc basis against the existing vacancies

S/Sri

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|-------------------------|--------------------|-----|
| 1. B.S Mohanty, Sr Sigr | Rs 1200-2040/- RPS | KUR |
| 2. J.P. Padhy | " | " |
| 3. P.K. Ranasingh | " | " |
| 4. K.K. Behera | " | " |

The above signallers have been given local training for Goods Guard both theory and practical as per DOM/KUR's Note No. PL3/staff dt. 11.07.95. But they have not completed the necessary formalities for utilization/absorption as goods guard viz:-

- a) they have not been declared suitable for the post of Goods guard duly screened by the Selection Committee
- b) they have not passed the medical category in A-2.
- c) they have not undergone training for Goods guard at ZTC/SNY.
- d) they are yet to be declared surplus in the signaler category with due concurrence by the local accounts.

In fact signalers are becoming surplus day by day and they are to be redeployed in other categories. In view of existing vacancies of guards in this division the above staffs are being utilized as Goods guard w.e.f. 19.6.95 pending above formalities.

In view of the above you are requested to accord the post facto sanction for utilization of the above four signalers as Goods guard pending completion of above formalities."

From the above, it is clear that although both the applicants had been utilized as Goods guard w.e.f. 19.6.95 they were not declared surplus as on 4.3.1996 and in this background post facto approval of Chief Personnel Officer (P&T) for utilization of the

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applicants as Goods guard had been sought pending completion of necessary formalities. By Annexure-R/4 letter dated 11.03.1996, the Sr. Divisional Personnel Officer in the office of DRM(P)/KUR issued instruction to Sr. Divisional Operating Manager/KUR to stop utilization of the applicants as Goods guard in order to avoid legal complicity. However, the applicant, on being asked, had exercised his option for his redeployment as Office Clerk and Goods Guard in order of preference, as per Annexure-R/5 dated 7.1.97. As per Annexure-R/7 dated 29.8.97, the applicants have been declared fit for the post of Goods Guard on the basis of screening test held on 4.3.97. Thereafter, the applicants having been declared surplus and found fit for absorption as Goods Guard and having passed the medical category in A-2, had been directed to undergo initial training course for the post of Goods guard w.e.f. 15.10.97 (Annexure-R/8 dated 13.10.97) on the status of Sr. Signaller and on successful completion of training, the applicants, as per Annexure-A/3 dated 12.12.97 were redeployed and/or posted as Goods Guard with immediate effect. In this connection the seniority list of Goods Guard as on 1.11.02 (Annexure-A/5) reveals that both the applicants have been given seniority w.e.f. 17.02.1998 when they took over the independent duty as Goods Guard, being placed at Sl Nos. 137 and 138 respectively. It further reveals from the record that at no point of time the applicants have challenged their respective position as goods Guard in this

seniority list. In other words, they have accepted their positions as such. Having regard to the above, we hold that both the applicants were declared surplus as per Annexure-R/8 dated 13.10.97, wherein they have been declared fit for absorption as Goods Guard and having passed the medical examination in A-2 category they have been further directed to report the Principal, ZTC/SNY to undergo training course as Goods Guard for a period of 30 days commencing w.e.f. 15.10.97. Since the post of Goods Guard comes under the safety category, the training in that behalf is a precondition for appointment, promotion and absorption, as the case may be and it is inferred that the applicants, on completion of their training course took independent charge of the post of Goods Guard w.e.f. 17.2.1998, which has not been disputed. In the circumstances, we further hold that the application of the provisions in clause-V of Master Circular 22-"Seniority of staff rendered surplus on redeployment" has not been deviated by the Respondent-Railways in so far as the present applicants are concerned. The instances given and claim laid by the applicants that they should have been given seniority at par with their juniors, viz. S/Sri T.V.S.G.K. Sastry and B.S. Majhi redeployed as Sr. Clerks and subsequently promoted to Head Clerk in the scale of Rs. 5000-8000/- (RSPP) are of no help inasmuch as those two persons, even assuming them to be junior, borne on the cadre and hierarchy unlike the applicants and as per the hierarchical need might have

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availed promotion earlier. But, this cannot be a good ground to safeguard the interests of the applicants for all times at par with their junior, particularly when the redeployment of junior and senior is not on the same class, grade or category of posts.

9. For the foregoing discussions, we are not inclined to accede to the prayer of the applicants. In the circumstances, both the O.As. being devoid of merit are dismissed. No costs.

Sd/-
Member (A)

Sd/-
Member (T)