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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.398/2002

Cuttack, this the 21st day of June, 2004

CORAM:

**HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)
&
HON'BLE SHRI M.R. MOHANTY, MEMBER (J)**

K. Vijayan, S/o K. Nano, Painter Grade-III in the office of Chief Project Manager, S.E. Railway At/P.O. Chandrasekharpur, Bhubaneswar, Dist. Khurda.....Applicant.

By the Advocate(s) Mr. P. Jena.

-Vs-

1. Union of India, represented through the General Manager, S.E. Railways, Garden Reach, Calcutta.
2. The Chief Administrative Officer (Con), S.E. Railways, Chandrasekharpur, Bhubaneswar.
3. The Chief Project Manager, S.E. Railway, Chandrasekharpur, Bhubaneswar.....Respondent(s)

By the advocate(s) Mr. S. R. Patnaik.

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• R D E R (ORAL)

SHRI R.K. UPADHYAYA:

The applicant Shri K. Vijayan has filed this Original application under Section 19 of the Administrative Tribunals Act, 1985 claiming the following reliefs:

"In view of the above facts and grounds mentioned in para-4 and 5 above the applicant prays for the following relief(s):-

- A. The Hon'ble Tribunal be pleased to allow this application and pass necessary order/orders, direction/directions to promote the applicant to the higher grade from the date when his juniors have been promoted; and
- B. To pass any other relief/reliefs to which this applicant is entitled under law and equity; and
- C. To grant cost of litigation.

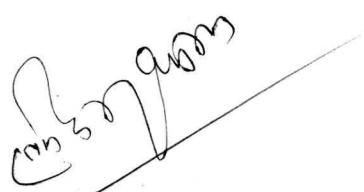
2. It is stated by the applicant that he was initially appointed as Casual Labour in the Construction Division of South Eastern Railway in the year 1966 and was regularised on 9.1.1989. While working in the Construction Division, he was given ad hoc promotion to the post of Painter Grade-III on 6.6.1983. In view of the order of this Tribunal dated 23.3.2000 in OA 260/1997, the applicant was promoted to the post of Painter Grade-III after passing the trade test as per order dated 9.1.2001 Annexure-2 w.e.f. 25.6.1997. The claim of the applicant is that his junior Shri P.C. Jena has been promoted from Technician Grade-III to Technician

Ch. R. K. Vijayan

Grade-II whereas the applicant is still working as Painter Grade-III and officiating on ad hoc basis as Painter Grade-II. The learned counsel invited our attention to Office Order dated 10.9.1993 Annexure-I to point out that the applicant was senior to Shri P.C. Jena. However, he subsequently stated that the said order was not a seniority list. It is only an order of regularisation of the employees w.e.f. 1.4.1973.

3. The respondents have opposed the prayer of the applicant and have filed a reply. It has been stated by the respondents that the applicant has been working on ad hoc measure against work charged post of Painter Grade-II as there is no regular PCR post of Painter Grade-II. It is further stated that the applicant has been regularised against a Painter PCR post in Grade-III category. The continuity of the applicant on ad hoc post of Painter Grade-II is wholly dependent on year to year budget sanction. This is not a regular post. Therefore, he cannot be regularised on this post.

4. The respondents have further stated that Shri P.C. Jena is a technician. He was called for the trade test of technician Grade-II. It is also stated by the respondents that the so-called juniors have been regularised as they pertained to the Regirdering Unit while the applicant is in the construction wing of the Project Organisation.



5. The applicant has not filed any rejoinder. However, the learned counsel of the applicant stated that casual labourers are given different types of work by the employer and it is not the fault of the applicant that he was put in Project Organisation whereas the junior was in another Organisation. He, therefore, urged that the benefits given to the juniors should be extended to the applicant also.

6. We have heard the learned counsel of the parties and have perused the material available on record.

7. The applicant has not placed on record any common seniority list of Grade-III. Office order dated 10.9.1993 is merely an order of regularisation in Group 'D' post w.e.f. 1.4.1973. Even from that Office Order, it appears that the date of birth of the applicant is 1.9.1949 whereas the date of birth of Shri P.C. Jena alleged Junior is 2.6.1944. Both of them are regularised on the same date. The common rule is that the person elder in age is treated as senior, but without going into this aspect of the case, it can be safely stated that the applicant belongs to Painter category in Project Organisation whereas the so-called ^{junior as} employee Shri P.C. Jena is technician in another Organisation, who is not dependent on sanction of the post from year to year as is the case in the case of the applicant. Since there is no common seniority list of Grade-III, it cannot be safely concluded that the applicant is senior to Shri P.C. Jena.

Ch. B. D. Joshi

For promotion to higher grades, seniority in feeder grade is the determining factor. Unless that can be shown, the entire grievance made out is without any basis.

8. Considering the facts of this case and for the reasons stated above, this application being devoid of merits is dismissed without any order as to costs.


Mohanty
21/06/04

(M.R. MOHANTY)
MEMBER (JUDICIAL)


Upadhyaya

(R.K. UPADHYAYA)
MEMBER (ADMN.)

'SRD'