IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 651&652 of 2006
Cuttack, this the 04th 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)

OA No.651 of 2006

Sri Gautam Kumar Singh, aged about 33 years, son of U.N.Singh, Village/Po.Unhad, Via-Ghanshyampur, Dist. Darbhanga, Bihar 847427.

..Applicants

By Advocate : M/s. G.A.R.Dora, G.R.Dora, J.K.Lenka

Versus

1. Union of India represented by its General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

2. Chief Personnel Officer, East Coast Railway, Bhubaneswar 23, Rail Vihar, Chandrasekharpur, Dist.Khurda.

3. Controller of Stores, East Coast Railway, Rail Vihar, Chandrasekharpur, Dist. Khurda.

4. Mrutunjaya Nanda.

5. Chandra Sekhar Sahu,

6. Sonaram Hembram

7. Haribar Sahu

8. M.K.Roy

9. J.Med Yunus

10. R.Soren

11. Raj Kumar Manda

12. R.N.Pradhan
Respondent Nos. 4 to 12 are working as Chasing Inspector, Stores Department, COS Office, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.

....Respondents

By Advocate :M/s.S.K.Ojha, A.K.Sahoo

OA No.652 of 2006

1. Jai Prakash Singh, aged about 28 years, son of Sri R.B.Singh, Village/PO-Alianj, Dist. Lucknolw, State-UP.

2. Jitendra Prasasd Jena, aged about 34 years, son of D. Jena, At-Bishok, PO. Jahanagar, Via. Chandol, Dist. Kendrapara.

3. Rajesh Sharma, aged about 27 years, son of Sahadev Sharma, Mansum Chhak, Kinsumtol, PO. Munsum Chak, Dist. Regusarai, Bihar-851128.

4. Aroop Faret, aged about 35 years, son of Parmananda Singh, Faret Nibash, New Morabadi, Ranchi, Jharkhand-834008.

5. Ramesh Bisi, aged about 33 years, son of D.Bisi, At-Daya Nibash, PO Sunari Tangarpali, Via I.B.Thermal, Dist. Jharsuguda.

6. Ambika Prasad Yadav, 43 years, son of Late Kartik Prasad Yadav, Village-Yogibageha, PO Bhalua, Via-Parapur, PS Sambhuganja, Dist. Banka, Bihar-813 221.

7. Pitabash Barik, aged about 43 years, son of Sri Kusha Prasad Barik, At/Po-Garasang, Via-Ada,PS-Simulia, Dist. Balasore-756 134.

8. Chandrakant Nayak, aged about 43 years, son of Sri Bishnuchandra Nayak, Village-Narasinghpur, PO-Talagop, Bindha, Via-Arnapal, PS-Tihidi, Dist. Bhadrak-756 116.

9. Brijendra Kumar Meena, aged about 35 years, son of L.K.Meena, Village Bairawanda, PO. Karety, Via. Rajgarh, Dist Alwar, Rajasthan, 302 113

10. Raj Kumar Choudhury, aged about 26 years, son of Babulal Choudhury, At/Po-Raghui, Dist. Nalanda, Bihar 803 113.

11. Basukinath Mukharjee, aged about 40 years, son of M.K.Mukherjee, Village/PO-Rishore, PS-Barharwa, Dist. Sakebganj, Jharkhand-816 101.

12. Aswani Kumar, aged about 33 years, son of Late Sri Ramdev Prasad Sinha, Moholla-Udantpuri Garhpar, PO-Bihar Sarif, Dist. Nalanda-803 101.

13. Pramod Kumar aged about 27 years, son of late Baleswar Sahani, Village/Po-Sakhmohan, PO-Bibhutipur, Dist. Samstipur, Bihar-848211.

14. Upendra Kumar Naik, aged about 30 years, son of Rabindranath Naik, Village-Kanjara, PO. Bimalbeda, Dist. Angul(Orissa).

15. Bhudipta Sekhar Mandal, aged about 27 years, son of S.S.Mandal, At 38/1/4, Mitrapara Road, PO. Barasat (Kolkata) 700124.

16. Subrat Kumar Nayak, aged about 30 years, C/o.B.N.Nayak, At Karthogoda (College Bpass), PO/Dist. Dhenkanal, Orissa.

All are working as Chasing Inspector Store Department (COS Office) East Coast Railway, Rail Vihar, Chandrasekhaprur, Bhubaneswar, Dist. Khurda.

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....Respondents

By Advocate :Mr.G.Singh.

O R D E R

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

Since common questions of facts and law are involved in these two cases, though we heard the matter one after the other, this common order is passed to govern both the cases.

2. While OA No.652 of 2006 was filed jointly by sixteen Applicants, OA No. 651 of 2006 was filed by one Applicant. All of them are working as Chasing Inspector Stores Department (COS Office), East Coast Railway, Rail Vihar, Chandraekharpur, Bhubaneswar, Dist. Khurda. In short about their grievance is that though they are senior to other private Respondents, they have been placed below the private respondents in the provisional seniority list of Chasing Inspectors, thereby while preparing the list for appearing at the selection for filling up of 4 UR and 1-SC vacancies of Purchase Assistant carrying the scale of pay of Rs.5500-9900/- (RSRP) in the Unit Purchase Cell cadre of Stores Department of East Coast Railway, they did not come within the zone of consideration because of wrong fixation of the seniority in the cadre of Chasing Inspector. According to them after being selected through RRB, they joined the post of Chasing Inspector prior to the date of joining of the private Respondents. But for no reason, the private Respondents, even without having the pre-requisite training, illegally have been placed above them. Their further case is that representations filed for rectification of the illegality in the matter of placing their names in the seniority list did not yield any result. They have approached

this Tribunal in the present Original Application filed U/s.19 of the A.T. Act, 1985 seeking the following reliefs:

> "i) Quash the revised seniority list and names calling to the test as per Annexure-11/A and 15/A;
> ii) To direct the Respondents 1 & 2 to fix the seniority of Applicants above Respondent Nos.4 to 12;
> iii) To direct Respondent No.1 to recommend the name of eligible chasing inspector after finalization of the seniority list to give notification for promotion examination as applicable to be considered for appointment of Purchase Assistant on the basis of seniority.
> iv) To pass such other order/orders as deemed fit and proper."

3. It is the case of the Respondents in their counter filed in both the cases separately that the seniority list of Chasing Inspectors was prepared in conformity with the seniority rules of DPQ and DRQ candidates prescribed in para 302 of Indian Railway Establishment Manual, 1989 Edition. However, candidates placed at Sl. Nos. 1 to 6 who joined the UPC cadre on the basis of options by foregoing their erstwhile venue are given the date of reckoning seniority w.e.f. 11.04.2006 i.e. the cut off date, as per para 301 of IREM (Vol.I) 1989 Ed. So far as Sl. Nos 7 to 9 are concerned, they have joined as Chasing Inspector Gr.III on passing selection from Sr. Clerks in UPC cadre on 23.05.2006 hence given the date of reckoning seniority w.e.f. 23.05.2006 i.e. the date of promotion as per Para 301 of IREM (Vol.I) 1989 Ed and Sl.Nos.10 to 26 who have

joined on successful completion of training and passing the final test are given seniority from the date(s) of joining in the working posts. However, an inadvertent error which crept while publishing their posting order irrespective of merit was subsequently rectified giving due regard to their merit position and chance of passing etc. The aforesaid facts and rule position has been indicated and intimated to the applicants while disposing of their representations. Therefore, no benefit can be extended to the applicants violating the clear rule position and at the cost of the interest of other employees. In the light of above, the Respondents opposed the prayer of the Applicants and have prayed for dismissal of OAs.

4. Heard rival submissions of the parties and perused the materials placed on record. Learned Counsel for the Applicant emphatically contended that the Applicants after being selected through RRB/BBS joined the department on 1.12.2005. After their joining, by order dated 30.11.2005, 15 candidates were directed to report for mandatory pre-appointment training with effect from 01.12.2005 and two other candidates w.e.f. 05.12.2005 and 26.12.2005 for a period of six months. After completion of their training applicants were directed to appear at a written

test examination on 3.6.2006 at COS office. All of them appeared at the written examination and their marks were declared on 12.06.2006. Out of 17 candidates eleven applicants were declared to have passed the training on 20.06.2006. Other six applicants were further directed to appear on 23.6.2006. The rest six applicants appeared at the test held on 23.6.2006 and were declared pass on 23.06.2006. Thereafter they were posted against working post of Chasing Inspector carrying the scale of pay of Rs.5000-8000/- on usual terms and conditions against the existing vacancies in stores HQS/BCO/BBS with the approval of the competent authority. As such they were entitled to count their seniority w.e.f. 1.12.2005 and not 23.6.2006. Their names were also arranged in accordance with the RRB merit list as a consequence thereof one Gautam Kumar Singh was placed at Sl. No.1. After the selection of private Respondents as Chasing Inspector they were not sent for the mandatory pre appointment training for six months in spite of the above and in spite of the fact that the private respondents were appointed after the applicants i.e. in between 11.4.2006 to 23.05.2006 they were placed above the applicants showing their initial appointment as 23.6.2006. By virtue of such wrong

placement of their names in the seniority list of Chasing Inspectors, they were deprived of coming within the zone of consideration for appearing at the test for selection to the posts in question. Accordingly, Learned Counsel for the Applicants sincerely prays for allowing the relief claimed in these OAs. On the other hand, Learned Counsel appearing for the Respondents vehemently opposed the contentions of the applicant by reiterating the stand in the counters and has stated that as the entire exercise was made by the Respondents in accordance with the Rules, there is hardly any scope for this Tribunal to interfere in the matter. In this connection by relying on Estt. Sl. No.301, Learned Standing Counsel appearing for the Respondents stated that the Applicants have no right to claim to appear at the selection test for the higher post of Purchase Assistant. Accordingly, Learned Standing counsel appearing for the Respondents prayed for dismissal of this OA.

5. No Rule could be cited to show that seniority of the Applicants shall be counted from the date(s) the applicants initially reported to duty after being selected through RRB. Rather it stands to reason that the seniority of the applicants would be reckoned from the date of joining after being successful in the pre-appointment training. This

was also the condition laid down in the order under Annexure-A/4 dated 30.11.2005 in which it was stated that candidates empanelled by RRB/BBS for the post of Chasing Inspector in scale of Rs.5000-8000/- on having reported will be sent for mandatory pre appointment training for six months and during which period they will be entitled to stipend. As such, the argument advanced by learned Counsel for the Applicant that the applicants were necessarily to be treated as Railway Employee with effect from the date(s) of their joining after being sponsored by the RRB/BBS cannot be countenanced either in Rules or law; especially when the order under Annexure-A/4 clearly envisages that during the training period the applicants would be entitled to **'no scale of pay'** but only "**stipend**". Whereas, Annexure-A/8 dated 16.04.2006 wuld go to show that some of the private Respondents were in the grade of Head Clerk carrying the scale of pay of Rs.5000-8000/- opted to come over as Chasing Inspector. Their option having been accepted they were treated as Chasing Inspector w.e.f. the cut off date. Similarly, some of the private Respondents who were continuing in the grade of Sr. Clerk having offered their willingness to become the Chasing Inspector and having been found suitable in the screening

test conducted by the Respondents were promoted to the post of Chasing Inspector. It is not in dispute that the joining of the Applicants after qualifying the pre appointment training was much after the persons named above the Applicants. It is also noticed that persons named at Sl.Nos.1 to 6 who have joined the UPC cadre on the basis of options by foregoing their erstwhile avenue are given the date of reckoning seniority w.e.f. 11.4.06 i.e. the cut off date as per para 301 of IREM (Vol.I) 1989. Sl.Nos. 7 to 9 who joined as Chasing Inspector, Gr.III on passing selection from Sr. Clerks in UPC cadre on 23.5.2006 are given the date of reckoning seniority w.e.f. 23.5.2006 i.e. the date of promotion as per para 301 of IREM (Vol.I) 1989 edition But Sl.Nos.10 to 26 who joined on successful completion of training and passing the final test are given seniority from the dates of joining the working posts which is much after the private Respondents. Since rule specifically provides reckoning seniority of the direct recruit employees after joining the working post on successful completion of the training, the private Respondents were assigned the date of seniority which is much after the dates of joining of the Applicants. This being a policy matter, and the Tribunal being not the Appellate Authority to sit over the said

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decision of the appropriate authority in the department, we see no infirmity in the decision of the Respondents in calling upon the eligible candidates coming within the zone of consideration for appearing at the selection for the post of Purchase Assistant.

6. For the discussions made above, we find no merit in any of the contentions of the Applicants. Accordingly both the OAs stand dismissed. No costs.

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Member (J)

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Member (A)

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