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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O A NO 517 of 2002
Cuttack, this the 14 day of August, 2004

Sri Prabhat Kumar Pradhan Applicant

Vrs

Union of India and others Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not? *✓*
2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *✓*


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO.517 OF 2002

Cuttack, this the 14th day of August, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

Sri Prabhat Kumar Pradhan, aged about 34 years, son of Sri Damodar Pradhan, at present residing At/PO Bara Banapur, via Kantiolo, Dist. Nayagarh

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Applicant

Vrs

- 1) Union of India, service through General Manager, S.E.Railway, Garden Reach, Kolkata 43.
- 2) Divisional Railway Manager, S.E.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.
- 3) Sr. Divisional Personnel Officer, S.E.Railway, P.O. Jatni, Dist. Khurda, PIN 752050.
- 6) Assistant Engineer, S.E.Railway, Bhubaneswar, Dist. Khurda

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Respondents.

Advocates for the applicant

- Mr. Achintya Das

Advocates for Respondents

- Mr. R. Ch. Rath, SC (Rly)

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Prabhat Kumar Pradhan, being aggrieved by his non-appointment as casual labourer by the Respondents, has filed this Original Application seeking a direction to be issued to the Respondents to offer him an appointment for which he was selected, empanelled and medically examined

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and also to fix his proforma seniority when the candidate junior to him in the panel was appointed.

2. The facts of the case are not disputed that the applicant was in the list of 609 successful candidates selected for appointment as Gangmen for monsoon patrolling during October, 1996. However, 159 candidates could not be engaged by 31.10.1996 due to all India postal strike. The applicant was, however, medically examined on 31.10.1996 and he reported to the Senior Divisional Personnel Officer for further posting order. But he could not get the posting order as his papers were reported to be misplaced. When he formally approached the Assistant Personnel Officer-III, Khurda Road, the said authority issued an order (Annexure A/3) that pending receipt of his application, he might be engaged as casual labourer. In spite of that he was not engaged. However, the case of engagement of 159 candidates, who could not be engaged earlier, was considered by the General Manager in February 1998 and the office of Sr. Divisional Personnel Officer, vide his letter dated 6.8.1999, asked the applicant to submit an affidavit declaring his date of physical test, date of interview and date of birth, after which his case was sent to police for verification which was completed by 5.2.2000. But in spite of all the formalities being completed, the applicant has not been offered any appointment.

3.. The Respondents in the counter, while admitting the facts of the case, have stated that the applicant could not be appointed as he did not report at the relevant point of time. They have also submitted that Courts and

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Tribunals cannot direct Government to make appointment. They have also drawn our attention to the order passed by this Tribunal in OA No. 555 of 1998 and 107 of 1999. They have also taken the ground that as the applicant was empanelled for engagement as casual labourer for monsoon patrolling in the year 1996 for a limited period of 119 days, this Original Application filed in the year 2002 is barred by limitation. It is also to be mentioned here that in the counter the Respondents have admitted repeatedly that the applicant could not be engaged due to misplacement of his original recruitment papers.

5. I have heard the learned counsel for the rival parties and have also perused the records placed before us.

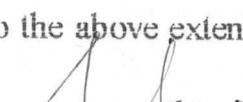
6. The facts of the case being not disputed and the Respondents having admitted that the applicant could not be given appointment because of administrative lapses, the applicant in this case deserves to get the relief that he has prayed for. I am also surprised to quote that though the Assistant Personnel Officer-III had given an order on 31.10.1996 that pending receipt of the original application form and other documents in respect of the applicant, he should be engaged, the applicant was not engaged and the reason for not carrying out the order of the Assistant Personnel Officer-III, dated 31.10.1996, having not been given either in the counter or during the oral argument, we have no doubt that the applicant was a victim of total injustice. Again when the General Manager allowed his representation in February 1998, his non-appointment therefore smacks of malice which has to be countenanced. It is true that we are bound by our own decisions, but our

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decisions in OA Nos. 555/98 and 107/99 was based on different facts and issues and therefore, those decisions have no application in this case. It is a case where due to a spate of administrative lapses, one candidate out of 609 candidates remained without job. If the Court will not intervene in this matter, it will seriously impair the sanctity of judicial system on which the people rely for fair-play and justice. Non-appointment of the applicant at the face of Annexure 3 is an instance of glaring inefficiency not necessarily without ill-motive and no Court can be a silent spectator to such a situation. This is one such case where Court can alone offer salvation. As the Respondents have admitted that the applicant could not be appointed along with similarly placed candidates numbering 158 due to administrative lapses and this happened in spite of order of the General Manager in his favour, I hereby direct the Respondents to appoint the applicant as casual labourer and if such an appointment is no longer available, as a Group D, following the same procedure which was followed for others who were appointed from the panel of 159 during the year 1998. I, however, pass no order regarding fixation of his seniority.

7. Accordingly, this O.A. succeeds to the above extent. No costs.


(B.N. SOM)
VICE-CHAIRMAN

An/ps