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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 886 OF 2002  
Cuttack this the 11th day of April 2005

Bishnu Ch. Nandi & Others ... Applicants

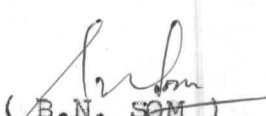
- Versus -

Union of India & Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 7<
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 7<

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 886 OF 2002  
Cuttack this the 11th day of April 2005

CORAM:

THE HON'BLE SHRI B.N.SOM? VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)  
...

1. Bishnu Ch. Nandi, aged about 38 years,  
S/o. Sadhu Charan Nandi, Village-Thakurapatna  
PO-Alabai, PS-Dalikuda, Dist-Jagatsinghpur  
at present working as Goods Driver under  
Chief Crue Controller, Titilagarh under  
S.E.Rly, Sambalpur
2. Bharat Chandra Mohanty, aged about 38 years  
S/o. H.M. Mohanta, Village-Nahara, PO-Mandabeuria  
PS-Jasipur, Dist-Mayurbhanj, at present working  
as Goods Driver under Chief Crue Controller  
Titilagarh under S.E.Rly, Sambalpur
3. G. Kereketta, aged about 39 years, S/o. Alfane  
Kereketta, At-Rupesera, PO/PS-Bagicha, Dist-  
Jaspur, at present working as Goods Driver,  
under Chief Crue Controller, Titilagarh  
under S.E.Rly, Sambalpur

...

Applicants

By the Advocates

M/s. D.R. Pattnayak  
M.K. Khuntia  
A.K. Routray  
S.R. Mohapatra  
N.S. Panda

- VERSUS -

1. Union of India represented by its General  
Manager, Garden Reach, S.E.Rly, Kolkatta,  
At/PO/Dist-Kolkata
2. Divisional Railway Manager, Sambalpur,  
At/PO/Dist-Sambalpur
3. Divisional Personnel Officer, S.E. Railway,  
Sambalpur, At/PO/Dist-Sambalpur
4. Sr. Divisional Mechanical Engineer, S.E.Rly.,  
Sambalpur, At/PO/Dist-Sambalpur
5. J.K. Mohant, C/o. DLR.M., Sambalpur - at  
present working as 'A' Grade Driver, Titilagarh,  
under S.E.Rly. Sambalpur
6. A.K. Barik, C/o. D.R.M., Sambalpur, at present  
working as 'A' Grade Driver, Titilagarh under  
S.E.Rly., Sambalpur

2

7. R.N.Sahu, C/o. D.R.M., Sambalpur  
at present working as 'A' Grade Driver,  
Titilagarh under S.E.Rly., Sambalpur
8. P.K.Pattanaik, C/o.D.R.M., Sambalpur  
at present working as Sr.Loco Inspector,  
Sambalpur, At/PO/Dist-Sambalpur
9. S.K.Padhi, C/o.D.R.M., Sambalpur  
at present working as Loco Inspector, Sambalpur  
At/PO/Dist-Sambalpur

... Respondents

By the Advocates

Mr.R.C.Rath,S.C.

- - - - -  
O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: This Original has been filed  
by Shri B.C.Nahdi and two others seeking the following  
reliefs :

- i) To direct the Opposite parties to  
give promotion to the applicants to  
against the post of Sr.Goods Driver  
or Passenger Driver from the date of  
juniors have been promoted.
- ii) To direct the opposite party to grant  
the all consequential and monetary  
benefits.
- iii) To direct the Respondents to allow the  
applicants to face the interview which  
is going to be held recently against  
the post of Sr.Goods Driver.

2. The grievance of the applicants as ventilated  
in this O.A. is that they have been deprived of promotion  
to the ~~Grade-A Driver~~. It is their case that they were  
working as Goods Driver in the Waltair Division under  
the Respondents-Railways when they were transferred to  
Sambalpur Division in administrative interest in the  
year 1998. By referring to letter dated 11/21.12.2001  
(Annexure-4) the applicants have submitted that their  
transfer was ordered on the condition that they would  
be entitled to get all the privileges 'as per existing  
rules', because, they had opted for transfer from

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Waltair Division to Sambalpur Division in pursuance of letter dated 2.7.1998 and 12.8.1998 vide Annexures-1 and 2, issued by the CPO/GRC, Calcutta and D.R.M./SBP Division, Sambalpur, respectively. The applicants have also submitted that their lien was retained in Waltair Division as the transfer was made in administrative interest. By referring to the gradation list under Annexure-5, issued by the Sambalpur Division vide their letter No.862 dated 17.4.2000, the applicants have submitted that whereas in the said gradation list they were placed at Sl.Nos.18,19 and 20 respectively, in another gradation list issued ~~there~~ after under Annexure-6 dated 13.5.2002, they were placed at Sl. Nos.67,68 and 69 respectively. Being aggrieved by this, they had submitted representation dated 20.5.2002 vide Annexure-7 to the competent authority, but without any positive result. They have further submitted that whereas their grievance was not redressed and they were not considered for promotion to the grade of Sr.Goods Driver/Passenger Driver, S/Shri J.K. Mohanta, A.K.Barik and R.C.Sahu, although juniors to them at Sambalpur Division, have been promoted as Grade A Driver by the order of D.R.M., Sambalpur. The applicants, have therefore, assailed the action of the Respondents as illegal and arbitrary.

3. The Respondents have resisted the application by filing their counter. The basic facts of the case, however, are not disputed. They have opposed the prayer

of the applicants on the ground that with effect from 12.2.1998, the authorities in Sambalpur Division had decided to repatriate all the Drivers ~~of~~ Waltair Division working in Sambalpur Division gradually in order to stop ~~tri~~-angular policy and that the repatriation of the Drivers to Waltair Division started from March, 2000 and was finally completed in the month of August, 2000. But the present applicants, who had given options for their retention in Sambalpur were retained and accordingly, their lien was transferred to Sambalpur on 21.12.2001 vide COP's letter dated 11/21.12.2001. Thus, from 21.12.2001, the applicants were included in the permanent cadre of Sambalpur Division and their seniority position was regulated accordingly. The Respondents have also clarified that before 21.12.2001, their seniority of the applicants were being maintained in Waltair Division, because, their lien was kept in that Division. On the other hand, Res. 6 to 8, who were in the cadre of Sambalpur Division, were initially promoted to the grade of Goods Driver (Rs.5000-8000/-) on 30.7.1998 and 18.1.1998 whereas the applicants were promoted to the post of Goods Driver (Rs.5000-8000) on regular measure with effect from 25.7.2001. In the circumstances, the said private Respondents are senior to the applicant. The Respondents have also submitted that the applicants cannot challenge the seniority of Res. 8 and 9, because, the grade and category of these Respondents

are different from those of the applicants, Res. 8 and 9 being promoted to Loco Inspector grade. It is in this backdrop that Res. 5 to 7 when called for selection to the grade of Passenger Drivers in January, 2000, the applicants were not called. The Respondents have, therefore, submitted that the O.A. is not maintainable in law and therefore, the same is liable to be dismissed.

4. We have heard the learned counsel for the parties and <sup>have</sup> also perused the records placed before us.

5. The issue raised in this application is whether the applicants having been transferred from parent Division to new Division in the administrative interest are entitled to protection of seniority of the parent cadre in the new Division/cadre.

6. Our attention has been drawn to the provisions laid down in Rule-311 of Indian Railway Establishment Manual (in short I.R.E.M.) Vol. I, which reads as follows:

"Seniority of railway servants on transfer from one cadre to the another in the interest of the administration is regulated by the date of promotion/date of appointment to the grade, as the case may be".

The stand taken by the Respondents to the reliefs sought by the applicants is that Res. 5 to 7 had been promoted to the grade of Goods Driver with effect from 30.7.1998 and 18.1.1998, whereas the applicants were promoted to that grade only with effect from 25.7.2001. The applicants, on the other hand, by referring to the conditions of option called



from the volunteers to move from Waltair Division to ~~to the provision in~~ Sambalpur Division ~~have drawn our notice/ that policy letter that the~~ seniority of the applicants in the Waltair Division would be taken into account while fixing their seniority in the new Division/Sambalpur Division. The applicants have pointed out that their turn for promotion to Goods Driver had arisen in the month of February, 1998 when by order dated 12.2.1998 issued by the Divisional Railway Manager (P), Waltair, they were granted adhoc promotion from the grade of Sr.Loco Shunter (Rs.4500-7000) to the grade of Goods Driver (Rs.5000-8000). Thereafter, the names of the applicants came within the zone of consideration for selection for filling up vacancies of Goods Driver on regular basis, in February, 2000. But because they were working at Sambalpur Division, they could not be trade-tested for promotion. This fact was notified by the Divisional Railway Manager(P) Branch, Waltair by his letter dated 30.3.2000. Further, it is found that the Divisional Railway Manager(P) by his letter dated 23.1.2001, while notifying the supplementary list of selected candidates for regular promotion to the grade of Goods Driver, vide Note.6 of the said order had stated that "S/Shri B.C.Mohanta, B.C.Nandhi and G.Kereketta, adhoc Goods Driver of Waltair have opted for their retention at <sup>SAP</sup> ~~BSP~~ Division. Hence, they did not appear for selection for regularising their adhoc Goods Driver Service". Further vide Note.3 of the said order (as referred to above) some of the officials, whose names

appeared under Pt-I were regularised as Goods Driver in the scale of Rs.5000-8000/- with effect from 30.3.2000, i.e., from the date of their juniors wereregularised/promoted as Goods Driver, since they could not be regularised along with their juniors due to administrative reasons. From the records, we further find that by issuing order dated 21.1.2002, the D.R.M.(P), Waltair vide Note-1 of the said order had notified that the applicants, while working as Goods Driver on ad hoc basis in SBP Division were called to appear for the test for the regularisation of their adhoc services, but they could not be spared from SPB Division to appear for the selection. It is because of this reason, they/applicants could not be regularised as Goods Driver. He, therefore, requested the authorities at SPB/Division that "selection may be conducted to regularise their services as Goods Driver". It was also mentioned in that notification that the applicants ~~were~~ entitled to all transfer privileges as the transfer to SBP/DIVISION was ordered in the interest of the administration. With these conditions/requests, the transfer of the applicants to SBP/Division was notified by terminating their liens.

7. Keeping the above facts in view and, in order to to arrive at a just conclusion, we had called upon the Respondents to produce the records pertaining to the seniority position of the applicants in their parent cadre organisation/Waltair before they were transferred to



Sambalpur Division and accordingly, the Respondents have produced the same for our perusal. On perusal of the records, we find that it was the Respondents/SBP Division, which had ordered extension of due service benefits to the applicants, to which they were entitled under Rule-311 of IREM(Vol.I) and also in terms of the policy decision of the Respondents, which was incorporated in the letter inviting options from the intending Goods Driver from Waltair Division. We are at a loss to understand the reasons which weighed with the Respondents in the SBP Division to dither on the matter and delay conferment of due benefits to the applicants for so long. It is not in doubt that the applicants would have been placed in the higher grade had they remained in Waltair Division. In other words, had they not opted to come to SBP Division, they would have got regular promotion to the grade of Goods Driver way back in 23.1.2001. Admittedly, they could not be spared by the SBP Division to appear in the selection test held by the Waltair Division, because of the administrative lapse. But for this reason, the applicants cannot be made to suffer. In the circumstances, by no stretch of imagination the applicants could be denied the benefits of their service including seniority/promotion to the higher grade in SBP Division - a benefit already granted by the rules framed in this regard by the Respondents-Department.

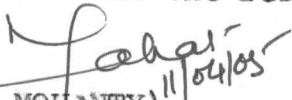
8. Having regard to the above facts and circumstances of the case, we allow the prayer of


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of the applicants. Accordingly, the Respondents are directed to offer notional seniority to the applicants as Goods Driver from the date(s) their juniors in the Waltair Division were regularised as Goods Driver and to give them further service benefits of such regularisation on their absorption in the SBP/Division.

Needless to say that the applicants on their regularisation will be entitled to further promotion to the next higher grade from the date(s) their juniors in the SBP Division were promoted, with all consequential financial benefits on actual basis.

9. In the result, the O.A. succeeds. No costs.

  
(M.R. MOHANTY) 11/04/05  
MEMBER (JUDICIAL)

  
( B.N. SOM )  
VICE-CHAIRMAN

BJY