

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 893 OF 2002
Cuttack, this the 2nd day of March, 2005

BISWAJIT MOHANTY.

APPLICANT.

-VERSUS-

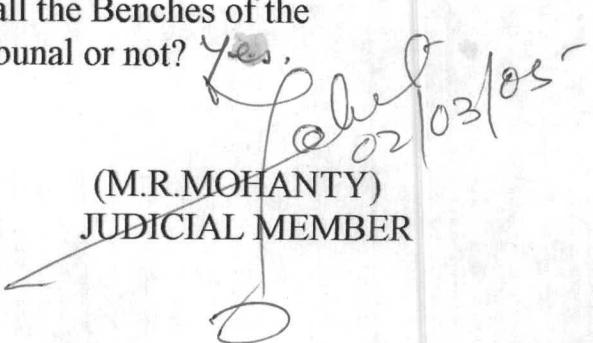
UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS.

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


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.893 OF 2002
Cuttack this the 2nd day of March, 2005

CORAM:-

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

Sri Biswajit Mohanty, aged about 29 years,
Son of late Bhaskar Mohanty,
working for gain as Commercial Tracer under P.O. cum
DY.CCM, S.E.Rly., Bhubaneswar
staying at Madhusudan Nagar, PO: Jatni, Dist-Khurda
APPLICANT.

By the Advocates: Mr.Achintya Das

..... Versus.....

1. Union of India through General Manager, S.E.Railway, Garden Reach, Kolkata-43
2. Member Staff, Railway Board, Rail Bhawan, New Delhi
3. Divisional Railway Manager, S.E.Railway, Khurda Road, PO Jatni, Dist-Khurda, PIN 752050
4. Additional Divl. Railway Manager, S.E.Railway, Khurda Road, PO-Jatni, Dist- Khurda, PIN 752050
5. Sr.Divisional Commercial Manager, S.E.Railway, PO Jatni, Dist.Khurda.

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6. Sr.Divisional Operations Manager,S.E.Railway,Khurda
Road,PO:Jatni,a Dist:Khurda.

By the Respondents : M/s. P.C.Panda, & P.Dutta,
Addl.Stading Counsel.

O R D E R

MR.MANORANJAN MOHANTY, JUDICIAL MEMBER:-

Applicant, Biswajit Mohanty is a Junior Booking Clerk of Commercial Department of East Coast Railways. Pursuant to the Circular dated 17.06.1998 (issued, by the Railway Authorities, for selection of Goods Guards in the pay scale of Rs. 4500-7000/- through Departmental Competitive Examination) the Applicant applied and appeared in the test (consisting of written and viva-voce) and was empanelled at Sl.No.42 along with 52 others. Out of such 52 empanelled candidates 50 candidates (who were medically examined) were sent to the Zonal Training Centre at Sini to take the training (of guard) vide Sr. DPO/KUR's Memo No.20/99 dated 12.04.1999 and another candidate (Shri S.K.Samantray) was sent for such training at Sini vide Sr. DPO/KUR's Memo dated 16.1.2001. But the Applicant

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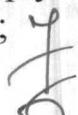
could not be sent for such training (along with others) as he was not spared (for medial examination) by his authority on the ground that there were shortage of staff (in the Commercial Control Office) at the relevant time. Thereafter, the Applicant, having been found suitable for promotion, was promoted to the post of Claims Tracer in the pay scale of Rs. 4000-6000/-, on 09.05.2001. Again, the Applicant sent for medical examination, on 21.05.2001, for grant of promotion to the post of Goods Guard, and he was declared fit under Aye two category. Thereafter, the Applicant made a representation, on 17.07.2001, with a prayer to send him for training (for the post of Goods Guard) and, even though favourable remarks were given by his immediate authority, he was not spared to go for such training. Subsequently, he made another representation (to the Additional Divisional Railway Manager at Khurda Road) on 24.09.2001 but, to his utter dismay, the said grievance of the Applicant was turned down in letter dated 27.09.2001 of the Sr.DPO/KUR addressed to the Sr. DCM/KUR (on the ground (a) that the life span of the panel of the said Goods Guard has already been expired w.e.f. 16.10.2000 and (b) that the Applicant has already been promoted to the post of Commercial Tracer. Having failed to get justice in the hands of his



higher authorities (after making representations dated 1/10/2001, under Annexure-II and dated 10.10.2001 under Annexure-A/12 to the D.R.M., Khurda Road and General Manager and Chief Personnel Officer, Kolkata-43) the Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the prayer (i) to quash the order dated 27.09.2001 and (ii) to direct the Respondents to send him for training and to promote him as Goods Guard from the date when his immediate junior (in the panel) was promoted as Goods Guard with notional fixation of pay.

2. The basic stand taken by the Respondents in their counter as against the pleas taken by the Applicant in his Original Application are as under:-

- (a) The Original Application is grossly barred by limitation; inasmuch as though the cause of action had arisen on 16.10.1998, this O.A. was filed only on 27/09/2002;
- (b) This Tribunal has no jurisdiction to entertain the Original Application;
- © Before sending for training (for promotion as Goods Guard) a candidate is to be declared fit in A/02 medical category; but the Applicant neither obtain the said certificate; nor apply the medical examination to Respondents 5/6;



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(d) Applicant, in the meantime, was promoted to the post of Claims Tracer; as a consequence of which he abandoned his claim for promotion to the post of Goods guard. Though he was sent for medical examination by the Sr.DCM/KUR on 21.05.2001 and passed the A/2 medical category, since there is no channel for promotion from Claim Tracer to the post of Goods Guard question, of his promotion as Goods guard does not arise; more so when the life span of the(Goods Guard) panel expired after two years as per the Rules of the Railways.

By stating so, the Respondents have opposed the prayers made by the Applicants in the Original Application.

3. We have heard Mr.Achintya Das, learned counsel appearing for the Applicant and Mr.P.C.Panda, learned Additional Standing Counsel, appearing for the Respondents/Railways and have taken note of the rejoinder and notes filed by learned counsel for both the sides.

4. Adverting the plea taken by the Respondents in the counter, the learned Counsel appearing for the Applicant has submitted that this Original Application, having been filed on 27.09.2002, challenging the impugned order passed by the Respondents under Anneuzxre-A/l0 dated 27.09.2001, can by no stretch of imagination be construed as hit by limitation under section 21 of the Administrative Tribunals Act,1985.

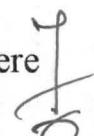
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5. As regards the jurisdiction of this Tribunal to entertain this O.A, it has been submitted by the learned counsel for the Applicant that this plea of the Respondents is totally baseless as the Applicant is a Railway Employee and seeks promotion under the Railways, the Tribunal has the jurisdiction.

6. With regard to Medical certificate, it has been argued by the learned counsel for the Applicant that the Respondents in order to cloth and cover up their inaction have made an attempt to shift the responsibility on the Applicant, as if he, of his own, was to be medically examined and obtained the certificate. It is the case of the Applicant that, under the rules, the Respondents are to send the Applicant for medical examination (with specific direction to the concerned Railway doctor to examine and furnish the report) and that the failure on the part of the Respondents to do so, is nothing but to intentionally deprive the Applicant of his promotion to the higher grade.

7. As regards the plea of validity of the panel, it has been argued by the learned counsel appearing for the Applicant that there being no time limit embodied in the Advertisement itself and even if had there



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been any time limit fixed in the Advt. at all, the same should stand valid till next panel is published. There being no such further panel prepared by the Railways (for promotion to the post of Goods Guard) as per the circular issued by the DOP&T, the panel, in question, is still in force.

8. Drawing our attention to the panel, it has been submitted by the Learned Counsel appearing for the Applicant that since officials ranked below to the Applicant, were sent for training and given promotion, the Applicant has an in-defeasible right to get promotion after undertaking the training. Lastly, it was argued by the learned counsel for the Applicant that since the Applicant could not be sent for medical examination and training, at the whims and caprice of the Respondents, he should not be made to suffer.

9. Per contra, it has been argued by the learned counsel appearing for the Respondents that as the Applicant could not obtain the necessary medical certificate, which was a mandatory requirement before one could be sent for training, he was rightly not sent. As regards the validity of the panel, it has been pointed out that, as per the rules, the life span of a panel lasts for two years and the DOP&T circular, as cited by the learned counsel for the Applicant is not applicable to the Railways. In the

said premises, learned counsel appearing for the Respondents prayed for dismissal of this O.A. being devoid of merit.

10. We have anxiously considered the rival submissions made by the parties. From the facts and submissions narrated above, the question for consideration is as to whether the Applicant was in fact not sent for medical examination due to the fault of the Department or at his own instance; and as to whether he having passed the medical test, at the instance of the Respondents, is entitled to be sent for training.

11. Before we proceed to answer the issues, as raised above, it would be proper if at the outset we deal with the point of maintainability of this O.A. as raised by the Respondents in their counter. It is not in dispute that the Applicant (vide Annexure-A/6 dated 21.5.2001) was directed to undergo the medical test and (vide Annexure-A/7 dated 24.5/2001 he was declared medically fit to undergo the training for Goods Guard. He having not been sent for the said training, he made representation on 17.7.01, which was rejected vide order dated 27.09.2001 under Annexure-A/10. The cause of action to approach the Tribunal having started from 27.09.2001 and the Applicant having approached the Tribunal on 27.09.2002, i.e. within one year, of the date of cause of action, after making an appeal, this application is within the period of limitation as provided

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under section 21 of the Administrative Tribunals, Act,1985 and, therefore, this Original Application is maintainable before this Tribunal.

12. Admittedly, the Applicant was empanelled for promotion to the grade of Goods Guard; being placed at Sl.No.42. It is also not in dispute that 50 officials empanelled along with the applicant were sent for medical examination and training excluding him. It is seen from the records produced by the Respondents that because of shortage of staff strength ,the Applicant could not be spared for medical examination and training, and later on, when he was spared for medical examination, he had, by virtue of his merit, availed one promotion to the grade of Claims Tracer carrying the scale of pay which is less than that of the Goods Guard; promotion to which grade is the subject matter of challenge. It is also the admitted position that the Applicant, having passed the medical examination, was on his way for being sent for training .

13. In the above back drop, the moot point for consideration is whether the applicant (having been promoted to the post of Claims Tracer) is also entitled to avail of promotion to the grade of Goods Guard ;in respect of which he was empanelled. Having considered this aspect of the matter we are of the view that even though the Applicant was willing to undergo the medical test but, as is evident from the materials available on record, for no

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fault of his and for the interest of the administration he was prevented to undergo such medical test and training and therefore, we are of the view that the Applicant cannot be made to suffer. Even if he was promoted by dint of his own merit, to the post of Claims Tracer, and even if the panel that was prepared no longer exists, the Respondents are under obligation to give a boost to the Applicant as his services were in -dispensable, apart from the fact that the Applicant does not want promotion from Claims Tracer to the post of Goods Guard. It also reveals from the notification as well as from the panel that there was no mention about the life span of the panel. This being the position the Respondents are bound to exhaust the existing panel until and unless a fresh panel is prepared, especially when the below ranking officials in the panel have been sent /provided with the benefits by depriving the claim of the Applicant. This view of ours gains support from the decision of the Hon'ble Supreme Court of India rendered in the case of PREM PRAKASH etc. vrs. UNION OF INDIA AND OTHERS (1984 (2) AISLJ376) ; NILESH MAJUMDER AND OTHERS vs. UNION OF INDIA AND OTHERS (2002(2)ATJ 556); and SUNIL KUMAR MANWANI vrs. THE UNION OF INDIA AND OTHERS (2002(3) ATJ 316). Thus, this is a fit case, where the intervention of the Tribunal is needed.

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14. Having regard to the facts and circumstances of the case as discussed above, we allow this case; hereby quash the impugned order dated 27.9.2001 under Annexure-A/10 and, consequentially direct the Respondents/Railways to send the Applicant for training and in the event of successful completion of the training, he should be promoted and/or appointed as Goods Guard, with effect from the date his immediate junior in the panel has been so promoted/appointed. We would make it clear that the post of Claims Tracer being not the feeder cadre for promotion to the post of Goods Guard, the Applicant pay should be fixed notionally in the post of Goods Guard from the date his juniors (in the panel) were promoted/appointed and grant him the actual financial benefits in the post; of Goods Guard prospectively. No costs.


(B.N. SOM)
VICE-CHAIRMAN


Taher
02/03/08
(M.R. MOHANTY)
JUDICIAL MEMBER