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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No. 204 of 2008

Cuttack, this the 21<sup>st</sup> day of March, 2011


Kanhu Charan Nayak .... Applicant

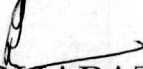
-v-

Union of India & Others .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench,  
Central Administrative Tribunal or not?

  
(A.K.PATNAIK)  
Member(Judl)

  
(C. R. MOHAPATRA)  
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A No. 204 of 2008  
Cuttack, this the ~~21~~ day of March, 2011

CORAM:  
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)  
AND  
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Shri Kanhu Charan Nayak, aged about 60 years, son of  
Kanduri Charan Nayak, retired Technician Grade-II,  
permanent resident of Village-Katapada, PO-Trilochanpur,  
Via-Delang, Dist. Puri.

By legal practitioner: M/s. <sup>B.S. Tripathy, M. K. Rath & J. Pati</sup> Applicant  
Counsel

-Versus-

1. Union of India represented through its General Manager,  
East Coast Railway, Rail Vihar, Chandrasekharpur,  
Bhubaneswar, Dist. Khurda.
2. The Chief Personnel Officer, East Coast Railway,  
Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. The Chief Workshop Manager, Carriage Repair Workshop,  
East Coast Railway, Mancheswar, PO-Mancheswar Railway  
Colony, Dist. Khurda.
4. The Workshop Personnel Officer, Carriage Repair  
Workshop, East Coast Railway, Mancheswar, Bhubaneswar,  
Dist. Khurda.
5. The Workshop Electrical Engineer, Carriage Repair  
Workshop, East Coast Railway, Mancheswar,  
PO.Mancheswar Railway Colony, Dist. Khurda.

....Respondents

By legal practitioner: Mr.S.SK.Ojha, SC

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

As it reveals from the record, challenging the action of  
the Respondents in not giving ad-hoc promotion based on his  
place and position appearing in the seniority list published by the

Respondents on 01-01-1988, Applicant approached this Tribunal in OA No. 479 of 1999. For the reasons recorded in the order dated 29-06-1999, this Bench of the Tribunal dismissed OA No. 479 of 1999. The Applicant challenged the said order before the Hon'ble High Court of Orissa in OJC No. 550 of 2000 with prayer to quash the order of this Tribunal and direct the Respondents to promote him after showing his name at the appropriate place in the seniority list dated 01-01-1988. The Hon'ble High Court of Orissa, on the specific request of the Applicant, without going to the merit of the matter, disposed of the matter on 11-09-2007 by granting liberty to the Applicant to make representation to the Respondent No.1 with further direction to the Respondent No.1 to consider and dispose of the said representation of the applicant within a period of two months. Accordingly, by making representation dated 21-10-2007 to the GM, BBS, he sought fixation of his seniority in the post of Skilled Gr.III w.e.f. 31.08.1984. According to the Applicant, his claim is well supported by the decision of this Tribunal dated 21<sup>st</sup> September, 2004 in OA No. 409 of 2001 filed by someone else. The representation of the Applicant did not yield any positive response. After retirement by filing this OA he seeks to quash the order under Annexure-A/7 dated 18.02.2008 and direct the Respondents to re-fix his seniority in Skilled Grade-III

w.e.f. 31.8.1984 as well as in the skilled Grade II w.e.f. 22.08.1987 i.e the date of his ad-hoc promotion to the said grades. He also seeks direction to the Respondents to grant him all consequential benefits arising out of such re-fixation of his seniority.

2. Respondents have raised no dispute in so far as the factual aspects stated above, are concerned. However, the Respondents have opposed the contention of the Applicant on the ground that once the prayer of applicant was held to be without any merit, rejection of the representation submitted after taking leave from the Hon'ble High Court of Orissa cannot give him a fresh cause of action. Hence accordingly, Respondents have prayed for dismissal of this OA.

3. The Applicant has also filed rejoinder more or less reiterating his stand taken in the OA.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at a considerable length, perused the materials placed on record including the order dated 29<sup>th</sup> June, 1999 in OA No. 479 of 1992 earlier filed by the Applicant.

5. In effect, in this Original Application the Applicant seeks change of his place and position in the gradation list published by the Respondents way back on 01-01-1988 on the basis

of the disposal of the representation under Annexure-A/6; although his prayer for such change of his position had already been rejected by this Tribunal which was not disturbed by the Hon'ble High Court of Orissa in the Writ Petition preferred by the Applicant against the said order of this Tribunal.

6. Law is well settled that when a direction is issued by a Court/Tribunal to consider or deal with the representation, unusually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgement of a jural relationship to give rise to a fresh cause of action [**C.Jacob v Director of Geology and Mining and Another**, AIR 2009 SC 264].

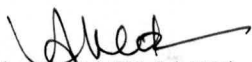
7. Also It is well established law that when seniority is challenged and persons who are claimed to be junior are not impleaded as parties ,no relief can be given without giving an opportunity to such persons claimed to be juniors -**Ranga Reddy vrs. State of AP**, 1987 SCC (L&S) 271, **J.S.Dhillon vrs. Unoin of India and others** (1989) 11 ATC 499; and **Prabodh Verma and others vrs. State of Uttar Pradesh and others**, AIR 1985 SC 167.

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This being the position, in absence of the parties who are likely to be affected in the event of any change of the position of the applicant in the seniority list, the applicant is not entitled to any of the relief claimed by him in this OA.

8. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more *res integra*. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the validity of the order after its conclusion.

9. On examination of the factual scenario of this case vi-a-vis the above cited law, we find no merit in this OA. This OA is accordingly dismissed. There shall be no order as to costs.

  
(A.K.PATNAIK)  
Member (Judl)

  
(C. R. MOHAPATRA)  
Member (Admn.)