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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A. No.357 of 2013

Cuttack, this the 20th day of June, 2013

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HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)

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Biranchi Narayan Mishra,
Aged about 36 years,
S/o. Debraj Mishra,
Balighata,
Po/Town/Dit. Puri,
Senior Clerk,
Under Divisional Personnel Officer,
East Coast Railway,
Sambalpur, At/Po/Dist. Sambalpur.

....Applicant

(Advocate(s):-M/s. B.S. Tripathy, M. Bhagat, J. Pati, M.K. Rath)

-Versus-

Union of India represented through –

1. General Manager,
East Coast Railway,
Rail Vihar,
At/Po. Chandrasekharpur,
Bhubaneswar,
Dist. Khurda.
2. The Divisional Railway Manager,
East Coast Railway,
Sambalpur Railway Division,
At/Po/Dist. Sambalpur.





3. The Divisional Personnel Officer,
East Coast Railway,
Sambalpur Railway Division,
At/Po/Dist.Sambalpur.

....Respondents

(Advocate(s)-Mr.T.Rath).

O R D E R

(Oral)

A.K. PATNAIK, MEMBER (J):

Heard Mr.B.S.Tripathy, Learned Counsel appearing for the Applicant and Mr.T.Rath, Learned Standing Counsel for the Railway on whom copy of this OA has been served and perused the records.

2. It is the case of the Applicant that he has been continuing in the post of Senior Clerk since nine years and being the senior most Sr.Clerk is eligible and entitled to be promoted to OS (as per merger grade introduced in 6th CPC). Further case of the Applicant is that after refusal of promotion by an UR employee one post in the grade of OS in UR category is available to be filled up. The Railway Board vide Estt.Srl. No.17/2013 dated 29.1.2013 reviewed the earlier order of promotion of merger grades and extend^{ed} the date upto

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31.3.2013 until further orders but his case was not considered. Next content^{ion} of the Applicant is that he has submitted representation against such non consideration but the same was rejected after which he has made an appeal to the Divisional Railway Manager, ECoRly, Sambalpur on 26.4.2013. But the Divisional Railway Manager, ECoRly, Sambalpur without considering his case in proper perspective rejected his appeal and intimated the same to the applicant in a cryptic order dated 30.4.2013 vide Annexure-A/7. Hence in the instant OA, the Applicant has prayed to the order dated 24.4.2013, 30.4.2013 under Annexures-A/5 & A/7 and to direct the Respondents to promote him to the post of OS as against the Departmental Promotion Quota.

3. On the other hand it was submitted by Mr. Rath, Learned Standing Counsel appearing for the Respondents that one cannot claim promotion as a matter of right and at best one can claim consideration for such promotion provided he/she is otherwise eligible as per Rules subject to availability of vacancy. After receipt of representation the matter was

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examined by the competent authority with reference to Rules.

Since the grounds taken by the applicant in support of his relief were found to be not in accordance with Rules the same was rejected and communicated to him which needs no interference.

4. Having considered the rival submissions of the parties, we have perused the records. It is true that if rule does not permit one cannot claim promotion as a matter of right not even consideration for such promotion. But an employee has a right to know the reason especially when the employee concerned has made an appeal alleging injustice was caused in the decision making process of the matter and the decision is against his interest; in other words the order must be a reasoned one meeting/answering all the points raised by the employee concerned. In this context we would like to place reliance on the observations of the Hon'ble Apex Court which are quoted herein below:

“giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.”

(State of West Bengal v. Atul Krishna Shaw & Anr., AIR 1990 SC 2205).

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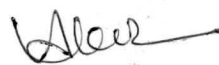
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It is not permissible to destroy any of the basic features of the Constitution even by any form of amendment, and therefore, it is beyond imagination that it can be eroded by the executive on its whims without any reason. The Constitution accords full faith and credit to the act done by the executive in exercise of its statutory powers, but they have a primary responsibility to serve the nation and enlighten the citizens to further strengthen a democratic State. Public administration is responsible for the effective implication of the rule of law and constitutional commands which effectuate fairly the objective standard set for adjudicating good administrative decisions. However, wherever the executive fails, the Courts come forward to strike down an order passed by them passionately and to remove arbitrariness and unreasonableness, for the reason, that the State by its illegal action becomes liable for forfeiting the full faith and credit trusted with it."

(Vide: Scheduled Castes and Scheduled Tribes officers Welfare Council v. State of U.P. & Ors., AIR 1997 SC 1451; and State of Punjab & Ors. v. G.S. Gill & Anr., AIR 1997 SC 2324).


5. In the instant case, the DRM, Sambalpur rejected the appeal of the applicant in order 30.4.2013 under Annexure-A/7 without disclosing the reason in support thereof in other words, the said order of the DRM is unreasoned which is contrary to the law laid down by the Hon'ble Apex Court, quoted above. It is trite law that if the order is *ab initio* ^{void} ~~is~~ from the beginning the same cannot be validated by the reason to be

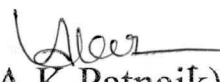


provided in the counter at subsequent stage. In view of the above, we find no justification to keep this matter pending by inviting the reply from the Respondents; especially when the said order is not valid in the eyes of law, as discussed above. Hence, without expressing any opinion on the merit of the matter, we quash the order dated 30.4.2013 under Annexure-A/7 and remit the matter back to the DRM, ECoRly, Sambalpur (Respondent No.2) to consider the appeal of the applicant afresh and communicate the result thereof in a well-reasoned order to the Applicant within a period of 60(sixty) days from the date of receipt of copy of this order.

6. In the result, with the aforesaid observation and direction this OA stands disposed of by leaving the parties to bear their own costs.

7. Registry is directed to send copy of this order along with OA to the Respondent No.2 for compliance at the cost of the Applicant for which Learned Counsel for the Applicant undertakes to furnish the required postal requisites by 22.06.2013.

(R.C.Misra) 
Member (Admn.)


(A.K.Patnaik)
Member(Judl.)