

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/746/2019

Date of Reserve: 03.02.2020
Date of Order: 13.03.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Janakar Patra, aged about 59 years, S/o. Late Banambar Patra, a permanent resident of At-Gadakan, PO-Mancheswar (RS), Bhubaneswar-17, Dist-Khurda, Senior Clerk in the office of the Workshop Personnel Officer, Mancheswar, Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda.

...Applicant
By the Advocate(s)-In Person

-VERSUS-

Union of India represented through:

1. The Chairman of Railway Board, Rail Bhavan, New Delhi, India-110 001.
2. General Manager, East Coast Railways, rail Sadan, Chandrasekharpur, Bhubaneswar-17, Khurda, Odisha-751 017.
3. Chief Vigilance Officer, Office of the General Manager (Vigilance), Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Khurda, Odisha-751 017.
4. Chief Personnel Officer, Rail Sadan, Chandrasekharpur, Bhubaneswar-751 017.
5. Chief Workshop Manager, Mancheswar Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
6. Workshop Personnel Officer, Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
7. Deputy Chief Electrical Engineer, Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
8. Arabinda Barik Office Superintendent, Personnel Branch, Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
9. Manoj Kanta Barisal, Office Superintendent, Personal Branch, Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
10. Gouranta Charan Rout, Office Superintendent, Personal Department, Carriage Repair Works, Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
11. Jyotshana Ray/Das, Office Superintendent, Personnel Branch, Carriage Repair Workshop, Mancheswar, PO-Mancheswar, Bhubaneswar, Dist-Khurda-751 017.
12. P.K.Routray, Office Superintendent under the office Chief Workshop Manager, CRW/Mancheswar, Bhubaneswar-17, Dist-Khurda-751 017.

...Respondents

By the Advocate(s)-Mr.T.Rath
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application, the applicant has sought for the following reliefs:

- i) To direct the respondents to antedate his promotion to the date when the respondent no.SI.No.8 (Arbind Barik) was promoted to the rank of Senior Clerk and Office Superintendent.
- ii) To direct the respondents to declare the applicant to be senior to the respondent SI.No.8(Arbind Barik) in the rank of Jr.Clerk & Senior Clerk and Office Superintendent.
- ii) To pass appropriate orders directing the Respondents-Railways to correct the seniority position of the applicant placing him above Respondent SI.No.8(Arbind Barik) and to extend all other service and consequential benefits, to which he is entitled; and
- iv) To quash the order dated 27.05.2013 to the extent it relates to the repatriating the applicant back to the Electrical Department.
- v) Consequently to quash the order dated 28.05.13 in relieving the applicant from Personnel Department.
- vi) To quash Annexure-17, 18, 19 the order dated 26.02.93, 09.06.13 & 27.07.93 (P.K.Routray + 13 Others).
- vii) To quash Annexure-20, 21, 22 the order dated 03.12.2001, 03.012.2001 & 24.05.2007 (M.K.Birisal & G.CV.Rout) & Smt.J.Dash & others).
- viii) Illegally giving promotion/salary to M.K.Barisa, G.C.Rout & Smt.J.Das/Ray & 4 others & P.K.Routray & 11 + 2 others. Proper action may be taken.
- ix) These three Jr.Clerk (Sri Barisal, Sri Rout and Smt.Ray) have not been qualified in selection test. Hence, these staff cannot work in the Personnel Department.
- x) To direct the Respondents to allow the petitioner to join and perform the duty as Sr.Clerk in the aforesaid office (WPO/CRW/MCS's Office) and permitted to

sign the attendance Register and continue in his previous post of Senior Clerk in the said office.

- xi) To direct the Respondents to pay the arrear salary/increment as well as current salary to the petitioner from 15.07.2015 to till date.
- xii) To direct the Respondents to allow Railway Medical facilities as the petitioner is high blood pressure and his wife high diabetes and asthma, taking insulin 3 times a day and his daughter also high blood pressure.
- xiii) To delete with effect from 01.01.1996 and was promoted to the post of Khalasi Helper on ad hoc basis and in place of 03.03.1981 the date 20.11.1984 may please be substituted Janakar Patra.
- xiv) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this OA with costs.

2. Shorn of unnecessary details, the facts in issue are that earlier the applicant had approached this Tribunal in O.A.No.260/00445 of 2013 seeking for the following reliefs:

- i) To direct the respondents to antedate his promotion to the date when the respondent nos. 5 to 8 were promoted to the rank of Senior Clerk and Office Superintendent.
- ii) To direct the respondents to treat the applicant to be belonging to the Personnel cadre of the Carriage Repair Workshop.
- iv) To quash the order dated 27.05.2013 to the extent it relates to the repatriating the applicant back to the electrical Department.
- v) Consequentially to quash the order dated 28.05.13 in relieving the applicant from Personnel Department.
- vi) To direct the respondents to give all service and financial benefits retrospectively.

3. However, during the course of hearing of the O.A., learned counsel appearing for the applicant confined the prayer as under:

"To direct the respondents to antedate his promotion to the date when the respondent nos. 5 to 8 were promoted to the rank of Senior Clerk and Office Superintendent".

4. This Tribunal vide order dated 27.11.2017 dismissed the said OA, the relevant part of which reads as follows:

"5. We have considered the rival submissions of the respective parties with reference to the pleadings and materials placed in support thereof. The prayer of the applicant in this O.A is to direct the respondents to antedate his promotion to the date when the respondent nos. 5 to 8 were promoted to the rank of Senior Clerk and Office Superintendent. From the pleadings it is clear that the Applicant belongs to Electrical Wing of the Railway. But the OA is conspicuously silent as to when the Opposite Parties were promoted to the post of Senior Clerk; especially when it is the specific stand of the Respondents in their counter that the promotion of the applicant to Senior Clerk was antedated to 08.03.2005 when his immediate junior in the Electrical Department was promoted to the post of Senior Clerk. It is not the case of the applicant that the promotion to the post of Senior Clerk or OS is like the promotion under Flexible Promotion Scheme under which irrespective of availability of vacancy in higher scale/grade one can automatically be promoted after acquiring the eligibility in the feeder grade/scale. Rather, as per the Rules, promotion is subject to acquiring eligibility and availability of vacancy. The applicant has sought direction to the respondents for ante dating his promotion in the grade of Senior Clerk without specifying the date or even challenging the order of promotion of his so called juniors.

6. Similarly, it is noteworthy that promotion to OS as per Rules is by way of positive act of selection. The applicant was continuing in the grade of Senior Clerk and was not promoted to OA after being qualified through positive act of selection as per Rules whereas, he has sought direction to the Respondents to antedate his promotion to OA which is absolutely vague and misconceived.

7. Another important aspect which needs to be emphasized is that this Bench while admitting the OA on 15.07.2017 has directed that pendency of the OA shall not stand as a bar on the respondents to give

consideration to the pending representation of the applicant. The representation of the applicant as it appears was rejected on 07.08.2013 (Annexure-R/5) which order, at least, if not earlier, the applicant must have noticed through the counter but has not sought to quash the same in the OA.

8. We are reminded by the decision of the Hon'ble Apex Court in the case of Abhyudyan Sanstha vs. Union of India & ors. reported in 2011 (4) Supreme 148 (Para-16) wherein it has been held by the Hon'ble Apex Court that those who attempts to pollute the stream of justice or who touches the pure function of justice with tainted hand by stating falsehood, misrepresentation and suppression of acts is not entitled to any relief.
9. Before parting with this order, we would like to keep on record how misconceived the applicant is about infringement of his right. In fact there is no infringement. In paragraph 8(v), the applicant seeks quashing of the order dated 28.05.2013 (Annexure-7) by which the Office of the Chief Workshop Manager, Mancheswar, has passed the impugned order directing release of the applicant from Personnel Branch on 28.05.2013 after working hours and further directed his posting as Sr.Clerk in Electrical Department against one vacant post of Mechanical Department temporarily transferred to Electrical Department in obedience to the order of the Hon'ble High Court of Orissa dated 01.05.2013 in contempt case No.1887/2012 (arising out of WP(C) No.8793/2004). So, once an order is passed in response to any direction of the Hon'ble High Court, this Tribunal is not competent to annul it or to make it sterile or infructuous, as it may amount to judicial indiscipline and infringe judicial decorum. Annexure-A/7, by which the applicant was transferred from Personnel Branch to Electrical Branch, cannot be questioned by this Tribunal. Needless to say that the applicant himself had initiated the contempt proceeding before the Hon'ble High Court for not transferring him to Electrical Department and retaining him in Personnel Department for which an order was passed. If the applicant was really aggrieved by such order, passed in response to the direction by the Hon'ble High Court of Orissa in contempt petition, he should have agitated the matter before the Hon'ble High Court instead of threshing such matter before this Tribunal as the Tribunal is not competent to scan the orders passed by the Hon'ble High Court, which power is only available to the Hon'ble Apex Court.

10. Next point that may arise for consideration is that why this Bench is regularly harping that the prayer of the applicant is evasive. This is due to the fact that through under Paragraph-8(iv), the applicant is seeking quashing of order dated 27.05.2013, there is no such order. The only impugned order available is dated 28.05.2013, which has been annexed under Annexure-A/7.
11. To conclude, since there is no basis of antedating promotion of the applicant at par with Respondent Nos. 5 to 8, the said prayer made in Paragraph-8(i) is emphatically denied as not tenable in law. We would have imposed heavy cost on the applicant for misusing the judicial forum but by way of judicial restraint, we refrain from doing so. In a nutshell, the applicant is not entitled to any relief. Hence ordered".

5. Aggrieved with this, the applicant approached the Hon'ble High Court of Orissa in W.P.(C) No.3394 of 2018 and the Hon'ble High Court vide order dated 09.08.2018 did not interfere with the order as passed by this Tribunal. However, the applicant filed a Review Petition No.202 of 2018 and the Hon'ble High Court vide order dated 30.08.2019 disposed of the same in the following terms:

"Heard learned counsel for the petitioner.

The review application has been filed by the petitioner to review the order dated 9.8.2019 passed in WP(C) No.3394 of 2018.

In the writ petition as there was no error apparent on the face of record as well as the order dated 27.11.2017 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A.No.260/00445 of 2013 this Court has not interfered with the same in exercising the jurisdiction under Article 227 of the Constitution of India.

In the review application petitioner has not made out a case of review rather he has introduced some new facts which are not advanced neither before the Tribunal nor when the writ petition was disposed of. Hence, we are not inclined to review the order. However, learned counsel for the petitioner seeks liberty to approach the Tribunal afresh. In

case cause of action still subsists, it is open for the petitioner to approach the Tribunal, if he is so advised".

6. In pursuance of the above order of the Hon'ble High Court, the applicant has filed the present OA seeking for the reliefs as quoted above.

7. On being noticed, the respondents have filed a preliminary counter-reply opposing the prayer of the applicant. It has been pointed out by the respondents that vide Memorandum dated 31.05.2016 the applicant has been compulsorily retired from service and therefore, he is no longer in service. They have therefore, submitted that under such circumstances, the question of promotion in Personnel Department has become infructuous. Respondents have also pointed out that the present OA is hit by the principle of res judicata.

8. Heard the applicant appearing in person and the learned counsel appearing on behalf of the respondent-railways on the question of admission and perused the records. Having regard to the checkered career and genesis of the matter as mentioned above, we are of the considered view that the points which the applicant in the present OA have now urged, have already been set at rest in the previous round of litigation in O.A.No.260/00445 of 2013 and as quoted above, the main relief sought by the applicant therein for direction to be issued to respondent-railways to antedate his promotion at par with Private Respondent Nos. 5 to 8 was held to be not tenable in law. This view of the Tribunal has also been upheld by the Hon'ble High Court in W.P.(C) No. 3394 of 2018. As it reveals, vide Paragraph-8(i), the applicant has again reiterated the same prayer in the present O.A. We have examined the relief(s) sought for by the applicant in the present OA vis-a-vis the orders of this Tribunal in O.A.No.260/00445 of 2013. The prayer for quashing of the

impugned orders vide Paragraphs-8(vi) and (vii) of the present OA cannot be entertained in the year 2019, the cause of action for challenging the same being hopelessly time barred. On a thorough scrutiny and examination of the materials on record, we are of the considered view that the OA as laid by the applicant is a frivolous one and hence, not justiciable, apart from the same being hit by the constructive res judicata. Accordingly, the same is dismissed at the very threshold. No costs.

9. Pending MAs, if any, are also disposed of accordingly.

(SWARUP KUMAR MISHA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)