

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 336 of 2015

**Present: Hon'ble Mr. Pradeep Kumar, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Bhagaban Jena, aged about 50 years, S/o Nakula Jena, Vehicle Driver Grade II, O/o CSTE/Con./E.Co.Rly./Chandrasekharpur, Bhubaneswar, at present working under COM/E.Co.Rly./Bhubaneswar, resident of Quarter No. D-35/S, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.

.....Applicant

VERSUS

1. Union of India, represented through the General manager, East Coast Railway, E.Co.R. Sadan, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
2. Chief Administrative Officer/Con./E.Co.Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
3. F.A. & C.A.O./Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. Sr.Personnel Officer/Con/Co-ordination/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda.
5. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 13.1.2021

Order on : 29.1.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(a) To declare the order of reversion dtd. 30.5.2001 under Ann. A/3 as non est in view of principle decided vide orders under Ann.A/4, A/5 & A/6.
- (b) And to quash the order of rejection dtd. 23.7.2015 under Ann. A/10;
- (c) And to restore the applicant in the post of Vehicle Driver Grade-I w.e.f. 30.5.2001 and pay the differential arrear salary.
And pass any other appropriate order as deems proper and fit in the interest of justice;
And for which act of your kindness the applicant as in duty bound shall every pray.”

2. The facts of the case in a nutshell are that the applicant was initially granted temporary status w.e.f. 30.6.1991 as a Driver Grade III in scale of

Rs.950-1500/-, promoted to the post of Driver Grade II vide office order dated 14.9.1992 and further promoted to the post of Driver Grade I in the scale of Rs.1320-2040/- vide office order dated 16.5.1997. On 13.11.2001 (Annexure A/2) respondent No.2 issued the order for review of ad hoc promotion and in the said order it was ordered that all second or more ad hoc promotion granted to the staff in violation of Railway Board's extant instructions on ad hoc promotion, should be terminated w.e.f. 1.12.2001. The applicant was reverted from the post of Vehicle Driver Gr.I in the scale of Rs.4500-07000/- to the post of Vehicle Driver Gr.II in the scale of Rs.4000-6000/- with immediate effect vide order dated 30.5.2001 (Annexure A/3). Being aggrieved by the order dated 13.11.2001 (Annexure A/2) some similarly situated persons approached this Tribunal in OA 509/2001 and OA 603/2001. This Tribunal vide order dated 21.3.2002 (Annexure A/4) quashed the order of reversion in respect of the applicants those who were PCR staff of construction organization for all purposes and consequential relief to be given to them within a period of three months. The respondents approached Hon'ble High Court in OJC No. 5477/2002 and 5459/2002, where vide order dated 2.3.2006 the writ petition was dismissed and the order passed by this Tribunal was confirmed. Another Vehicle Driver filed OA 595/2012 before this Tribunal and this Tribunal was pleased to dispose of the matter applying the principle decided by Hon'ble High Court in OJC No. 5477 & 5459 of 2002. The respondents have restored back the applicant in OA 595/2012 in his promotional post of Driver Gr.I. The applicant submitted representations in 2001 and 2002 for cancellation of his reversion order dated 30.5.2001 but since at that point of time the matter was sub judice before this Tribunal, nothing happened. The applicant again submitted two representations in 2008 and 2009 to recall the order of reversion and restore him in his promotional post of Driver Gr.I, but nothing happened. The applicant finally submitted representation dated 16.3.2015 (Annexure A/9) which was disposed of by the respondent No.4 on 23.7.2015 (Annexure A/10) rejecting the same. Being aggrieved with such rejection order, the applicant has filed the present OA.

3. The grounds taken by the applicant are that ad hoc promotions are permissible only in case of exigencies of service and should be ordered for a short duration against short term vacancies/leave vacancies, but allowing an employee to work for more than 5 years on ad hoc basis amounts to exploitation. This Tribunal as well as Hon'ble High Court vide their orders have made it clear that double ad hoc promotion granted to PCR employees of Construction organization is not illegal and have turned down the order dated 13.11.2001 and hence the order of reversion is liable to be quashed. Moreover the applicant has submitted that in other similar matters this Tribunal allowed the prayer and quashed the order of reversion and Hon'ble High Court has confirmed the order of this Tribunal. Therefore in applicant's case also the order of reversion is to be quashed. The applicant has relied on the following citations in support of his case :

- i) B.N.Nagarajan & Ors. -vs- State of Mysore & Ors. [AIR 1966 SC 1942]
- ii) Amritlal Beri -vs- Collector of Central Excise [AIR 1975 SCC 438]
- iii) K.I.Shepherd -vs- UOI [AIR 1988 SC 686]
- iv) Maharaja Krishna Bhatt & Anr. -vs- State of Jammu & Kashmir & Ors. [(2008) 2 SCC (L&S) 783]
- v) Uttaranchal Forest Rangers Assn. (Direct Recruit) -vs- State of UP [(2006) 10 SCC 346]
- vi) State of Karnataka -vs- C.Lalita [(2006) 2 SCC 752]

4. The respondents have filed their Counter stating that the applicant was initially appointed as Leave Reserve Casual Vehicle Driver on daily rate of pay w.e.f. 5.7.1990. He was granted consolidated wages w.e.f. 1.1.1991 on completion of 180 days' continuous service and temporary status w.e.f. 30.6.1991 on completion of 360 days' continuous service in the scale of Rs.950-1500/- vide order dated 16.7.1991. He was promoted as ad hoc Vehicle Driver Grade II in the scale of Rs.1200-1800/- w.e.f. 7.9.1992 and further promoted as ad hoc Vehicle Driver Grade I in the scale of Rs.1320-2040/- w.e.f. 16.5.1997. Later while continuing as ad hoc Vehicle Driver Grade I, the applicant was regularized against 60% Gr. D PCR (Permanent Construction Reserve) post in the scale of Rs.2550-3200/- w.e.f. 4.7.1993 in terms of order dated 8.11.2000. It is submitted that Railway Board vide letter dated 19.9.1985 (Annexure R/1), instructed that Railway administration should not make

double ad hoc promotions and that all possible steps should be taken to discourage ad hoc promotions and further that no second ad hoc promotion should be allowed. It was further instructed that if it becomes inescapable in exigencies of service to make ad hoc promotions against regular vacancies, only senior suitable staff should be appointed for which prior approval of CPO should invariably be obtained. Railway Board vide letter dated 9.6.1988 (Annexure R/2) further instructed that staff can be granted promotion to only one grade above their regular post in the parent cadre and in no case should any double ad hoc promotion be allowed. These instructions have also been emphasized in IREM at para 216A(1) where it has clearly been stipulated that ad hoc promotions should be avoided in both selection as well as non-selection posts and as a rule, a junior should not be promoted ignoring his senior unless the competent authority ordering the ad hoc promotion considers him unsuitable. It has also been stipulated that no second ad hoc promotion shall be allowed in any case. The respondents have further submitted that the claim of the applicant is hopelessly barred by limitation. The applicant was reverted back to ad hoc Vehicle Driver Gr.II w.e.f. 30.5.2001. In the meantime on account of such reversion, the applicant became eligible for two financial upgradations under MACP scheme on completion of 10 and 20 years of service which also included 50% of service after temporary status till regularization in PCR post together with regular service w.e.f. 4.7.1993. Thus having availed two financial upgradations in the Grade Pays of Rs.1900/- and Rs.2000/- w.e.f. 1.9.2008 and 2.7.2012 respectively, the applicant has directly or indirectly accepted and acted upon his reversion effected way back in 2001. Hence he cannot question his reversion after such a long time. The respondents have claimed dismissal of the present OA.

5. Learned counsel for the respondents have placed reliance on the following case laws in support of their case :

- i) B.N.Nagraj & Ors. -vs- State of Mysore & Ors. [AIR 1966 SC 1942]
- ii) Amritlal Beri & Ors. -vs- Collector of Central Excise, Central Revenue & Ors. [AIR 1975 SC 538]
- iii) K.C.Sharma & Ors. -vs- UOI & Ors. [(1997) 6 SCC 721]

- iv) Tukaram Kanha Joshi & Ors. -vs- Maharashtra Industrial Development Corporation & Ors. [(2013) 1 SCC 353]
- v) State of UP & Ors. -vs- Arvind Kumar Srivastava & Ors. [(2015) 1 SCC (L&S) 191]
- vi) L. Chandra Kumar -vs- UOI & Ors. [(1997) 3 SCC 261]
- vii) Order passed in WP(C) No. 15824/2008
- viii) Order passed in WP(C) No. 16986/2009

6. We have heard both the learned counsels through video conferencing and have gone through the pleadings on record and the citations relied upon by the learned counsels for both parties.

6. The applicant has relied upon the decision of Hon'ble High Court in OJC No. 5477/2002 and 5459/2002 wherein vide order dated 2.3.2006 wherein vide order dated 2.3.2006 the writ petition was dismissed and the order passed by this Tribunal quashing the order of reversion was confirmed. Learned counsel for the respondents has submitted that facts and circumstances of the said case are distinguishable and therefore not applicable to the facts and circumstances of the present case. Learned counsel for the respondents has submitted that in the reported case it was not brought to the notice of Hon'ble High Court that prior to issue of the letter dated 13.11.2001 (Annexure A/2) there was inbuilt provision in Rule 216A(1) of Indian Railways Establishment Manual, Volume-I, not to give second ad hoc promotion. Besides that the applicant in the present case has availed the benefits of two financial upgradations in his favour after his second ad hoc promotion was discontinued w.e.f. 30.5.2001. Therefore the applicant in the present case has approached this Tribunal in the year 2015 i.e. after a gap of 14 years. The silence for long 14 years cannot be overlooked. The said undue delay and the conduct of the applicant in remaining silent after getting the benefits of two financial upgradations in his favour, disentitles him to claim any relief in this case on the principle of estoppels and acquiescence. This Tribunal is also of the view that the applicant cannot approbate and reprobate at the same time. He cannot claim that he should continue in ad hoc promotion and simultaneously also get the financial upgradations. In the case of the applicant in OA 509/2001 (Annexure A/5), the employee had initially joined in the Open Line/General Line but in the present case the applicant was directly employed

in the Construction Line/Establishment. Similarly the facts and circumstances of OA 595/2012 (Annexure A/6) and the implementation order passed by the department in favour of another Driver dated 26.8.2014 cannot also be utilized in favour of the applicant since in the said case the applicant had not availed two financial upgradations and there was no delay pointed out. In the present case an undue delay of long 14 years and conduct of the applicant disentitles him to get any relief in the present OA.

6. Accordingly the OA stands dismissed. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

I.Nath