

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH  
CUTTACK

O. A. No. 90 of 1989 12

Present : Hon'ble Mr. K.P.Acharya, Vice-Chairman

Hon'ble Mr. J.C.Roy, Administrative Member

ALOK KONAR

VS

UNION OF INDIA & ORS

For the applicant : Mr. B. Mohanty, counsel

For the respondents : Mr. R.C.Rath, counsel

Heard on : .11.91 : Judgement on : 24.12.91

JUDGEMENT

J. C. Roy, A.M.:

In this application under section 19 of the Administrative Tribunals Act, 1985, the prayers of the applicant are for regularisation of his service with effect from 22.3.75, for counting his seniority from that date and for considering his promotion to Class III cadre on that basis and for consequential benefits arising out of his continuous service from 22.3.75. The respondents are the Union of India represented by the General Manager, South Eastern Railway and three officers subordinate to him. The application was filed on 22.2.89.

2. In brief the facts of the case are that the applicant was appointed by an order dated 22.3.75 issued by the Divisional Personnel Officer, Khurda Road, S.E.Railway (Annexure-A1) as a substitute JJE Porter in the scale of Rs. 195-232/- purely on a stop gap measure for the period upto 30.4.75. Eleven other persons were also appointed by the said order. The applicant joined on 22.3.75, and worked there upto 14.4.75. He could not complete the

entire period upto 30.4.75 because it is stated by the Railway that it was found during this time that his father Shri R.Konar, who was a railway employee, participated in the agitation of May 1974 and was detained under MISA. Therefore, the first engagement of the applicant as a Substitute Porter was terminated within one month of his appointment. The applicant had been representing against this termination and was trying for further appointment. He also represented through several political personalaties like MPs and MLAs etc. At one stage he was considered for recruitment in relaxation of the rules in Class IV against the quota reserved for outstanding sportsmen. He claims that during the period 1976 to 1980, eight persons as enumerated in para 4.6 of his application, were recruited in the railway against this sports quota. But although he was recommended for such appointment, he was not given any appointment till 1982 by an order of the Divisional Personnel Officer, Khurda Road, S.E. Rly dated 3/9.8.82 (Annexure-A6). However, the applicant was re-appointed for utilisation of his service as substitute TTE Porter again. He joined this post in December 1982 and has been continuing as a substitute Porter as and when he could be appointed. After joining also he has been representing to the railway authorities for counting his casual service from the first date of his appointment in March 1975 onwards. He did not receive any reply to his such representation. But he has produced some internal notings and instructions of May 1986 from which it would appear that his case was considered by the railway authorities but they did not find any merit in his prayer. The applicant's grievance is that if he was allowed to continue as a substitute Porter from 22.3.75 he would become eligible for not only confirmation as a Class IV staff but also would have been eligible for promotion to Class III grade. The ground taken

is that many amongst the eleven persons who were appointed by Annexure-Al along with him are now working in Class III. His second grievance is that although he had been representing for appointment against sports quota and although eight persons mentioned in para 4.6 of his application were appointed against such sports quota between 1976 and 1980, his case was not considered. Therefore, this application with the aforesaid prayers. It is pointed out again that the applicant has not aligned any of the persons mentioned either in Annexure-Al or in para 4.6 of his application as respondents.

3. On the side of the railways, a written reply was filed in which it has been explained that during the year 1975 the authorities of Khurda Road division decided to form a divisional squad with extra TTE Porter for conducting camp courts in that division. Accordingly, temporary labour requisition for a limited period from 21.3.75 to 30.4.75 was sanctioned. The applicant was one of the substitute porters appointed against this sanction. It is a fact that the approval to the applicant's working as a substitute was withdrawn because it was later discovered that his father was himself arrested under MISA during the railway agitation in May 1974. But the fact remains that the applicant could work only for 21 days as a substitute porter. Therefore, he did not acquire any right either for continuing as a substitute porter or for subsequent regularisation. On the other hand, the other 11 persons appointed as substitute in Annexure-Al continued from time to time and in course of time became eligible for screening test and subsequent absorption. On the question of his appointment against sports quota, it has been admitted that he was considered for such appointment but the Selection Board did not find him suitable for such appointment. The Divisional Personnel Officer, Khurda Road, S.E. Rly, by his letter dated 2.7.83 (Annexure-R2) informed the applicant of this position. The railways have strongly opposed the application on the ground of limitation and also

on the ground of non-joinder of necessary parties.

4. We heard Mr. B. Mohanty, learned advocate on behalf of the applicant and Mr. R.C. Rath, learned advocate on behalf of the S.E.Railway and have gone through the records of this case.

5. The first point that arises is the question of limitation. The approval of the applicant's appointment as a substitute JEE Porter was withdrawn before he could complete the period upto 30.4.75 in April 1975. In fact, he was not given any work of substitute porter after 14.4.75. If others were given work after this date, it may be stated that the cause of action of the applicant arose in 1975. If the applicant's prayers are considered, it will definitely prejudice others who were appointed initially along with him by the letter dated 22.3.75 (Annexure-Al) and were allowed to continue and became permanent or even got promotion by the time the application was filed. In so far as the grievance of the applicant regarding non-absorption in the sports quota is concerned, it has not been contradicted that he got a final reply on 2.7.83 (Annexure-R2). On this ground also the limitation would run from July 1983. The application was filed in February 1989 without giving any reason whatsoever why this delay occurred. We have to remember that law of limitation gives valuable rights to the opposite party and limitation cannot be waived lightly particularly when it may prejudice others who are not before us.

6. The railway respondents' second contention is also equally important. As already been mentioned, if the application is allowed not only those who were initially appointed as substitute Porter along with the applicant by Annexure-Al will be prejudiced but also some of the persons mentioned in para 4.6 of the application, who are reported to have been appointed against sports quota during the years 1976 and 1980 maybe affected. The applicant has not chosen to align any of them and we feel that we cannot pass any order which is most likely to affect the rights and interests of these persons without giving them an opportunity of hearing.

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7. Even apart from this serious lacuna of the application, on merit also we do not find any infirmity or illegality in the railway's decision not to count his service from 22.3.75. For whatever reasons, he only rendered 21 days service as a substitute, although he was ~~given~~ given a scale of pay by an order which clearly states that the arrangement was purely stop gap and the arrangement was to last only upto 30.4.75. It is a fact that after the lapse of 7 years by the order dated 3/9.8.82 (Annexure-A6) he was re-appointed for utilisation of his service as substitute TTE Porter. The word 're-appointed' only confers on him the right to count his previous service, if it is on the same scale or an identical scale, for the purpose of increment only. We, therefore, are unable to accept the contention of the learned counsel for the applicant that the word 're-appointed' gives him a right to count his past service for all purposes. The question could have been considered if the first appointment was ~~and~~ regular and continuous basis. Admittedly, his first appointment was expressly a stop gap appointment for a limited period. Therefore, the question of counting the past service on the strength of the word 're-appointed' cannot be considered in this case. The rules for acquiring temporary status, screening for the purpose of regularisation in Class IV are well codified in the Railways and find place in the IREM. In our opinion, even from the point of view of natural justice, the applicant cannot claim continuity of service and thereby seniority on the basis of 21 days officiating service rendered ~~five~~ <sup>seven</sup> years back.

8. In view of what has been stated above, the application fails on the ground of limitation as well as on merit also. We, therefore, dismiss the application without making any order as to costs.

*K. P. Acharya*  
( K. P. ACHARYA )

VICE- CHAIRMAN



*J. C. Roy*  
J. C. ROY  
MEMBER (A)