

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 190 of 1990

Date of decision: February 23, 1993.

E.K.S. Nair ... Petitioner

Versus

Union of India and others ... Opp. Parties.

For the Applicant ... Mr. G.A.R. Dora, Advocate.

For the Opp. Parties. ... Mr. L. Mohapatra, Standing Counsel (Railway).

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C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
A N D
THE HONOURABLE MR. C.S. PANDEY, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not?
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA,V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the prayer of the petitioner are as follows:

- (a) Quash Gr.I posting Order in Annexure-A/6.
- (b) Declare that the applicant shall be deemed to be continuing as CPWI with consequential benefits.
- (c) Direct the Respondents to count applicant's seniority in the post of CPWI from 7.5.1986 the date on which he assumed the charge of CPWI because of subsequent regularisation after passing the suitability test.
- (d) Issue any other appropriate relief in favour of the applicant justified under the circumstances.

2. Shortly stated the case of the petitioner is that initially the petitioner joined the South Eastern Railway as an apprentice Asst. Permanent Way Inspector (A.P.W.I.) on 5th February, 1963, and regularisation of the services of the petitioner as Assistant Permanent Way Inspector (APWI) was made effective with effect from February, 1964. In course of time, the petitioner was promoted to the post of Grade I Permanent Way Inspector. While the matter stood thus, a vacancy occurred in the post of Chief Permanent Way Inspector (C.P.W.I.) at Cuttack. By order dated 18th April, 1986, vide Annexure-I, the petitioner was directed to work as Chief Permanent Way Inspector at Cuttack till a regular Chief Permanent Way Inspector was posted and in compliance with the said order, the Petitioner discharged duties of the Chief Permanent Way Inspector at Cuttack with effect from 7th May, 1986 and after the petitioner appeared ^{with in} suitability test for

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the post of C.P.W.I., he was found to be suitable. The services of the petitioner as C.P.W.I. was regularised as per order dated 1st February, 1989 Vide Annexure-3. The Petitioner not having ^{been} paid the salary of C.P.W.I. from 7.5.1986, the petitioner invoked the jurisdiction of this Tribunal for a declaration that the petitioner was entitled to pay scale of the Chief Permanent Way Inspector and this formed subject matter of Original Application No.64 of 1989. By judgment dated 19th December, 1989, passed in Original Application No.64 of 1989, this Bench directed the Opposite Parties to pay ^{to the petitioner} the salary of C.P.W.I. from the date he assumed charge. The Judgment not having been readily complied, the petitioner made certain representations which is said to have caused anger to Opposite Party No.2 resulting in the order dated 9th May, 1990 contained in Annexure 6 posting the petitioner as Grade I Permanent Way Inspector. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that though the Promotional order has been issued yet it could not be given effect to because the Departmental enquiry was pending and therefore no illegality has been committed in regard to issuance of the posting of the petitioner as a Permanent Way Inspector. Finally it was maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G.A.R.Dora learned counsel for the petitioner and Mr. L.Mohapatra learned Standing Counsel (Railways) for the Opposite Parties. Before we discuss, the merits of the case, it is worthwhile to

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mention that vide order dated 25th May, 1990, this Bench had stayed operation of the order contained in Annexure 6 and therefore, it is presumed that the Petitioner is now working as the Chief Permanent Way Inspector.

5. From the above mentioned statement of fact the admitted position is that the promotion order vide Annexure 3 dated 1st February, 1989 was passed by the Chief Personnel Officer promoting the petitioner Shri E.K. S. Nair to the post of Chief Permanent Way Inspector in the scale of Rs. 2375-3500/-. Further admitted position is that Vide Annexure 6 dated 9th May, 1990, the Senior Divisional Personnel Officer, Khurda Road had ordered posting of the petitioner as Permanent Way Inspector, Grade I which amounts to reversion. The only question now remains to be considered and in respect of which, the Bench should address itself as to whether Annexure 6 is legally sustainable and in case it is so, the application is bound to be dismissed otherwise it is bound to be allowed. The plea taken in the counter is that since a Disciplinary proceeding was pending against the petitioner, he was not given promotion. This is stated in paragraph 7 of the counter. This assertion on behalf of the Opposite Parties is very vague. In case a disciplinary enquiry was pending at the time when the promotional order was passed, then it was incumbent upon the opposite parties to specifically mention the date on which the chargesheet was delivered and whether the allegations, if any levelled, against the petitioner, pertains to the relevant period or it related to a

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period after the promotional order was passed. In case the details should have been furnished the Bench could have been in a position to come to a conclusion as to whether actually a disciplinary proceeding was pending, keeping in view the law laid down by the Full Bench in the case of K.Ch. Venkata Reddy and others Vs. Union of India and others reported in 1987 (3) Service Law Journal 117 (CAT) and confirmed by the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman reported in AIR 1991 SC 2010 that the date of delivery of the chargesheet is the deemed date of initiation of the disciplinary proceeding. In the absence of these details and the vague manner in which the above mentioned averment finds place in the counter, we are not prepared to accept the fact that a disciplinary proceeding was pending against the petitioner on the date on which the promotional order was passed. In case a disciplinary proceeding was pending against the petitioner, then according to the dictum laid down by the Hon'ble Supreme Court in the case of Janakiraman (supra) and the full Bench judgment in Venkat Reddy case (supra) sealed cover procedure should have been adopted instead of ordering promotion of the petitioner. Therefore, ^{one} ~~one~~ can safely presume that on the date on which the promotional order was passed no proceeding was pending against the petitioner. Vide Annexure A/1 dated 21st April, 1980, the petitioner was directed to take over charge of the post of CPWI from Shri J.K. Sen till a regular CPWI is posted. Vide Annexure 2 which is a Memorandum dated 13th January, 1989 issued by the Chief Personnel Officer, it is stated that the petitioner had been declared as suitable for promotion to the post of CPWI.

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Vide Annexure 3 dated 1st February, 1989, the petitioner was given promotion to the post of CPWI. Reversion contained in Annexure 6 was passed on 9.5.1990. One can also presume that the disciplinary proceeding if any was not pending against the petitioner from 21.4.1986 to 1st February, 1989. Had there been any disciplinary proceeding against the petitioner during this period then he would not have been allowed to hold the post of CPWI as contained in Annexure-1. He would not have been allowed to continue in the post as late as May, 1990. According to the petitioner he having approached this Bench in Original Application No. 64 of 1989 with a prayer that his emoluments as CPWI should be given to him and this having been allowed in favour of the petitioner out of wrath and anger the petitioner had been reverted. The judgment in Original Application No. 64 of 1989 was passed in December, 1989 and at the cost of repetition it may be stated that the reversion order Annexure 6 is just five months after the judgment was pronounced. By this we do not mean to say or pass any adverse comment against the Opposite Party No. 2 but these facts cannot go unnoticed especially in the absence of details having been furnished in regard to the date of delivery of the charchheet if any. The Promotional order was passed by the Chief Personnel Officer. The reversion order was passed by the Senior Divisional Personnel officer who is undoubtedly subordinate to the Chief Personnel Officer. Of course in Annexure 6 it is stated that with the approval of the

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competent authority the promotion/transfer and posting are ordered. Even though it is not known as to who was the competent authority from whom approval was taken, presuming that such approval was taken from the Chief Personnel officer no reasons have been assigned in Annexure 6 as to whether this reversion order has been passed due to pendency of the disciplinary proceeding. The cumulative effect of all the facts and circumstances stated above, drives us to an irresistible conclusion that Annexure 6 is not sustainable. Hence it is hereby quashed, and it is directed that promotional order passed on 1st February, 1989 contained in Annexure 3 promoting the petitioner to the post of Chief Permanent Way Inspector remains valid and effective and it is deemed that the petitioner is promoted to the post of CPWI on officiating basis with effect from 1st February, 1989, and is continuing as such.

6. As regards prayer of the petitioner to direct the Opposite Parties to count the services of the petitioner with effect from 7th May, 1986 in regard to his seniority, position, the petitioner is at liberty to file an application before the competent authority laying his claim and the competent authority would pass necessary orders according to law.

7. Thus, the application stands partly allowed leaving the parties to bear their own costs.

K. Mohanty
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MEMBER (ADMINISTRATIVE)

Central Admn. Tribunal,
Cuttack Bench/K. Mohanty
23.2.93



K. Mohanty
23.2.93
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VICE CHAIRMAN