

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No.364 of 1991

Cuttack this the 3rd day of April, 1995

N. Nayak ... Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *m*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? *m*

H. Rajendra Prasad
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

D. P. Hiremath
(D. P. HIREMATH)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No.364 of 1991

Cuttack this the 3rd day of April, 1995

C O R A M:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

...

Nabaghan Nayak
S/o. Jagabandhu Nayak
Tracer, J & T. Drawing Office
Office of the Chief Workshop Manager,
Carriage Repair Workshop
S.E. Railway, Mancheswar, PO/
Bhubaneswar-5: District: Khurda

... Applicant

By the Advocate: Mr. G. A. R. Dora

1. Union of India through the
General Manager, S.E. Railway,
Garden Reach, Calcutta-43

2. Chief Workshop Manager,
Carriage Repair Workshop,
W.E. Railway Mancheswar
PO: Bhubaneswar-5
District: Puri

... Respondents

By the Advocate: Shri D.N. Mishra,
Standing Counsel (Railway)

...

O R D E R

D.P. HIREMATH, VICE-CHAIRMAN: The applicant, who joined service as a Fitter Grade III in March, 1984, after completion of probation was given adhoc appointment of a Tracer in the scale of Rs.260 - Rs.430/- (in the revised scale). He has specifically averred in his petition that

even when he joined as Fitter he had already possessed a Diploma in Draftmanship of the I.T.I. ^{of} ~~for~~ two years. This specific averment has not been specifically denied by the respondents, and therefore, we proceed on the assumption that he did possess this qualification when he joined service as a Fitter in March, 1984, itself. Then came, the Railway Board's Circular of 9.7.1985 (Annexure-4) which in respect of Cadre Review and Restructuring of Group C & D staff stated that the Ministry of Railways have decided with the approval of the President to restructure certain categories of Group C and D as detailed in the annexure, viz., those ^{who} possess Diploma in Draftsmanship from the recognised Institution could be upgraded as Junior Draftsman in the scale of Rs.330-560/- and those who do not possess Diploma in Draftsmanship but have completed five years of service as on 1.1.1984 could be upgraded as Junior Draftsman in the scale of Rs.330-Rs.560/-. Though the respondents have tried to put the case of the petitioner under the second category, viz. completion of five years of service as on 1.1.1984, it is ^{patently} ~~eminently~~ clear that after his appointment as Tracer on adhoc basis he was given the benefit of Junior Draftsman in the scale of Rs.330-560/-. As we could not find anywhere in the counter that the ^{not} petitioner had ~~possessed~~ this qualification of Diploma in Draftsmanship it follows that in the year 1988, this qualification of his was taken into consideration

to upgrade him in the scale given above. It is worthwhile to mention that as far as this cut off date 7.8.1985 is concerned, the respondents invited our attention to Annexure-A/1 itself which is the office order appointing him dated 7.8.1985 and in the counter it is contended that by virtue of this order he joined on 14.8.1985. Even Mr. G.A.R. Dora, learned counsel for the applicant is agreeable to accept this date as the date from which if at all the petitioner is entitled for upgradation may be considered as the due date.

2. The argument of the petitioner's counsel is that when existing vacancy was there, there was also a post existing, it was wholly improper to have appointed the petitioner on adhoc basis. The respondents have stated in their counter that the petitioner continued as such adhoc Tracer till 1.1.1988 when the Mancheswar Workshop was treated as independent unit as per Annexure-R/2. In our view this date 1.1.1988 appears to have been selected without any reasonable basis and when the petitioner was appointed as a Tracer in the existing vacancy there was no occasion or reason to select this 1.1.1988 awaiting the Mancheswar Workshop being treated as independent unit. In this behalf he brought to our notice a decision of the State Tribunal in the case of Ramachandra Patnaik vs. Secretary, Food & Civil Supplies Department reported in Service & Labour

Laws 1989, Vol.31, 147 in which the Tribunal cited a decision of the Supreme Court in the case of Delhi Water Supply and Sewage Disposal Committee and others vs. R.K.Kashyap and others reported in 1989 SC 278.

It was pointed out from the decision that the Supreme Court has held that continuous officiating appointment cannot be ignored for the purpose of seniority in a cadre. The normal rule consistent with equity is that officiating service, even before confirmation in service, has relevancy to seniority if eventually no infirmities in the way of confirmation exist. The point from which service has to be counted is the commencement of the officiating service. Assistant Engineers (whose case Supreme Court was considering) might not have secured permanent appointments in the beginning and in that sense may still be temporary, but for all other purposes, have been regularised and are fit to be absorbed into permanent posts as and when they fall vacant.

It is also pointed out by the Supreme Court that if a stop-gap-arrangement is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, there is no justification for ignoring his past services.

3. The present case stands on a better footing than that before the Supreme Court. There is nothing like stop-gap-arrangement in the instant case as the petitioner was appointed on adhoc basis against

an existing vacancy. In our view, therefore, there is absolutely no difficulty for the respondents to treat the applicant as ^{having} ~~has~~ been upgraded right from the day of his appointment in the cadre of Tracer in which cadre he joined on 14.8.1985.

4. Railway Board's letter referred to above as per Annexure-4 is attracted and as rightly contended by the petitioner's counsel, automatic upgradation should follow and it is a case falling in first category in Paragraph - VI.

5. In Annexure-7 dated 5.8.1985 relating to upgradation of Tracers, it has been pointed out that the existing regular Tracers, who possess the Diploma in Draftsmanship from a recognised Institute could be upgraded as Junior Draftsman in the scale of Rs.330-560/-. Annexure-A/10, relates to implementation of restructuring orders in respect of Tracers to the post of Junior Draftsman in the scale of Rs.330-560/-. In the last paragraph of Annexure-A/10, it is stated that the said Tracers are possessing the same qualification as has been laid down for direct recruitment to Junior Draftsman in the existing scale of Rs.330-560/- and if so there ^{should be} ~~is~~ no objection to their being given the benefit of upgradation in the Board's letter cited therein dated 25.6.1985.

6. It is rather un-understandable as to why respondents are taking so much of time to implement the Board's direction which is so specific and

unambiguous and as the petitioner has possessed the requisite qualification, at least after 1.9.1987 when Annexure-A/10 came to be circulated among the concerned officers in the Establishment, the official ought to have been given the benefit of upgradation with effect from 14.8.1985. In our view, there is absolutely no justification for the respondents to postpone this grant of benefit to the petitioner which he deserves from various orders of the Railway Board. Accordingly while allowing the petition we direct that the upgradation shall be given to the petitioner with effect from 14.8.1985 and arrears of pay in the scale should be paid to him within 90 days from the date of receipt of a copy of this order. No orders as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

03 APR 95


(D.P. HIREMATH)
VICE-CHAIRMAN

B.K.Sahoo//