

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.200 OF 1992

Cuttack, this the 27th day of October, 1998

K..Bhandariah Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som

(SOMNATH SOM)

27.10.98
VICE-CHAIRMAN

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.200 OF 1992
Cuttack, this the 27th day of October, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

K.Bhandariah,
son of K.Tataiah,
Jeep Driver, Grade II, Office of the
Chief Workshop Manager,
Carriage Repair Workshop,
S.E.Railway, at-Mancheswar,
P.O-Bhubaneswar-5,
Dist.Puri

Applicant

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

Vrs.

1. Union of India, through the
General Manager, S.E.Railway, Garden Reach,
Calcutta-43.
2. Chief Workshop Manager,
Carriage Repair Workshop,
S.E.Railway,
At-Mancheswar,
P.O-Bhubaneswar-5, Dist.Puri.
3. Sri R.H.Samantray,
Motor Mech-cum-Driver Gr.III, Office of the
Chief Workshop Manager, Carriage Repair Workshop,
At-Mancheswar, P.O-Bhubaneswar-5,
Dist.Puri

Respondents

By the Advocate - Mr.Ashok Mohanty.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

1. In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for quashing the order dated 27.2.1992 (Annexure-A/7)

7
reverting the applicant to the post of Khalasi and promoting him on ad hoc basis to the post of Khalasi Helper. There is also a prayer for a direction to the respondents to appoint the petitioner as Grade III Driver, if necessary, by quashing the appointment of respondent no.3, with consequential benefits.

2. Facts of this case, according to the petitioner, are that he was appointed on 17.5.1968 in S.E.Railway as Gang Khalasi. On 5.4.1979 he was appointed as Fitter-cum-Driver and was given temporary status from 1.1.1983 and was regularised from 11.4.1985. He was promoted to the post of Skilled Grade III as Driver in order dated 24/26.8.1985 (Annexure-A/1). He was further promoted to Grade II Driver on ad hoc basis in order dated 17.2.1987 (Annexure-A/2). The petitioner was deputed to work as Grade II Driver under Deputy Chief Electrical Engineer (Construction), Cuttack, in letter dated 2.4.1992 (Annexure-A/3). Case of the petitioner is that one R.H.Samantray (respondent no.3) joined as Khalasi long after the petitioner on 17.2.1981 and was given temporary status on 1.1.1984. Though respondent no.3 is junior to the petitioner, he has been promoted as Motor Mechanic-cum-Driver Grade III on ad hoc basis in order dated 16.9.1991 (Annexure-A/4). In letter dated 7.4.1992 (Annexure-A/5) Deputy Chief Electrical Engineer (Construction) wrote to respondent no.2 stating that it would be desirable if the applicant could be retained in the post of Driver Grade II. In the impugned order dated 27.2.1992, the applicant, who was Jeep Driver Grade II (ad hoc) in the scale of Rs.1200-1800/- was transferred back from the office of Deputy Chief Electrical Engineer (C), Cuttack, to the office of Chief Workshop Manager and reverted to the post of Khalasi in the scale of Rs.750-940/- and promoted as Khalasi Helper on ad hoc basis in the scale

J. Sam.

8

of Rs.800-1150/-.In the context of the above facts, the applicant has come up with the prayers referred to earlier. On the date of admission of this application on 11.5.1992 interim stay of the impugned order at Annexure-A/7 was given and this was made absolute in order dated 30.6.1992. Thus, the petitioner is continuing in the post of Jeep Driver Grade II.

3. The departmental respondents in their counter have stated that the petitioner was officiating as Highly Skilled Grade II with effect from 12.2.1987 on ad hoc basis against the Construction cadre of Electrical Department at Mancheswar Workshop. At that point of time, Mancheswar Workshop was under construction and separate cadres for different staff had not been created. Therefore, all promotions were given on ad hoc basis. As the construction work of the Workshop neared completion, there was shortage of work and shortage of posts and no post was available in Grade II to accommodate the applicant at Mancheswar. So he was transferred temporarily to the office of Deputy Chief Electrical Engineer (Construction) at Cuttack with effect from 22.11.1990. In the meantime, the cadre of staff of Electrical Department of Mancheswar was finalised and provisional seniority list was published on 14.1.1992 and all promotions were regulated with reference to the seniority list. When the applicant reported back to Mancheswar Workshop, it was seen that his immediate seniors was officiating as Khalasi Helper. Therefore, he was reverted to the post of Khalasi and promoted to the post of Khalasi Helper in the impugned order at Annexure-A/7. As regards respondent no.3, the departmental authorities have mentioned in their counter that respondent no.3 is junior to the applicant, but he has been given ad hoc promotion to Grade III in compliance with the judgment of the Tribunal in OA No.137/90.On the above grounds, the departmental respondents have opposed the prayers of the applicant.

Sd/-

9 4. Respondent no.3 was issued notice, but he did not appear and file counter.

5. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel for the departmental respondents.

6. From the above recital of facts, it is clear that the admitted position is that respondent no.3 is junior to the applicant, but he has been given ad hoc promotion to a higher post. The departmental authorities have stated that this has been done in pursuance of the judgment of the Tribunal in OA No.137 of 1990. We have looked into the record of OA No.137/90 which was disposed of in order dated 20.11.1990. In this O.A., R.H.Samantray was applicant no.1. He along with eight others prayed for quashing their reversion order dated 11.4.1990. In this order, respondent no.3 who was working as Skilled Grade III on ad hoc basis was reverted to the post of Khalasi and promoted to the post of Khalasi Helper on ad hoc basis. The applicants in OA No. 137 of 1990 also prayed for a declaration that they shall be deemed to be continuing in Skilled Grade III and Skilled Grade II with consequential benefits. The relevant portion of the order dated 20.11.1990 is quoted below:

".....Admittedly, there are no promotional posts available and the Administration finds it difficult to continue them further without sanctioned posts. We, therefore, do not like to interfere in the decision taken by the Administration but we however direct that as and when sanction is available in the promotional posts the cases of these applicants should first be considered for appointment against those vacancies in view of the experience they have acquired in the meantime." (Emphasis supplied)

A.S.M.
The departmental respondents have mentioned in their counter that even though respondent no.3 is junior to the applicant, the case of respondent no.3 was considered because the Tribunal had directed that the applicants in OA No.137/90

should be considered first. That is how respondent no.3 has been given promotion on ad hoc basis to the post of Skilled Grade III whereas the petitioner has been given ad hoc promotion in the impugned order as Khalasi Helper. The departmental respondents have also stated that the petitioner has been posted as Khalasi Helper because many of the seniors of the applicant are working as Khalasi Helpers and in view of this, the applicant cannot be given ad hoc promotion to any post higher than Khalasi Helper. We feel that the controversy in this case has arisen because the departmental authorities have not properly understood the order dated 20.11.1990 of the Tribunal in OA No.137/90. From the extract of the relevant portion of the above order, it is clear that the Tribunal had only directed consideration of the applicants in OA No.137/90 which included the present respondent no.3 for appointment against future vacancies. It was also indicated that when future vacancies are available, cases of these applicants should be considered first. Consideration of a Government servant for promotion, regular or ad hoc, to any higher post has to be in accordance with rules and at the time of such consideration, cases of similarly placed employees who are senior to the concerned Government servant must also be considered. It is well known that a Government servant has no right to promotion but only has a right to be considered for promotion. In view of the above, when the departmental authorities considered respondent no.3 for ad hoc promotion to available higher post, along with respondent no.3 they should have considered those who are senior to respondent no.3. It has been averred by the departmental respondents that many persons who are senior to the applicant are continuing as Khalasi Helpers.

J. Som.

Apparently, their cases have also not been considered when respondent no.3 was given ad hoc promotion to Skilled Grade III and they are also senior to respondent no.3. In view of the above factual position, this Original Application is disposed of with a direction to the departmental respondents to consider afresh the case of respondent no.3 for ad hoc promotion to higher post strictly in accordance with rules. While so doing, the departmental authorities should also consider the cases of all those including the applicant who are senior to respondent no.3. This exercise should be completed within a period of 60 (sixty) days from the date of receipt of copy of this order.

7. In the result, therefore, the Application is disposed of in terms of the observation and direction given in paragraph 6 of this order. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

27.10.98