

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 184 OF 1993Cuttack, this the 31st day of August, 2001

Shri B.S.Bhaskar Rao and others Applicants

Vrs.

Union of India and another 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*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Commented on
(SOMNATH SOM)
VICE-CHAIRMAN
31.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 184 OF 1993
Cuttack, this the 31st day of August, 2001

CORAM:

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

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1. Shri B.S.Bhaskar Rao, Divisional Engineer, S.E.Railway, Khurda Road, PO-Jatni, District-Puri.
2. Shri S.M.Basha, Assistant Engineer, S.E.Railway, At/PO-Rayagada, District-Koraput.
3. Shri D.S.Murty, District Engineer (Con.), S.E.Railway, Visakhapatnam.
4. Shri C.S.Muni Reddy, Divisional Engineer, S.E.Railway, Waltair.
5. Shri R.Venkata Rao, Assistant Engineer, S.E.Railway, Cuttack.
6. S.E.Railway Class II Officers Association, represented by Shri B.S.H.Rao, General Secretary

(for the purpose of notice, their address shall be C/o Shri Aswini Kumar Misra, Advocate, near Moonlit Public School, Mohammedia Bazar, Cuttack).... Applicants

Advocates for applicants - M/s A.K.Misra
B.S.H.Rao
A.Kanungo

Vrs.

1. Union of India, represented by General Manager, S.E.Railway, Garden Reach, Calcutta-43.
2. The Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.

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Respondents

S. Pal
Advocates for respondents - M/s B.Pal
O.N.Ghosh

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioners have prayed for a direction to the respondents to regularise their services in Group-B Gazetted as Assistant Engineer in the pay scale of Rs.2000-3500/- from the dates of their initial

appointment as Assistant Engineer. The second prayer is for a direction to promote the petitioners to Group-A Assistant Engineer in Senior Scale of Rs.2200-4000/- retrospectively after completion of three years service as Assistant Engineer. The third prayer is for a direction to pay the petitioners the pay scale of Rs.3000-4500/- attached to the post of Divisional/Senior Engineer, the posts which they are holding. They have also asked for financial and service benefits retrospectively.

2. The applicants state that in Railways Group-C officials belong to Non-gazetted cadre and include Inspector of Works, Grade-I, Chief Inspector of Works, P.W.I Grades III to Grade-I, C.P.W.I., etc. From Group-C the next promotion is to Group-B Gazetted in the rank of Assistant Engineer in the pay scale of Rs.2000-3500/-. Group-B gazetted posts are filled up through Limited Departmental Competitive Examination and viva voce and preparation of a panel. The applicants state that they were promoted to the cadre of Divisional/Senior Engineer (Senior Scale) from the rank of Assistant Engineer on ad hoc basis. It is further stated that petitioner nos. 1 to 4 have been working for a number of years in Group-C cadre and have been appointed in the gazetted cadre of Assistant Engineer Group-B in the pay scale of Rs.650-1200/- revised to Rs.2000-3500/- with effect from the dates ranging from 12.11.1982 to 2.11.1987. It is stated that their appointment as Assistant Engineer in Group-B gazetted has been approved by General Manager after they have been adjudged suitable by four Heads of Department based on their record of service. The applicants have been functioning as Assistant Engineer in the pay scale of Rs.2000-3500/- from the dates of their appointment and discharging all the duties and are also getting the

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emoluments of the post. Applicant nos. 1, 3 and 4 have been detailed to look after the Senior Scale posts in August and June 1992 on payment of charge allowance. These orders have also been annexed at Annexures 5 to 7. The applicants have stated that selection tests due to be held for promotion from Group-C to Group B were not held for a number of years and the applicants were given ad hoc promotion to the post of Assistant Engineer for ten to 12 years. Ultimately selection was conducted in 1991, a panel was published, and the applicants were regularised. Their grievance is that these vacancies were continuing from 1980 and according to rules panel is to be prepared once in two years. Therefore, according to the applicants, the Railways should have prepared six panels from 1980 to 1990 separately once for every two years starting with 1980 and ending with 1990. It is stated that in orders dated 14.8.1991 and 30.9.1991 at Annexures 9 and 10 respectively they were regularised and in these orders it has been mentioned that names of the selected candidates have been placed in the panel separately for the six selection years from 1980 to 1990. The applicants have mentioned the number of vacancies which were available from 1980 to 1990 for every two years block period. It is stated that petitioner no.5, who is SE Railway Class-II officers Association has been representing for regularising the petitioners with retrospective effect. It is further stated that petitioner nos. 1 to 4 have been empanelled for vacancies arising in different years as mentioned in paragraph 4(11) of the O.A. They have also stated that though the respondents have correctly empanelled the petitioners for the recruitment years in which the regular vacancies had occurred, the applicants have not been regularised from the dates they have been working as

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Assistant Engineer on ad hoc basis but have been regularised only from 14.8.1991 and 30.9.1991 to deny all future benefits to them. It is also stated that petitioners 1,3 and 4 have been promoted on ad hoc basis to the post of Divisional/Senior Engineer (Senior Scale) but they have only been granted charge allowance and have not been allowed to draw the pay of the higher post. In the context of the above, they have come up in this petition with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayers of the applicants, and the applicants have filed rejoinder. The respondents have also filed an additional counter to the rejoinder. For the present purpose it is not necessary to refer to all the averments made by the respondents in their counter and counter to the rejoinder, and the applicants' averments in the rejoinder.

It will only be necessary to note the main grounds on which the respondents have opposed the prayers of the applicants.

4. The respondents have stated that posts of Assistant Engineer Group B Gazetted are filled up 75 % by promotion and the last selection test for such promotion was held in 1978. Thereafter it was not possible to conduct any further selection till the selection of 1991 because of the stay order of the Hon'ble High Court of Calcutta in CR No.6501 (W) of 1978. This case was disposed of only on 19.6.1990. Therefore the Railway administration was faced with exceptional circumstances beyond their control for not holding the selection as the selection was stayed by the Hon'ble High Court of Calcutta. As soon as the stay order was vacated, the selection of Assistant Engineer was processed and panel was published on 14.8.1991 and

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30.9.1991. While doing so, vacancies were assessed separately for each of the six selections which had become due from 1980 to 1990. Even though all the vacancies of these six blocks were filled up through one selection, it is stated that the applicants were given regular promotion in order dated 14.8.1991 at Annexure-9. The respondents have also mentioned the yearwise vacancies and the vacancies indicated by the respondents are more than what have been indicated by the applicants in their O.A. As against the total figure of 151 vacancies indicated by the applicants, the respondents have indicated 184 vacancies. It is stated that the employees who were within the zone of consideration with reference to vacancies to be filled in at each selection in the six two-years blocks were called to the written test on 15.12.1990 and 19.1.1991 and viva voce was held in July 1991 and September 1991. 156 candidates came out successful and because vigilance cases were pending against 5, panel of 151 candidates was published on 30.9.1991 (Annexure-10). Earlier to this, in the order dated 14.8.1991 (Annexure-9) 147 candidates were included in the panel. The applicants were regularised with effect from the date of publication of the panel. In view of the above, the applicants have been given regular promotion with prospective effect. It is stated that ad hoc promotion of the applicants given in 1982, 1983 and 1987 was ordered mainly on the basis of seniority. It is stated that from the date of their regularisation after three years they will be entitled to get the Senior Scale. According to the Railway Board's instruction dated 20.6.1988 if an officer in Group-B Gazetted is asked to look after duties in Senior Scale before completion of three years, then he will be entitled

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to a charge allowance and to the scale of the higher post after completion of three years service in Group-B.

5. The applicants in their rejoinder have questioned the averment of the respondents with regard to the existence of the stay order and have stated that the order of the Hon'ble High Court of Calcutta did not preclude the respondents from holding the selection test.

6. We have heard the learned counsel for both sides and have perused the records. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of Union of India v. Vipinchandra Hiralal Shah, 1997(1)SLJ 69. In that decision, dealing with appointment to IAS by promotion, the Hon'ble Supreme Court have held that Selection Committee for the purpose is required to meet every year and failure on the part of the Selection Committee to meet in a particular year would not dispense with the requirement of preparing the select list for that year. It is further laid down that if the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year. In the instant case the admitted position between the parties is that before holding the selection test in 1991 vacancies for each of the six blocks of two years were worked out separately and the officers coming within the zone of consideration for each block of two years were considered and empanelled but only one examination was held for all these blocks. In view of this, it is not necessary to refer further to the above decision.

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7. From the above recital of pleadings of the parties it is clear that the main question for consideration in this case is whether the applicants were entitled to be regularised from the dates of their initial ad hoc appointment as Assistant Engineer in 1982, 1983 and 1987. These dates for each of the applicants vary by a few days. But it appears that whereas the applicants have taken the dates of issuance of the orders giving them ad hoc appointment, respondents have indicated the dates of joining of the applicants as Assistant Engineer on ad hoc basis. This difference of a few days is, therefore, not material for the present purpose. The admitted position between the parties is that for appointment to the post of Assistant Engineer Group-B Gazetted, selection against 75% quota has to be done in every two years block through written test and viva voce. The respondents have stated that because of the stay order of the Hon'ble High Court of Calcutta, selection could not be held for six block years from 1980 to 1990. The applicants in their rejoinder have contested this. We have considered this aspect carefully. In their rejoinder the applicants have quoted the orders passed by the Hon'ble High Court of Calcutta from time to time in respect of the stay order and these have not been contested by the respondents in their counter to the rejoinder. In order dated 16.2.1979 the Hon'ble High Court of Calcutta directed that without prejudice to the rights and contentions of the parties, the petitioners shall be at liberty to appear before the selection test and the respondents shall prepare the panel, but no final selection shall be made on the basis of that

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panel until disposal of the rule. From this it is clear that in this order dated 16.2.1979 no stay was given to holding of the selection test. In order dated 13.5.1980 the Hon'ble High Court of Calcutta directed that the respondents would be at liberty to pass orders of promotion to the post of Assistant Engineer as on ad hoc basis and if such promotion is made that will be subject to the result of the rule. From this it is clear that the Hon'ble High Court of Calcutta did not pass any order staying the selection test. The net result of their Lordships' orders, as quoted by the applicants, is that the selection could be held but the persons so selected would be given promotion only on ad hoc basis. But the railway authorities did not hold the selection and gave ad hoc promotion to the applicants going only by seniority, as has been mentioned by them in paragraph 8 (page 5) of the counter. In view of this, the contention of the respondents that there was a stay order of the Hon'ble High Court of Calcutta against holding of selection test cannot be accepted. If there was any such order other than what have been quoted by the applicants in their rejoinder, the respondents have not filed a copy of such order. The effect of not holding the selection test and giving ad hoc promotion to the applicant will have, therefore, to be considered. Had the selection test been held and persons who had qualified in the selection test been given ad hoc promotion, then after disposal of the case before the Hon'ble High Court of Calcutta, such promotion would have been treated as regular promotion. In Maharashtra Engineering's case the Hon'ble Supreme Court have held that if ad hoc promotion is given following the rules and later on the promotee is given regular promotion, then the period of ad hoc promotion will count towards seniority. As in

this case the railway authorities did not hold the selection test, the applicants cannot be made to suffer on that account. It is also to be noted that ultimately the applicants before us had qualified in the selection test when it was held in 1991 and the respondents have stated that the vacancies were grouped separately block yearwise for the years 1980 to 1990 and only persons who were coming within the zone of consideration going by the yearwise vacancies and who had qualified in the selection test, were given regular promotion in the combined promotion order dated 14.8.1991. In the order dated 30.9.1991, which is at Annexure-10, the yearwise panels for the six block years have been mentioned and the persons have been empanelled block yearwise.

8. The applicants in their petition have prayed for treating their promotion as Assistant Engineer Group-B Gazetted regular from the dates they were given such promotion on ad hoc basis. The respondents in paragraph 9 of their counter have indicated that applicant nos. 1 to 5 have been working as Assistant Engineers on ad hoc basis with effect from 20.12.1982, 23.10.1987, 28.9.1982, 1.12.1982 and 9.12.1983 respectively. In the order dated 30.9.1991 at Annexure-10, the persons who had qualified in the selection test held in 1991 have been empanelled separately for each of the six block years. On a reference to this, we find that applicant ^{No 1} [^] has been included in 1982 panel, applicant no.2 has been included in 1984 panel, applicant no.3 has been included in 1982 panel, applicant no.4 has been included in 1980 panel and applicant no.5 has been included in 1982 panel. From this it is clear that the dates of their ad hoc appointment as Assistant

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Engineer are in the same year or a subsequent year for which they were ultimately empanelled in the order dated 30.9.1991. In view of this, we direct that their appointment as Assistant Engineer should be treated as regular from the dates of their ad hoc appointment as Assistant Engineer on ad hoc basis as indicated above. This prayer of the applicants is accordingly allowed.

9. The applicants have stated in paragraph 4.5 of the O.A. that from the dates of their appointment as Assistant Engineer on ad hoc basis, they are getting emoluments of Assistant Engineer. In view of this, no order is required to be passed for giving them financial benefits on treating their appointment as Assistant Engineer regular from the dates of their initial ad hoc appointment.

10. As regards consequential prayer for a direction to the respondents to promote them to Group-A after completion of three years and further promotion to Divisional/Senior Engineer, the respondents are directed to take a view in the matter in the light of our above order within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order.

11. In the result, therefore, the Original Application is allowed in terms of our observation and direction above. No costs.

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(G.NARASIMHAM)
MEMBER(JUDICIAL)

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VICE-CHAIRMAN
31/8/2001

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