

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 467 OF 1993.

Cuttack this the 2nd day of April, 1998.

JUDHISTIR DAS & ANOTHER.

....

APPLICANTS.

- Versus -

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 No Central Administrative Tribunal or not ?.

[Signature]
SOMNATH SON
VICE-CHAIRMAN
2-4-98

[Signature]
(S.K. AGARWAL) *24/98*
MEMBER (JUDICIAL).

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 467 OF 1993

Cuttack this the 2nd day of April, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

A N D

THE HONOURABLE MR. S.K. AGARWAL, MEMBER(JUDICIAL).

IN THE MATTER OF:-

- 1(a) Judhistira Das, aged about 54 years,
S/o. late Adikanda Das, At/Po. Brahmanigaon,
Via. Arei, Munsiffi-Jajpur Dist. Jajpur.
- (b) Now working as Peon in DEN(Con.) Office,
S.E. Railway, Cuttack.
- 2(a) Hari Behera, aged about 54 years,
S/o. late Sananda Behera, At. Sisua, Po. Banki,
Via. Banki, Dist. Cuttack.
- (b) now working as Peon in DEN(Con.) Office,
S.E. Railway, Cuttack.

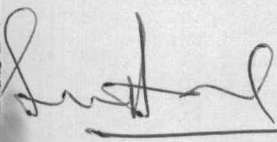
B. B. :- Address for communication :-

Mr. Shreekanta Prasad Sahoo, Advocate
Orissa High Court, Cuttack.

.... APPLICANTS.

By legal practitioner : Mr. S.P. Sahoo, Advocate.

- Versus -

- 
1. South Eastern Railway represented through
its General Manager, Garden Reach, Calcutta-43,
West Bengal.
 2. The Chief Personnel Officer, S.E. Railway,
Garden Reach, Calcutta, West Bengal.

3. The Assistant Personnel Officer,
S.E. Railway, At/Po. Station Bazar,
Cuttack.
4. The Chief Engineer (Con.), S.E. Railway,
At/Po. Station Bazar, Cuttack.
5. The District Engineer (Con.),
S.E. Railway, At/Po. Station Bazar,
Cuttack.

... RESPONDENTS.

By legal practitioner :- Mr. Ashok Mohanty, Senior Standing
Counsel.

O R D E R

MR. S.K. AGARWAL, MEMBER (JUDICIAL) :-

This is an application, under section 19 of the Administrative Tribunals Act, 1985 with the prayer that the Respondents be directed to consider the cases of the applicants for promotion to the higher post as per the Boards' Circular (annexures 1 and 2) retrospectively with other consequential service benefits as available under law.

2. The facts of this case, as stated by the applicants, are that Applicants 1 and 2 were appointed as peons on 25-8-1963 and 10.12.1963 respectively under the District Engineer (Con.). Both of them were regularised and their services were confirmed by the Competent Authorities. It is stated that they have already completed 30 years of service in the Department in the same posts. They are literate. They can read and write. Therefore, taking their length of service,

into consideration, the applicants deserve promotion to the next higher post as per law. It is stated that Respondents neglecting the right of the petitioners, have given promotions to a large number of juniors to the promotional post of Record Shorter and the like. Petitioners, at different points of time, had made several representations to the Respondents to consider their cases for promotion to the next higher post but all the times, respondents have ignored the request of the applicants. It is stated that the Chief Personnel Officer, vide his letter No.P/R/14/312, dated 27.3.1992, Estt.Srl.No. 61/62 and No.P/R/14/312/ dated 12.2.1993 Estt.Srl.No.16/93 intimated to all concerned about the in situ promotion and accordingly, the petitioners are eligible to be promoted to the higher posts during their service period. Their scale of pay have been stagnated since long and they are now waiting for their retirement. It is further submitted that the petitioners fulfil all the criteria laid down in the circular but their cases have not been considered whereas large number of juniors have been promoted. Petitioners made several representations but all of them have been treated as waste papers. It is, therefore, requested that Respondents be directed to consider the cases of the petitioners for promotion to the next higher post retrospectively from the date as per the circular of the Railway Board.

9

3. Counter has been filed by the Respondents in which it is stated that promotion to the next higher grade is not automatic inasmuch as the Railway Establishment Manual provides that promotion of Lower grades i.e. from Gr.D to Gr.C posts should be wholly filled up from among the Gr.D employees who have put in for more than five years service. It is submitted that some of the juniors of the applicants have been promoted on the basis of the selection made by the duly constituted selection Board and at the end, it is submitted by the Respondents that letter dated 5.2.1992 will be given effect to and the cases of the applicants will be considered alongwith other similarly placed persons in due course and in this way, it is stated that the application of the applicants is devoid of merit and is liable to be dismissed.

4. Additional statement on behalf of the applicants was also filed on 14th of January, 1994 in which it is stated that applicant No.1 has passed 8th class examination from Naindipur High School. Both the applicants were recruited to the Gr.D Posts and their scale of pay was fixed at Rs. 70-85/- . After their transfer to Cuttack, under Khurda Division, their pay scale was also fixed at Rs. 70-85/- . It is stated that during their service career, the applicants have not been promoted to the higher post even temporarily

[Signature]

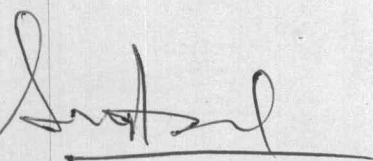
and their scale of pay have been stagnated long since after reaching the maximum of the scale and large number of juniors have been promoted ignoring their rights. Therefore, as per the Board's letter dated 5.2.1992, the petitioners are entitled to be promoted to the next higher post i.e. Record Shorter, Store issuer etc. It is further submitted that both the applicants are now at the fag end of their service career and as such non-implementation of the Board's Circular is bad and illegal.

5. Rejoinder has also been filed by the applicants in which a list of fifteen persons have been given who are juniors to the petitioners and have been promoted to the next higher post ignoring the cases of the applicants. It is also averred that petitioner no.1 has already left Garden Reach since last 25 years and he does not hold any lien there. Therefore, his seniority is maintained at Cuttack and as such, both the petitioners are entitled promotion as per the Board's circular dated 5.2.1992.

6. We have heard Mr. S.P. Sahoo, learned counsel for the applicants and Mr. Ashok Mhanty, learned Senior Standing Counsel appearing on behalf of the Respondents and perused the records.

7. It is not in dispute that Petitioners 1 and 2 are/were working as Peons w.e.f. 25.8.1963 and 10.12.1963 respectively and both of them have been superannuated after completing the service of more than 34 years. It is also not in dispute that no promotion was given to them during the whole career of their service. As per the Board's letter dated 5.2.1992 (Annexures-1 and 2) a scheme was introduced to ensure atleast one promotion in service career to each Group C and Group D employee and this scheme was made applicable to employees ; (1) who are directly recruited to a Group C or a Group D post; (2) whose pay on appointment to such a post, is fixed at the minimum of the scale ; and (3) who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post. The circular of the Railway Board, which has been forwarded for information and guidance to all the Railways and production units provides as under:-

* SUB:- Career advancement of Group C and Group D employees.

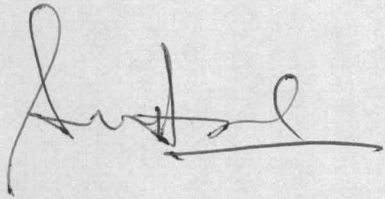

" As a result of the recommendations of the Fourth Central Pay Commission contained in para 23.10 of part-I of its Report, Selection Grades in Group 'C' and Group 'D' cadres were abolished. The Staff side of the National Council (JCM) raised a demand for revival of selection grades in these cadres on the ground that simultaneous Cadre Reviews to provide for promotional grades/ posts were also required to be conducted. The demand of the staff side for revival of selection grade could not be agreed to. However, the Government, agreed to evolve a scheme whereby Group C and D

employees may get at least one promotion in their service career.

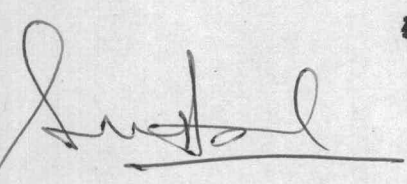
2. This matter has accordingly been under consideration of the Government for sometime past and the President is now pleased to introduce a scheme to ensure at least one promotion in service career to each Group C and D employees. This scheme shall be applicable to employees :-

- (i) who are directly recruited to a Group 'C' or a Group 'D' post;
- (ii) whose pay on appointment to such a post is fixed at the minimum of the scale; and
- (iii) who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post;

The scheme will have the following basic feature:-

- (a) Group 'C' and 'D' employees who fulfil conditions mentioned at (i), (ii) & (iii) above will be considered for promotion in situ to the next higher scale;
 - (b) Promotion in situ will be allowed after following due process of promotion with reference to seniority cum suitability;
 - (c) The employees will get promotion in situ to the next higher scale available to them in the normal line/hierarchy of promotion. Promotions made on the basis of a qualifying or competitive departmental examination or subject to possessing or acquiring higher qualifications will not be treated as promotions in the normal line/hierarchy for the purpose of these instructions. In all these cases promotional scales will be decided by the Railway Board for which a reference should be made by the Railway Administration at the time of considering the employees for insitu promotion, indicating the category and grade of the employee and the next higher scale available to them in the normal line/hierarchy of promotion.
 - (d) In case recruitment to any category of posts (Group 'C' or 'D') is made both by direct recruitment and by promotion, a promotee
- 

will be considered for promotion in situ from the date of direct recruit junior to him in that cadre becomes eligible for in situ promotion even though in his case (in case of promotion) it will be the second promotion. Similarly, a direct recruit who has not fixed at the minimum of the scale at the time of appointment will also be considered for promotion in situ from the date of direct recruit junior to him and fixed at the minimum of the scale becomes eligible for promotion.

- (e) Employees given promotion in situ will continue to be borne on the seniority list of the lower cadre/post and will be considered for functional promotion against available vacancies as per provisions of the Recruitment and Promotion Rules.
- (f) Even though promotion under this scheme which is in situ, may not involve assumption of higher duties and responsibilities, the benefit of FR 22 (1)(a)(1) (old FR 22-C) will be allowed while fixing pay on promotion as a special dispensation. However, such benefit will not be allowed again at the time of functional promotion in the same scale.
- (g) In case of Group 'D' employees, the stagnation increment(s) being drawn will be taken into account in fixation of pay in the event of promotion in situ under the scheme as a one time dispensation.
3. Railway Administrations will identify the posts which have no promotional grades and furnish the information relating to designation, scale of pay, recruitment qualifications, duties and responsibilities attached to each post along with suggestions for suitable promotional scale has on comparable promotional grades generally available for the posts of that level to the Board in consultation with their financial Adviser and Chief Accounts Officer.
4. These orders will take effect from 1.4.91.
- 

5. Necessary action may be taken immediately to consider eligible Group 'C' & 'D' employees for promotion in situ in accordance with the scheme contained in para-2 above and to furnish details of cases having no promotional grade in accordance with the provisions of para 3 above.
6. This issues in consultation with the Finance Directorate of the Ministry of Railways".

8. Vide Cp's letter dated 12.2.1993 some clarifications were also made which is as under :-

Sl.No.	Points	Clarification
1.	Whether the provisions of these orders are applicable to re-employed pensioners.	No.
2.	Whether an employee directly recruited in the scale of Rs. 750-940 as Farash, Mali, Chowkidar etc. and subsequently appointed in the same scale as peon etc. eligible for the benefit of insitu promotion.	Yes, he is eligible for insitu promotion in terms of para(e) (d) of Board's letter No.E(NG) 1/91/PM/24 dated 5.2.92 viz from the date a directly recruited Peon junior to him and fixed at the minimum of the scale becomes eligible for promotion.
3.	Whether Mali, Farash, Chowkidar etc. who declined to be appointed as peon can be considered for insitu promotion.	Yes.
4.	Whether the employees in the pre-revised selection grade and ordinary grade have been placed in the same revised scale whether the employees belonging to erstwhile selection grade are entitled to insitu promotion.	Yes, provided they were appointed to ordinary grades as direct recruits and their pay was fixed at the minimum of that scale.

5. Whether instu promotion can be allowed in the case of persons who were initially appointed to a post on direct recruitment basis but subsequently transferred to different post(s) carrying the same scale of pay.

16

Yes, such persons are eligible for insitu promotion in terms of para 2 (d) of Board's letter No.E(NG)I/91/PMI/24, dt.5.2.92 viz. from the date of directly recruited person junior to him and fixed at the minimum of the scale becomes eligible for promotion.

6. Whether instu promotion is permissible to a person who was initially appointed to a post in one organisation but subsequently transferred to another organisation in the same scale.

Yes, such persons are eligible for instu promotion in terms of para 2 (d) of the Board's letter No.E(NG)I/91/PMI/24, dated 5.2.92 from the date a directly recruited person junior to him in the new organisation whose pay was fixed at the minimum of the scale becomes eligible for promotion.

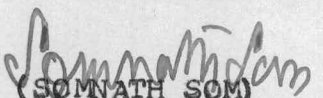
9. In the counter, it is stated by the Respondents that letter dated 5.2.92 will be given effect to and the cases of the applicants will be considered alongwith similarly placed other persons in due course. This means that the Respondents have admitted that the instructions issued by the Railway Board vide letter dated 5.2.92 in connection with career advancement of Group C and Group D staff is to be implemented.


[Signature]

10. As both the applicants, who were appointed under the Respondents on 25.8.1963 and 10.12.1963 respectively on the posts of peon, and both of them have retired on reaching the age of superannuation and during their service career, no promotion has been given to them, we feel it just and proper to direct the Respondents to consider the cases of the applicants for in situ promotion as per the Circular dated 5.2.1992 issued by the Railway Board.

11. We, therefore, direct the Respondents to consider the cases of the applicants for in situ promotion as per Board Circular No.E(NG)/I/91/PMI/24, dated 5.2.1992 issued by the Railway Board, within a period of three months from the date of receipt of a copy of this order and in case they are found suitable for promotion to the next higher posts, all consequential service and financial benefits should be granted to them as per rules as provided in the Railway Board's circular dated 5.2.1992.

12. With the above directions, the Original Application is allowed. There would be no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(S.K. AGARWAL) 2/4/98
MEMBER (JUDICIAL)