

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS.657 TO 665 OF 1993
Cuttack, this the 3rd day of June, 1999

CORAM:

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

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In OA 657/93

Shri N.V.Satyanarayan, son of late N.Sanjeeva Rao, aged about 35 years, at present residing at Sector-A, Qr.No. 395, At/PO-Bondamunda, Dist. Sundergarh.

In OA 658/93

M.Jagannath Rao, son of late Appal Naidu, aged about 41 years, residing at Qr.No.L 59/3, Diesel Colony, Bondamunda, PO-Bondamunda, Dist.Sundargarh.

In OA 659/93

Shri G.S.Parmanik, son of A.Parmanik, aged about 46 years, at present residing at Qr.No.L/212/1, Driver Colony, Bondamunda, PO-Bondamunda, Dist.Sundargarh.

In OA 660/93

Shri John Y, son of Y.Madhai, aged about 41 years, at Driver Colony, Qr.No.L/213/1, Bondamunda, PO-Bondamunda, Dist.Sundargarh

In OA 661/93

Shri Radhika Prasad, son of Dhanjaya Mohto, aged about 43 years, at Diesel Colony near Santoshi Maa Mandir, PO-Bondamunda, Dist.Sundargarh.

In OA 662/93

Shri Dharmnath Sharma, son of Rajmohan Sharma, aged about 40 years, At-Sitalnagar, PO-Bondamunda, District-Sundargarh.

In OA No. 663/93

Shri Srikanta Singh, son of late R.L.Singh, at Qr.No.235, Sector-D, PO-Bondamunda, District-Sundargarh, now working as a Compressor Fitter at Bondamunda, SE Railway.

In OA No. 664/93

Shri Foren Parmanik, son of R.K.Parmanik, aged about 44 years, at present residing at Q.II Sector E/274, P.O-Bondamunda, District-Sundargarh.

In OA 665/93

Shri Raman K., son of Kunhelal, aged about 41 years, at Driver Colony, Qr.No.L/213/1, Bondamunda, PO-Bondamunda, District-Sundargarh

Applicants

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Advocates for applicants - M/s D.S.Misra
S.Mohanty
S.Behera
K.K.Misra
G.S.Pani

Vrs.

In all the O.As.

1. Union of India, represented through the Secretary, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
3. Divisional Railway Manager, South Eastern Railway, Chakradharpur, Singh Bhum, Bihar.
4. Divisional Personnel Officer (Senior), South Eastern Railway, Chakradharpur, Singhbhum, Bihar.
5. Senior Divisional Electrical Engineer (TRS), South Eastern Railway, Chakradharpur, Singhbhum, Bihar.

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Respondents

Advocates for respondents -Mr.D.N.Misra
(in OA 657/93)
&
M/s B.Pal
& O.N.Ghosh
(in OAs 658 to
665/93)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

These nine cases have been heard separately. But the relief claimed by the applicants in these nine O.As. is similar. Facts of each case are similar though not identical. The respondents have filed similar and in some cases identical counters and the points for decision are the same. Therefore, one order will cover all these cases. Facts of each case, however, can be briefly stated.

2. In OA No. 657/93 the applicant has prayed for regularisation of his service in the post of Painter from the date of his appointment to the post. According to the applicant, he was appointed as Khalasi at Bondamunda on 29.9.1983. On 5.6.1984 Senior Divisional Electrical Engineer(TRS), Bondamunda, invited option from the staff who were willing to work in the ancillary category posts on ad hoc basis. The applicant gave his option and was given ad hoc promotion as Painter Grade III from 27.11.1984 in the scale of Rs.260-400/- after he was found suitable in the trade test. He continued in that post and filed representation for

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getting regularised in the post. But ultimately he was regularised as Skilled Fitter Grade III with effect from 6.11.1992. His prayer is for getting regularised from 27.11.1984.

3. In OA No. 658/93 the applicant was appointed as Khalasi at Bondamunda on 29.9.1983. Option was called for on 5.6.1984 by Senior Divisional Electrical Engineer(TRS), Bondamunda, from the willing staff who were prepared to work in ancillary category posts on ad hoc basis. On the applicant giving option he was appointed as Crane Driver Grade III on 27.11.1984 in the scale of Rs.260-400/- after he was found suitable in the trade test. He filed several representations for regularisation in the post but that was not done. Ultimately he was regularised in the post of Fitter Grade III with effect from 2.11.1989. His prayer in the OA is for getting regularised with effect from 27.11.1984.

4. In OA No. 659/93 the applicant's case is that he was originally appointed as Gangman at Chakradharpur Division on 24.7.1971 and was transferred to Tata sometime in 1980. On 9.5.1984 he was transferred from Tata to Bondamunda as Khalasi. On 11.7.1985 options were invited from the employees who were willing to work as Painter. The applicant gave his option and was appointed on 6.2.1986 as Painter Grade III in the scale of Rs.260-400/- after he was found suitable in the trade test. He continued in that post till 4.5.1989 when his services were regularised in the post of Fitter Grade-III. In this application, he has prayed for regularisation of his service from 6.2.1986.

S. J. M.
5. In OA No. 660/93 the applicant was initially appointed as Khalasi at Bondamunda on 7.10.1983. Options were called for on 5.6.1984 from the willing staff for working in ancillary category posts on ad hoc basis. The

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applicant gave his option for the post of Welder. He was appointed to the post of Welder on 5.11.1984 in the scale of Rs.260-400/- after he had passed the trade test. He continued in the post and made several representations for regularisation. Ultimately, his services were regularised with effect from 6.11.1992 in the post of Skilled Fitter Grade-III. In this application his prayer is for getting regularised with effect from 5.11.1984.

6. In OA No. 661/93 the applicant's case is that he was appointed as Khalasi at Bondamunda in 1983. In response to a notice dated 5.6.1984 calling for options, the applicant opted to work in the post of Hammerman. Accordingly, he was promoted to the post of Hammerman with effect from 5.11.1984 in the scale of Rs.260-400/- after he passed the trade test. He continued in the post and made several representations for regularisation. But ultimately his services were regularised with effect from 10.9.1990 in the post of Skilled Fitter Grade-III. In this application his prayer is for regularising his service with effect from 5.11.1984.

J.Sm.
7. In OA No. 662/93 the applicant was initially appointed as Khalasi at Bondamunda in the year 1983. In response to a notice dated 5.6.1984 calling for options from the staff willing to work in ancillary category posts on ad hoc basis. The petitioner gave his option for the post of Blacksmith. Accordingly, he was promoted to the post of Blacksmith with effect from 5.11.1984 in the scale of Rs.260-400/- after he qualified in the trade test. He continued in that post and made representatons for regularisation. Ultimately, his services were regularised in the post of Blacksmith Grade III with effect from 1.3.1993. In this application he has prayed for regularising his service with effect from 5.11.1984.

8. In OA No. 663/93 the applicant was appointed as Khalasi at Bondamunda on 16.7.1978. On 11.7.1985 options were called for from the employees who were willing to work as Compressor Fitter. The applicant gave his option and was promoted to the post of Compressor Fitter with effect from 4.2.1986 in the scale of Rs.260-400/- after he was found suitable in the trade test. He continued in that post and was ultimately regularised as Fitter Grade III with effect from 4.5.1989. In this application he has prayed for regularisation with effect from 4.2.1986.

9. In OA No. 664/93 the applicant was initially appointed as Gangman at Chakradharpur on 24.5.1970 and was transferred to Tata in the year 1980. On 9.2.1984 he was transferred to Bondamunda as Khalasi. He became Khalasi Helper at Bondamunda after appearing in a trade test. On 22.2.1985 options were invited from employees who were desirous of working as Machinist. The applicant gave his option and he was appointed as Machinist in the scale of Rs.260-400/- with effect from 4.6.1985 after he was found suitable in the trade test. He continued as such and was regularised in the post of Machinist with effect from 4.5.1989. In this application he has prayed for regularisation of his services with effect from 4.6.1985.

10. In OA No.665/93 the applicant was appointed as Khalasi at Bondamunda on 7.10.1983. On 5.6.1984 options were called for from the willing staff for working in ancillary category of posts on ad hoc basis. The applicant gave his option for the post of Welder and was promoted to the post of Welder in the scale of Rs.260-400/- with effect from 27.11.1984 after he was found suitable in the trade test. He continued in that post and gave representation for regularisation. Ultimately, his services were regularised in the post of Skilled Fitter with effect from 1.3.1993. In this application he has prayed for regularisation of his service with effect from 27.11.1984.

11. From the above recital of facts in these nine cases it is seen that all these applicants while working as Khalasi and in one case as Khalasi Helper, opted for working in higher posts on ad hoc/officiating basis and accordingly, were appointed to different posts in the scale of Rs.260-400/- after they were found suitable in the trade test. Their services were, however, regularised on different dates and the period of their service in the higher post on ad hoc/officiating basis was not regularised. In these applications their prayer is to regularise their services from the date of their ad hoc/officiating appointment to the higher posts.

12. The respondents have filed identical counters in OA Nos. 658 to 665 of 1993. In the counters filed by the respondents in OA No. 657/93 and in OA Nos.658 to 665 of 1993 the prayer of the applicants has been opposed by the respondents.

13. In the counter filed by the respondents in OA No. 657 of 1993 it has been stated that Electric Loco Shed at Bondamunda came into operation in 1983 and subsequently due to increase of loco holdings the maintenance requirement also increased and it became necessary to carry out works similar to other sheds. The cadre of staff existed only for artisans and class IV staff and there was no specific post for other items of work, like blacksmith, operation of air compressor and miscellaneous works relating to carpentry, painting, etc. It was anticipated that the staff being promoted in ancillary groups would get stagnated at various levels as the cadre for such ancillary post if created would be very small. Therefore, it was felt that the cadre should not be split for creating separate posts. Accordingly, options were invited from general pool to work in the specialised cadre by giving ad hoc promotion in such a manner that the seniority of other staff is

not disturbed. This was done in the interest of work and keeping in view the interest of other staff in general. It was also stipulated that promotions are optional and senior Khalasi Helpers/Khalasis not opting for such posts will not lose seniority. According to the respondents, the applicant in OA No.657/93 joined the Loco Shed as Khalasi in 1983 and when options were called for, he opted for higher post and he was promoted on ad hoc basis with effect from 27.11.1984 as Carpenter Grade III after he passed the trade test which was mandatory even for ad hoc promotion for short period. He was promoted as a regular measure from 2.11.1992 when his turn came. The ad hoc promotion was to continue till such time as the other staff of the Shed just above ^{the applicant} in the seniority list were promoted to higher grade. The ad hoc promotees were confirmed in the higher grade in their turn when promotions were due to them. The respondents have stated that the applicant could not be given promotion from the date of his initial appointment on ad hoc basis because it would affect seniority of others and there will be discontentment amongst the staff. It is also stated that in the promotion order it was clearly stipulated that officiating promotion will not confer on the incumbent any claim for seniority or a right to continue in such post. In view of this, it has been stated that the applicant in OA No. 657/93 cannot claim to be regularised with effect from the date of his appointment as Painter on ad hoc/officiating basis on 27.11.1984.

14. In OA Nos. 658 to 665 of 1993 the respondents have filed identical counters. These are again more or less on the same lines as the counter filed in OA No. 657 of 1993. But even then it is necessary to note the averments made by the respondents in their counters in OA Nos. 658 to 665 of 1993. It will be adequate if the averments made in the counter in OA No. 658/93 are noted. The respondents have stated that

Electric Loco Shed at Bondamunda became operative with effect from 1983. Subsequently the work increased and maintenance requirement also went up. There was need for various types of work like welding, manufacturing of components for day to day use by blacksmith, operation of compressor and miscellaneous work in relation to carpentry and painting. The cadre in the Loco Shed consisted of only artisans and Class IV staff. There was no specific post available for other items of work which are normally classified as ancillary work. It was felt that if the staff are promoted as ancillary groups they would get stagnated at various levels as cadre for the ancillary posts even if created would be very small. Accordingly, options were called for from general pool to work in the specialised cadre on ad hoc promotion in such a manner that seniority of other staff is not disturbed. This was done in the interest of executing the work and also keeping in view the interest of other staff. It was specifically provided that senior Khalasi Helpers/Khalasis not opting for the post will not lose their seniority. The ad hoc promotions were continued till such time as other staff in the Shed just above the applicants in the seniority list were promoted to the higher grade and accordingly the applicants were regularised as and when their turn came for promotion on the basis of seniority. The respondents have stated that in the promotion order of the applicant it was mentioned that the ad hoc appointment will not count towards seniority. The applicant has accepted the ad hoc appointment on that condition and therefore he cannot now claim seniority on the basis of his ad hoc/officiating appointment to the higher post. It is also stated that allowing the prayer of the applicant will upset the seniority of the other staff who are senior to the applicant and who had not opted for working in ancillary posts. On the above grounds, the respondents in OA Nos. 658 to 665 of 1993 have opposed the prayer of the applicants.

15. Before closing the recitals of the respondents in their counters, it is to be noted that the respondents in OA Nos. 658, 662, 663 and 664 of 1993 have not specifically denied in the counter the averment of the applicants in these OAs that they were regularised with effect from 2.11.1989, 1.3.1993, 4.5.1989 and 4.5.1989 respectively. The dates of regularisation mentioned by the applicants in other OAs have been specifically admitted by the respondents in their counters.

16. We have heard Shri D.S.Mishra, the learned counsel for the petitioners and Shri D.N.Mishra, the learned Standing Counsel appearing for the respondents in OA No.657/93 and Shri B.Pal, the learned Senior Panel Counsel appearing for the respondents in OA Nos. 658 to 665 of 1993 and have perused the records. Learned Senior Panel Counsel for the respondents has filed written note of submissions in OA No. 658 of 1993 which has also been taken note of.

17. It has been submitted by the learned counsel for the petitioners that the point for decision in these cases has already been decided in OA No. 250 of 1990 (Ramasankar Prasad v. Union of India) allowed in order dated 23.2.1993 by the Division Bench and in the light of the decision in OA No. 250 of 1990 the prayer of the applicants in these cases should be allowed. The facts of OA No.250/90, which are similar to these applications, will have to be referred to. In OA No. 250/90 the applicant, who was a Khalasi at Bondamunda, opted to work as a Blacksmith and was appointed as a Blacksmith in order dated 14.9.1982. He continued as such and was regularised as Blacksmith with effect from 1.5.1989. In that OA he had prayed for regularisation of his service in the post of Blacksmith from the date of appointment to the post on ad hoc basis since 14.9.1982. The Tribunal in their order dated 23.2.1993 noted

S. Som.

that in accordance with the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineer Officers Association and others v. State of Maharashtra and others) AIR 1990 SC 1607, /(commonly referred as Maharashtra Engineering Case), once promotion is given to a particular incumbent on ad hoc basis or to officiate as per rules, such period of officiation and/or ad hoc service rendered shall be computed to the credit of the particular incumbent for the purpose of seniority. The Tribunal also noted that the order of promotion dated 14.9.1982 in that case did not indicate that the promotion was given to the applicant as Blacksmith either on ad hoc basis or as a stop gap arrangement to carry on day to day work. In view of this, the Tribunal allowed OA No.2 50/90 and directed regularisation with effect from the date of original appointment. The learned counsel for the petitioners has also referred to and relied on the law as laid down by the Hon'ble Supreme Court in Maharashtra Engineering Case. In Paragraph 44(B) of the above decision, the Hon'ble Supreme Court have laid down that even if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. Of these nine cases before us the cases of the applicants in OA No. 659 and 663 of 1993 are exactly similar as the applicant in OA No. 250/93. In both these cases the order of promotion which is dated 4.2.1986 and is at Annexure-2 of the Application, does not indicate anywhere that the appointments of these two applicants G.S.Parmanik and Srikanta Singh were on ad hoc basis or as a stop gap arrangement. In view of this, it is clear that the service of these two applicants who were both promoted to higher posts as Painter and Compressor Fitter respectively in the same order dated 4.2.1986 will have to be counted for the purpose of their regularisation and seniority. It is accordingly so ordered.

J. S. M.

18. As regards the other seven cases in OA Nos. 657, 658, 660, 661, 662, 664 and 665 of 1993, the respondents have stated that in the orders of promotion it was specifically indicated that the promotion is on ad hoc basis by way of stop gap arrangement and will not confer on the incumbents any claim for seniority or title to continue in the posts. It is also submitted that these applicants opted for the post in response to a notice inviting options in which it was specifically provided that senior Khalasi Helpers/Khalasis who do not opt for the posts will not lose their seniority. Thirdly it is contended that these seven applicants having accepted the promotional posts on the above terms cannot now turn back and claim regularisation and seniority from the date of their ad hoc appointment. It is also submitted that allowing these persons higher seniority would upset the seniority of other staff who did not opt for higher posts and continued in the posts of Khalasi Helper/Khalasi. The claim of these seven applicants has been opposed on the above grounds by the respondents. In support of the above contentions, the respondents have also relied on the decision of the Hon'ble Supreme Court in Maharashtra Engineering Case referred to earlier. In the above case, in paragraph 44(A) the Hon'ble Supreme Court have laid down that where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. In the instant cases, the respondents have not stated in their counters that the appointment of the applicants to higher posts was not in accordance with rules. On the contrary, they have stated that each of the applicants was given appointment to higher post only after they qualified in the trade test. Thus, they came to be appointed to higher posts not merely by exercising option but also by qualifying in the trade test. It cannot, therefore, be held, in the absence of any specific averment to that effect,

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that initial appointments of these applicants to higher posts were not in accordance with rules.

19. The second aspect of the matter is that ad hoc appointment or appointment by way of stop gap arrangement by its very nature is for a limited period. In the instant case, the respondents in their counter have stated that the applicants were promoted on ad hoc basis by way of stop gap arrangement to higher posts and they continued in those posts uninterruptedly till they were regularised in the posts from different dates. The applicants were regularised from the dates their immediate seniors became due for promotion to higher posts. In the context of the above facts, the appointment of these applicants to higher posts cannot be held to be ad hoc or by way of stop-gap arrangement in any way. Obviously, their appointment to the higher posts was termed ad hoc merely for the purpose of denying them the benefit of their working in the higher posts till such time their seniors in the cadre of Khalasi Helper/Khalasi who did not opt for higher posts were not due to be promoted to higher posts in regular course. In view of this, it must be held that the appointment of the applicants to higher posts was not by way of stop gap arrangement because they continued in the higher posts till their regularisation and their appointments were termed ad hoc only for the purpose of denying the benefit of service for that period.

20. It is next contended by the respondents that in any case the applicants having accepted the promotion to higher posts taking the same to be ad hoc and agreeing not to claim benefits of higher posts, cannot now turn back and claim the same benefit. The learned counsel for the petitioners strongly refuted this contention and relied on the decision of the Hon'ble Supreme Court in the case of Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others, AIR 1998 Supreme Court 2909. It is not necessary to go into the facts

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of that case. But a similar point was raised in another context in that case and it would be adequate to quote paragraph 8 of the judgment of their Lordships which is extracted below:

"8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer-I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act."

In view of the above, this contention of the respondents is held to be without any merit and is rejected.

21. The last point urged by the respondents is that if the claim of the applicants is allowed, then it will disturb the seniority of other staff who are senior to the applicants in the rank of Khalasi Helper/Khalasi. In this connection, it has to be noted that it was open to such senior persons to give their option which they did not do. Secondly, giving of option by itself would not have entitled them and has not enabled the applicants to be promoted to higher posts. The

S Som

applicants have come through trade tests and similarly, had such senior persons given their options, they would have had to appear in the trade test in which they had to become successful. Moreover, in the above context, the assurance that the senior persons by not opting will not lose their seniority would only mean that they will not lose their seniority in the basic cadre of Khalasi Helper/Helper. Promotion to higher posts in any case was based on successful clearing of the trade test and not on seniority alone. This contention is also therefore held to be without any merit.

22. In consideration of all the above, we hold that the applicants in these seven cases (OA Nos. 657, 658, 660, ^{661,} 662, 664 and 665 of 1993) are entitled to be regularised from the dates of their initial appointment to the higher posts. It is so ordered.

23. In the result, all the nine Applications are allowed in terms of the observation and direction given above. No costs.

Sd/-G. Narasimham
Member (Jud)

Sd/-Somnath Som.
Vice-Chairman