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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.432 OF 1995
Cuttack this the 16th day of September, 1998

S.Padma Lakshmi

Applicant(s)

-VERSUS-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
16.9.98

16.9.98
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO.432 OF 1995
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

...

S.Padma Lakshmi,
T.G.T. (Telgu Medium) Arts,
S.E.Railway,
Mixed Higher Secondary School
Khurda

...

Applicant

By the Advocates: Dr.V.Prithiviraj,
S.K.Swain
S.Nayak(I)

-VERSUS-

1. Union of India represented
through General Manager,
South Eastern Railway,
Garden Reach, Calcutta-700043
2. Dvisional Railway Manager,
South Eastern Railway
Khurda Road, Jatni

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Respondents

By the Advocates: Mr.L.Mohapatra

...

ORDER

MR.G.NARASIMHAM, MEMBER(J): Applicant, S.Padma Lakshmi entered railway service on 14.12.1982 and posted at Khurda Road as Primacy School Teacher in the scale of Rs.330-560. She having completed B.Ed. course was regularised as a Trained Graduate Teacher (T.G.T. in short). In December, 1982, two posts of Domestic Science Teachers Gr.II in the scale of Rs.440-750, one in Oriya Medium and the other in Telgu Medium were created in Railway Mixed High School, Khurda Road to be engaged from academic session 1983-84(Annexure-1). The petitioner being a B.A.B.Ed. was thereupon transferred to this Mixed Railway High School, Khurda Road and posted as Domestic Science Teacher Gr.II(Telgu Medium), but in the scale of Rs.330-560 which she had been drawing hitherto. It was indicated that this arrangement has been made till such time the selection of Gr.II Teacher is completed and/or other regular arrangement is made (Annexure-2) dated 10.8.1983. She accepted this assignment with effect from 17.9.1983. She was sanctioned the pay scale of Rs.440-750 with effect from 10.7.1984 as Trained Graduate Teacher on adhoc basis. In this way she continued. Her case was duly recommended by the Divisional Personnel Officer, Khurda Road (Res.2) to Res.1 with a proposal that she be posted in that post on regular basis (Annexure-3) on the ground that she was the only eligible candidate readily available. As there was no response from the Office of Res.1, she had submitted a series of representations till

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4.10.1994 when her service in that post was regularised, but without giving retrospective effect (Annexures-4 and 5). Thereafter again she represented on 14.11.1994 and 22.5.1995 (Annexures-6 and 7) for her regularisation in this post with effect from 17.9.1983 in the scale of Rs.440-750/- and for consideration for promotion with effect from 14.12.1983, and also for arrear pay and allowance pertaining to period 17.9.1983 and 10.7.1984 (Annexures- 6 and 7). Her representations were duly recommended to Res.1 by the Divisional Railway Manager, Khurda Road (Annexure-8) observing that since her service has been utilised with effect from 17.9.1983, it is reasonable to consider her promotion with effect from 14.12.1983. It is also her case that Smt. Sabita Panda, Teacher at par with her was regularised with effect from 11.8.1983, yet her case was discriminated.

2. On the basis of these pleadings supported by an affidavit the applicant prays for retrospective promotion to the scale of Rs.440-750 with effect from 17.9.1983 in Gr.II Teacher post with subsequent and consequential service benefits and/or for her promotion to the post in the said scale with effect from 14.12.1983 as recommended by D.R.M. in the consequent regularisation of her service.

3. This application was filed on 3.8.1995. In spite of due service of notices, no counter was filed even till 18.5.1998 on which day the petition was ordered to be placed for regular hearing.

4. Counter having not been filed we presume facts averred in the petition are correct. Two posts of Domestic Science Teacher for Khurda Road Railway Mixed

High School were created in the subject Domestic Science, viz. one for Oriya Medium and other for Telgu Medium inGr.II in the scale of Rs.440-750. The applicant, a B.Ed. Teacher already serving as Assistant Teacher in Railway M.P.School, Khurda Road was transferred as Domestic Science Teacher Gr.II (Telugu Medium) to the Railway Mixed High School where she joined on 17.9.1983, but was paid in the scale of Rs.330-560. It is not in dispute that she had requisite qualifications to be appointed in this newly created post. This has also been admitted by D.R.M. in his letter dated 29.8.1991 addressed to the Chief Personnel Officer, Garden Reach, Calcutta (Annexure-8).

There is no record that after the applicant was promoted this pay scale of Rs.440-750 with effect from 10.7.1984 as Trained Graduate Teacher on adhoc basis, there was any regular selection to this particular post. On the other hand, the applicant continued in that post till 4.10.1994 when her service in that post was regularised though without retrospective effect. In other words from 10.7.1984 till 4.10.1994 she functioned in this post of Trained Graduate Teacher of Domestic Science(Telugu Medium) on adhoc basis. During hearing the learned counsel for the applicant filed a copy of the Railway Board's letter No.E(NG)1/87/PM5/2 dated 21.8.1987, containing the reference of Board's circular dated 28.8.1985 and consequent instructions of the S.E.Railway to Departments subordinate to it. The learned counsel also filed letter dated 5.1.1990 of the S.E.Railway containing copy of Board's letter dated

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15.12.1989 and so also letter dated 8.1.1991 publishing Railway Board's letter dated 24.12.1990. All these letters make it clear that adhoc promotions are not to be resorted to and if they become inescapable they should resort to only for a short duration of 3/4 months. The fact that the applicant served on adhoc basis from 10.7.1984 to 4.10.1994 without interruption and without any selection having been conducted by the Department for this post would imply that the Railway Department intended that her promotion to this post with effect from 10.7.1984 was on regular basis. Even in regard to this post created in Oriya Medium no selection was also conducted. The plea of the applicant as earlier stated that her case ^sat par with Smt. Sabita Panda who was regularised with effect from 11.8.1983. This is also clear from the letter dated 23.8.1984 (Annexure-3) of Divisional Personnel Officer, Khurda Road addressed to Senior Personnel Officer (WL) S.E. Railway, Garden Reach, wherein it ^{is} ~~is~~ mentioned that the post of ^{Domestic} ~~Basic~~ Science Teacher (Oriya Medium) has been initially filled up by incumbent in the same grade whereas the post of Domestic Science Teacher (Telugu Medium) was operated in lower grade though the incumbent, that is applicant, possessed requisite qualifications and that the applicant should have been called for the selection exclusively for this post as she was the only eligible candidate readily available.

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It comes to this that the Teacher, who was posted as Domestic Science Teacher(Oriya Medium) in the same High School was allowed that grade and scale of Rs.400-750 from inception, but in the case of the applicant the lone B.Ed. Teacher having requisite qualifications, this was denied and she was allowed to function in this post from 17.9.1983 in the lower scale of Rs.330-560 and given adhoc promotion on 10.7.1984. This amounts to discrimination for which there is no answer from the Railway Administration.

5. For the reasons discussed above, we are of the view that the applicant is entitled to be regularised in this post with effect from 17.9.1983 and is entitled to the arrear pay for the period from 17.9.1983 to 10.7.1984. We accordingly direct the respondents to regularise the applicant in the post of Trained Graduate Teacher, Gr.II in the pay scale of Rs.440-750/- with effect from 17.9.1983 and pay her arrear differential pay for the period from 17.9.1983 to 10.7.1984.

With the above direction the O.A. is disposed of.
There is no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.7.84

B.K.SAHOO

G. Narasimham
(G.NARASIMHAM)
MEMBER(JUDICIAL)
16.7.84