

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 617 OF 1995.  
Cuttack, this the 20<sup>th</sup> day of June, 2000.

B. RANGARAO.

....

APPLICANT.

- Versus -

UNION OF INDIA & ORS.

....

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.*

*J ~ 14*  
(J.S. DHALIWAL)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*20.6.2000*

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ORIGINAL APPLICATION NO. 617 OF 1995.  
Cuttack, this the 20th day of June, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
A N D  
THE HONOURABLE MR. J.S.DHALIWAL, MEMBER(JUDL.)

....

SHRI B. RANGARAO,  
Son of B. Ramamurty,  
C/o. F. Paramanik, Gr. No. E/274,  
Railway Colony, Boudamunda,  
PO: Boudamunda, Dist: Sundargarh.

.... APPLICANT.

By legal practitioner: M/s. D. S. Mishra, K. K. Mishra, Advocate.

-VERSUS-

1. Union of India represented through  
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,  
Dist: Singhbhum,  
Bihar.

4. Senior Divisional Electrical Engineer(TRS),  
South Eastern Railway,  
Chakradharpur,  
Dist: Singhbhum,  
Bihar.

.... RESPONDENTS.

By legal practitioner : Mr. D. N. Mishra,  
Standing Counsel (Railways).

....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for regularisation of his service in the post of Skilled Fitter from the date of his appointment.

2. Applicant's case is that he was appointed as a casual Khalasi in Bandomunda, South Eastern Railway on 6.4.81. On 16.3.1983, a notice was issued by the authorities inviting options from the employees who were willing to work as Fitter. In response to this, applicant gave his option in letter dated 25-3-1983, at Annexure-1. He was trade tested and on being found suitable, he was promoted as Skilled Fitter in the scale of Rs. 950-1500/- in order dated 6.5.1983 at Annexure-2. Applicant has stated that in the appointment order, it was mentioned that he has been given appointment against an existing vacancy but it was mentioned that he is appointed on adhoc basis. Applicant continues in the post of Fitter and on 29.3.1994 his services were regularised as Skilled Fitter. Applicant has filed representation for regularising his service from 4.5.1983 i.e. from the date of his joining in the post but without any result. In his representation, at Annexure-3, he has mentioned that some other staffs who have been appointed to higher posts on adhoc basis, have been regularised from the date of their promotion but his case has been ignored. In the context of the above fact, he has come up with the prayer referred to earlier.

*J. Som*

3. Respondents, in their counter have opposed the prayer of applicant. They have stated that the Electric Loco Shed at Bonda Munda came into operation in the year 1983. Subsequently, work load increased and recruitment also went up. It became necessary to carry out works similar to other Sheds, like lifting of locos by over head cranes, welding, manufacturing of components for day to day use by black-smith, operation of air compressor and miscellaneous etc.. The cadre existed only for artisans and class IV staffs and there was no specific post available for the above mentioned works which are normally classified as ancillary works. As it was apprehended that staffs promoted in Ancillary group would stagnate at various levels as the cadre for such ancillary post, if created would be very small, hence the cadre was not split by creating separate posts for ancillary works.

*SJom.*  
Moreover, creation of post for ancillary staff would have gone against the concept of integration of disciplines. Respondents have submitted that this practice is being followed in other Loco sheds and accordingly option was invited from general pool to work in special cadre by giving adhoc promotion, in such a manner that the seniority of other staffs is not disturbed. It was stipulated that promotions are optional and Senior Khalasi/Helper/Khalasis not opting for such post will not lose their seniority. But in the instant case, this condition was not explicitly indicated in any of the orders issued, except that in the order of promotion it was mentioned that the promotion was on adhoc basis. According to the Respondents, such adhoc promotion was to continue till such time the other staff of the shed just above in the seniority list were promoted to higher grades. Applicant could not be given regular promotion

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at that stage as a large number of staff would have been affected by losing their seniority and therefore, applicant had to wait till his turn in the seniority list came.

Respondents have further stated that on 3-3-1988, a notice was issued for forming a panel for ancillary post. In response to which, applicant submitted his application and in order at Annexure-2, he was found suitable to hold the post of Skilled Fitter, on adhoc basis. Respondents have stated that as the appointment was only on adhoc basis, he could not claim regularisation from the date of such adhoc appointment. On the above grounds, they have opposed the prayer of applicant.

4. We have heard Mr. D. S. Mishra, learned counsel for the applicant and Mr. D. N. Mishra, learned Standing Counsel appearing for the Respondents and have also perused the records. Learned counsel for the applicant has relied on the decision of the Tribunal in O.A. No. 663/1993 and 669/1993 disposed of in order dated 3.6.1999 and OA No. 250/90 disposed of in order dated 23.2.1992. Learned Standing counsel for the Respondents wanted time at the conclusion of the hearing to file a circular indicating that for giving adhoc appointment also trade test has to be conducted. Accordingly, two adjournments were given to him but on 23.5.2000, learned Standing Counsel indicated that he has not been able to locate the concerned circular and appropriate orders may be passed in this regard.

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5. It has been submitted by learned counsel for the petitioner that the applicant was promoted to the post of Skilled Fitter after he has qualified in the trade test as

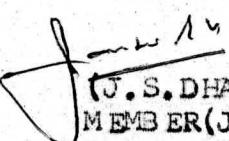
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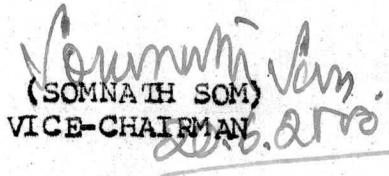
is evident from the order at Annexure-2. In this order, it has specifically been mentioned that he has been trade tested and has been found suitable. It is also mentioned in this order that he has been appointed against an existing vacancy but on adhoc basis. Similar matters came up before this Tribunal in O.A.No. 657/1993 to 665/1993 disposed of in order dated 3.6.1999. Out of those batch of 9 cases in seven cases i.e. OA Nos. 657, 658, 660, 661, 662, 664 and 665 of 1993 the facts are exactly similar to the facts of this case. Respondents in the present case have opposed the prayer of the applicant on the ground that promotion was on adhoc basis and it is urged that the applicant is not entitled to claim the benefit of service of the adhoc period towards his regularisation and seniority. It is noted that the applicant's averment is that he has been regularised in the post of Skilled Fitter from 29.3.1994 has not been denied by the Respondents. Thus, the sole question for determination is whether his regularisation should be dated back to 4.5.1988 when he was appointed as Skilled Fitter after being trade tested and against an existing vacancy. In the earlier seven cases, referred to above, going by the decision of the Hon'ble Supreme Court in the case of DIRECT RECRUIT CLASS II ENGINEER OFFICERS ASSOCIATION AND OTHERS VRS. STATE OF MAHARASHTRA AND OTHERS reported in AIR 1990 SC 1607 it has been held that the regularisation must be reckoned from the date of original appointment. No doubt in the order of appointment at Annexure-2 it was mentioned that he was appointed as Skilled fitter on adhoc

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basis but it is also mentioned that this appointment is against an existing vacancy and the applicant continued in the post of Skilled Fitter till he was regularised in 1994. By way of stopgap arrangement he would not have been continued for over six years. The other plea that persons who are senior to the applicant in the rank of Khalasis can not be accepted because his seniors had also the chance to opt for the higher post of Skilled Fitter. In view of this, going by our earlier decisions dated 3.6.1999 in CA Nos. 657, 658, 660, 661, 662, 664 and 665 of 1993, we hold that the applicant's appointment to Skilled Fitter must be taken as regular from 4.5.1988 and it is accordingly ordered.

6. In the result, therefore, the original Application is allowed. No costs.

  
(J.S. DHALIWAL)  
MEMBER (JUDICIAL)

  
(SOMNATH SOM)  
VICE-CHAIRMAN  
20.6.2003

KNM/QM.