

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 285 OF 1998
Cuttack, this the 28th day of February, 2000

M.R.Koteswar Rao

Applicant

Vrs.

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 Central Administrative Tribunal or not? *No*.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CORAM:

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

M.R.Koteswar Rao, officiating Chief Draftsman, O/o Chief
Engineer (Con), South Eastern Railway, Visakhapatnam-4..
.....
Applicant

Advocates for applicant-M/s A.Kanungo
B.S.H.Rao
S.R.Mishra

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Administrative Officer (C), South Eastern Railway, Chandrasekharpur, Bhubaneswar.
3. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.
4. Divisional Railway Manager, S.E.Railway, Waltair.
5. Chief Engineer (Con.), S.E.Railway, Visakhapatnam.
.....
Respondents

Advocates for respondents-M/s D.N.Misra
S.C.(Rly)
B.K.Behura
J.K.Nayak

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 18.5.1998 (Annexure-12) reverting the applicant from the post of Chief Draftsman in the pay scale of Rs.6500-10500/- to Head Draftsman in the pay scale of Rs.5500-9000/-. The second prayer is for a direction to the respondents to regularise the applicant from the date his juniors have been regularised in the Open Line or in the alternative extend the same benefit of confirmation against

PCR post to the applicant in the Draftsman cadre at par with the employees similarly situated.

2. The applicant's case is that he possesses National Trade Certificate in Draftsman (Civil) and was initially appointed as Casual Tracer under District Engineer, DBK Railway, Waltair, in 1967 and has been working in the Construction Organisation for the last 31 years except for four and half months as Casual Tracer/Supervising Mistry when he was in the Open Line in Waltair Division. After working for about eight years as Casual Tracer/Supervising Mistry from 1.7.1967 to 10.7.1975 he came to Open Line in Mechanical Department for four and half months where he was utilised in the Drawing Office though his regular designation was shown as Khalasi. He was again transferred to Construction Division and was posted as Tracer in regular pay scale of Rs.260-430/- in the Drawing Section with effect from 27.12.1975 in Office Order dated 27.12.1975 at Annexure-2. Since then he is continuously working in the Construction Organisation and had risen from the post of Tracer to Chief Draftsman. While in service he acquired higher technical qualification, i.e., Diploma in Civil Engineering (LCE) in 1990. After ten years of service as Head Draftsman and being the seniormost in the Drawing Section of Construction Organisation he was promoted to the post of Chief Draftsman in the scale of Rs.2000-3200/- with effect from 28.5.1997 on ad hoc basis in order dated 28.5.1997 (Annexure-4). It is submitted that the respondents are proposing to draw the wages from May 1998 in the lower grade on the ground that approval of Chief Administrative Officer (Construction), Bhubaneswar (respondent no.2) has been received on 22.4.1998 in which those staff who are enjoying

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more than double ad hoc promotions are to be paid at old scale upto 31.3.1998. The applicant states that his present officiating promotion as Chief Draftsman is not more than double ad hoc promotions as has been termed by the respondents. He has stated that having been appointed as Casual Tracer in 1967 and being available on the rolls as on 1.4.1973 he ought to have been confirmed in any post against Permanent Construction Reserve(PCR) as has been done in respect of ministerial staff. It is furtherstated that in order to regularise locally recruited Groups C and D staff of Construction Organisation, PCR posts to the extent of 40% of construction cadre were created as on 1.4.1973 and this has been increased to 60% from 1.4.1984. The total number of sanctioned PCR cadre posts circulated in order dated 1.3.1990 is at Annexure-6. All the posts sanctioned in Group-D have been filled up in 1978-79 with effect from 1.4.1973. In Group-C cadre only ministerial posts were filled up and while filling up the ministerial posts, the ministerial staff holding lien in Open Line were also confirmed with effect from 1.4.1973 against PCR posts, terminating their lien in Open Line. The applicant has enclosed two office orders dated 17.7.1984 at Annexures-7 and 8 which show the above position. The applicant has stated that Tracers and other technical Group-C posts have not been filled up and even though he has been appealing for last twelve years for regularisaton against PCR or Open Line posts, no action has been taken in the matter. Had the applicant been regularised, then his promotions in the Construction Organisation would have been as a regular measure and not on ad hoc. It is further stated that the applicant has never worked as Khalasi in Mechanical Department in Open Line and for the short period of four and half months service in Open Line in 1975 he was actually

utilised for drawing works in the Mechanical Department and not as a Khalasi. As he has worked for 31 years in the Construction Organisation he ought to have been absorbed in PCR cadre. It is further stated that the departmental authorities have regularised the services of similarly circumstanced construction employees, names of three of whom have been mentioned by the applicant who are junior to the applicant. They have been regularised as Tracers in the Civil Engineering Department with effect from 5.12.1986 and 7.5.1987 in order dated 27.2.1996 at Annexure-9, but the case of the applicant has been ignored. More specifically it has been stated that one B.Danteswar Rao, who has been working as Senior Draftsman in the Drawing Office of Construction Organisation where the applicant is working as Chief Draftsman has been regularised as tracer in Open Line with effect from 5.12.1986. B.Danteswar Rao was appointed as Casual Tracer in Waltair Kirandul Railway Electrification at Waltair and was absorbed as Engine Cleaner in Steam Loco Shed of Mechanical Department of Waltair Division which is in Open Line with effect from 21.1.1980. He was transferred to Construction Organisation on 28.3.1983 and was posted as Tracer in the scale of Rs.260-430/- B.Danteswar Rao was holding lien in Group-D in Loco Shed Mechanical Department of Waltair Division in Open Line and has been regularised as Tracer in Civil Engineering Department. The applicant is senior to B.Danteswar Rao and three other persons mentioned in the O.A. as is seen from the tabular stagement given by the applicant in page 6 of the O.A., but he has been denied regular absorption as Tracer. It is further stated that the Draftsman cadre was restructured by the Railway authorities. But the benefit of restructuring has been denied to the applicant even though he had submitted two representations dated 30.8.1996 and 2.8.1997 at Annexures

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10and 11. It is further stated that by virtue of the impugned order dated 18.5.1998 at Annexure-12 issued by respondent no.5 the applicant along with 24 other staff were reverted to their former posts with effect from 1.4.1998. But surprisingly in an order dated 20.5.1998 issued two days later reversion order in respect of serial nos. 5,12,13 and 22 of Annexure-12 has been cancelled. Again in order dated 22.5.1998 it has been indicated that the reversion shall take effect from 1.5.1998 instead of 1.4.1998. The applicant has challenged the reversion order on the ground that it takes effect from a retrospective date which is illegal and that in respect of four persons reversion order has been cancelled and therefore discriminatory treatment has been meted out to the applicant. The order of reversion results in civil consequences and therefore reasonable opportunity should have been given. It is further stated that in Survey & Construction Organisation at Visakhapatnam a large number of employees are having more than one ad hoc promotions for decades and therefore reversion of the applicant is illegal. In the context of the above facts the applicant has come up with the prayers referred to earlier.

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3. The respondents in their showcause against continuation of the interim order have opposed the prayer of the applicant by stating that in order dated 28.5.1997 at Annexure-4 the applicant was promoted as ad hoc Chief Draftsman for a period of six months only from the date of his assuming charge. In the order itself it was made clear that ad hoc promotion is valid only in Survey & Construction Organisation and he is liable to be replaced at any time by his seniors/selected candidates and such promotion does not confer on him any prescriptive right to continue as such in the Survey & Construction Organisation or in his parent

Department. The applicant having assumed charge of the promotional post purely on ad hoc basis on the above terms on 1.7.1997 his rights, if any, to the said post had expired on 31.12.1997. The benefit of ad hoc promotion was however extended upto 30.4.1998 consequent upon a proposal mooted in the office of Chief Engineer(Construction), Visakhapatnam and accepted by Chief Administrative Officer (Construction), Bhubaneswar. The emoluments of the applicant and some other ad hoc promotees having been drawn upto April 1998, such ad hoc promotees including the applicant were allowed to draw their emoluments in higher promotional posts upto 30.4.1998. This has been clearly mentioned in the order at Annexure-14 of the O.A. In view of the above, it is stated that the question of reversion of the applicant with retrospective effect does notarise. It is further stated that the benefit of ad hoc promotion having expired on 30.4.1998 the applicant cannot be permitted to enjoy the same as of right. It is further stated that both the orders dated 18.5.1998 and 22.5.1998 at Annexures 12 and 14 had already been implemented by the time the interim order was passed by the Tribunal on 26.5.1998. Thus the interim order of stay has become infructuous and should be vacated. As regards withdrawal of order of reversion in respect of persons against serial nos. 5,12,13 and 22 at Annexure-13 it has been explained by the respondents that these employees had only two ad hoc promotions and thus were not covered by the decision of the Chief Administrative Officer (Personnel) to the effect that ad hoc promotion beyond two levels shall not be granted. In view of this, it has been stated that the applicant has not been treated in a discriminatory fashion. On the question of regularisation of the applicant in the PCR posts or in Open Line it has been stated that these matters have to be gone into at the time of

hearing of the O.A. We have mentioned the averments made by the respondents in their showcause because in paragraph 30 of their regular counter it has been stated that the showcause may be read as a part of the counter.

4. In the counter filed by the respondents it has been stated that the application seeks to cover several causes of action arising at different times and is therefore not maintainable. It is further stated that the order of reversion not being by way of penalty is appealable under Rule 18 of Railway Servants (Discipline & Appeal) Rules, 1968, which provided for appeal against an order of reversion to lower service, grade or post otherwise than as a penalty. As the applicant has not exhausted the alternative remedy, the OA is not maintainable. It is further stated that the petitioner has prayed for regularisation in Open Line of South Eastern Railway, Visakhapatnam, with effect from 5.12.1986 when the services of his juniors were allegedly regularised. The cause of action having arisen on 5.12.1986 the relief now sought for by him is 12 years after the event and therefore barred by limitation moreso when successive representations stated to have been made by the applicant cannot extend the period of limitation. It is also stated that the seniority claimed by the applicant over others cannot also be considered as the applicant has not impleaded those persons as parties. The relief of absorption in PCR cadre is also barred by limitation because of delay. The respondents have denied the averments of the applicant with regard to joining in the Construction Organisation from 1.7.1967 and working therein for 31 years. It is stated by the respondents that according to available records the applicant served as a casual labourer under District Engineer, D.B.K. Railway Project, Waltair from 1.7.1967 to 5.8.1969 and again after a gap of two years, as a

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casual worker from 4.8.1971 to 17.12.1971 in the Steel Plant Survey Works and again, after a break of four years, he was employed as Substitute Diesel Cleaner in Diesel Locoshed Waltair from 11.7.1975 from where his continuous service under the South Eastern Railway commenced. The respondents have enclosed at Annexure-R/1 the details of service particulars of the applicant along with many others prepared on 30.7.1976. The applicant has put his signature on 13.8.1976 against the details of his past service mentioned in this statement. It is further submitted that while the applicant was serving as Substitute Diesel Cleaner in Diesel Loco Shed, Waltair, he came on transfer on his own request to the establishment of District Engineer, D.B.K.Railway Project on 27.12.1975. He was screened and was found suitable and accordingly was absorbed in Group-D post as Diesel Cleaner in Diesel Loco Shed, Waltair in Open Line Organisation. Following another screening and suitability test he was promoted to the post of Khalasi Helper in Open Line in Office Order dated 28.1.1984 copy of which is at Annexure-R/2. While he was continuing in Construction Organisation in S.E.Railway in Waltair he again appeared at a trade test held for promotion to the post of Fitter Grade-III in the Skilled Artisan cadre of his parent Department in Open Line but failed to qualify in the test which is borne out by the results declared in order dated 8.8.1997 at Annexure-R/3. The respondents have stated that the applicant maintained his lien against permanent and regular post of Diesel Cleaner from 11.7.1975 to 27.1.1984 and as Khalasi Helper from 28.1.1984 in the Open Line while he was actually working in Construction Organisation. While he was retaining his lien in the permanent and regular post of Diesel Cleaner and later as Khalasi Helper, he had come to Construction Organisation as Tracer on

27.12.1975. He became a Junior Draftsman on 2.4.1980, Senior Draftsman on 9.8.1980, Head Draftsman on 7.12.1987 and Chief Draftsman on 1.7.1997. All these promotions were given on ad hoc basis from one post to another. All these orders are at Annexures R/4, R/5, R/6 and R/7. He was brought back to his ad hoc promotional post of Head Draftsman upon expiry of the period of his appointment as Chief Draftsman and extensions granted by way of implementing the order dated 24.4.1998 at Annexure-5 of the O.A. The respondents have stated that the applicant having his lien against a permanent and regular post of Khalasi Helper in the Open Line cannot claim regularisation in the said Open Line as he has already been regularised in the Open Line. Although he has been employed on ad hoc basis in different promotional posts in the Construction Organisation, he cannot claim the benefit of regularisation in the said Construction Organisation while retaining and continuing his lien against permanent and regular post in the Open Line. The respondents have relied on the Railway Board's instruction dated 3.1.1962 the relevant portion of which has been quoted by them in the counter. In this circular the Railway Board considered whether the non-gazetted staff who are temporarily transferred to Projects or other Railway organisations to meet administrative requirements should be considered for promotion to higher grade posts of the borrowing organisations. It was clarified that such employees should not be debarred from promotion against vacancies which may arise in the borrowing organisations during the period of their tenure and for which there are no suitable persons awaiting promotion in the borrowing organisations. But it should be made clear that both at the time of calling such persons for selection and the final orders, that any position assigned to such staff taken from other organisations is purely

temporary and would last so long as they are on deputation with the borrowing Railway organisation. This would not automatically entitle such persons to any preferential treatment on their parent Railway in the matter of promotion to higher posts, which will be governed by the normal rules applicable to their category. The above position has been clarified in a further circular dated 24.5.1988 in which it has been clarified that posting in the Construction Organisation will be treated as on purely ad hoc basis and they will have no claim for the post or grade held by them therein. They will be considered for promotion in their respective parent cadres in accordance with rules governing such promotion. The respondents have further denied the allegation of the applicant that persons junior to him were regularised as Tracers in the Open Line while his case for regularisation was bypassed. They have stated that during a period of shortage of hands of Tracers in the Waltair-Kirandul Railway Electrification Project, an employment Notice dated 21.6.1973 was issued by Senior Electrical Engineer for recruitment of 13 Tracers on casual basis to meet the exigencies of service. Of the 13 so employed, services of nine Tracers were regularised in order dated 19.8.1980 at Annexure-R/8. The services of remaining four Tracers A.V.Krishna Rao, V.A.Janardhana Rao, B.Danteswara Rao and Ms.M.Chandra Kumari were regularised under approval of the Railway Board in order dated 20.9.1985 (Annexure-R/9). According to this order these four persons were required to appear before Railway Recruitment Board for adjudging their suitability for absorption as Tracers against the vacancies of Waltair Division. It is necessary to note at this stage that out of these four persons the applicant has referred to the case of A.V.Krishna Rao, B.Danteswar Rao and M.Chandrakumari.

The respondents have stated that the petitioner not having applied and not having been employed in Waltair-Kirandul Electrification Project, cannot claim the benefit of regularisation given to employees of the said establishment and it cannot be said that they are junior to the applicant in service. The respondents have further stated that the Divisional Railway Manager (Personnel), South Eastern Railway, Waltair, issued an Employment Notice dated 2.12.1981 (Annexure-R/10) for filling up of the post of Tracer on regular basis from amongst the technical staff working in the Open Line as well as Construction Organisation. Even though the notice was widely circulated including in the unit where the applicant was working, for reasons best known to him, the petitioner failed to apply. Not having applied for the post, he cannot make a grievance that he has been left out while persons junior to him have been given the benefit. As regards his absorption against a PCR post, the respondents have pointed out that the applicant was ineligible for absorption against PCR post on 1.4.1973, 1.4.1984 and 1.4.1988. He was in the service of S.E.Railway as on 1.4.1973 and the total period of his casual service S.E.Railway was 2 years, five months and 20 days by 1.4.1973 whereas the requirement for absorption against PCR post was aggregate of three years of casual service by 1.4.1973. When the matter of filling up of the PCR posts was taken up in 1978 the applicant had held lien against permanent and regular post of Diesel Cleaner in the Open Line and therefore he could not have been absorbed against PCR post. Lastly it has been submitted that the question of restructuring of the Draftsman cadre and to extend him the benefit allegedly given to his counterparts in the Open Line does not arise as he is not a regular Tracer in the Open Line but a Group-D post holder in the Open Line. Moreover, the

benefit given to regularly employed Tracers in Open Line in 1985 cannot be claimed by the applicant more than a decade later. On the above grounds, the respondents have opposed the prayers of the applicant.

5. The applicant in his rejoinder has reiterated his prayers and also many of his averments in the OA and it is not necessary to repeat the same. He has stated that his main prayer in the OA is for regularisation in the absence of which he was illegally reverted and therefore he has not come up with multiple prayers. He has also stated that cause of action has arisen on 18.5.1998 when the applicant was reverted in the order at Annexure-12. He has also stated that his representation submitted on 2.8.1997 (Annexure-11) is still pending. It is further stated that as he is not claiming seniority over any person and his prayer will not affect any other person, it is not necessary to implead others as private respondents in the O.A. The applicant has further stated that his service particulars under Annexure-R/1 cannot be relied upon as it does not bear the signature of the respondents. He has also stated that records of service of casual labourers were not properly maintained. The applicant has also stated that he was not at all examined in the trade test but it was declared that he has failed. The Office Order failing him was also not communicated to him. The applicant has enclosed at Annexure-17 the list of names of 25 officers who have got more than two ad hoc promotions. The applicant has also stated that as he has worked for many years in the Construction Organisation, his lien in Open Line should be deemed to have been suspended and the instructions provide for such suspension of lien. In this connection the applicant has enclosed the relevant rules at Annexure-16 and has relied upon

Rules 241, 242 and 243 at Chapter II of General Conditions of Service.

6. The respondents have filed a reply to the rejoinder in which they have also repeated many of their averments in the counter. They have enclosed at Annexure-R/14 an order dated 9.12.1975 in which the applicant was released from the post of Substitute Diesel Cleaner to work under District Engineer, D.B.K.Railway Project, Waltair at his own request. In this order it has also been mentioned that as the applicant is only a substitute staff his lien will not be maintained in the Open Line and he will cease to be employee of Open Line from the date of his release. The respondents have also enclosed documents relating to his trade test which show that a regular test was made, questions were put to him and he failed in the test. It is also stated that the applicant appeared in the screening for Diesel Cleaner held on 13.8.1976 and he has put his signature in the letter dated 12.8.1976 at Annexure-R/15. At Annexure-R/16 the respondents have enclosed the documents regarding the trade test in which the applicant appeared for the post of Fitter and in which he has failed. The enclosure to Annexure-R/16 shows that regular questions were put to him and the applicant has also signed these papers. On the basis of these documents the respondents have reiterated their averments in the counter to the rejoinder.

7. The applicant has filed an additional rejoinder in which he has stated that while this OA was pending the respondents have regularised ad hoc promotions of seven persons who were holding lien in Group-D PCR posts. He has enclosed the three orders dated 5.1.1999, 11.1.1999 and 18.2.1999 at Annexure-20. The applicant has also filed an affidavit enclosing an order dated 6.1.1988 in which he was

confirmed as Diesen Cleaner on 1.4.1985. He has also enclosed an order dated 14.8.1987 in which A.V.Krishna Rao, B.Danteswar Rao and M.Chandra Kumari were allowed paper lien in Civil Engineering Department of Waltair Division.

7A We have heard Shri B.S.H.Rao, the learned counsel for the petitioner and Shri B.K.Behura, the learned Special Counsel and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have also perused the records. The learned counsel for the petitioner has filed a memo with copy to the other side enclosing two Establishment Serials of the Railways and the decision of the Tribunal in OA No. 360 of 1989. He has also submitted a written note of submission. All these have been taken note of. The learned counsel for the respondents has also filed written note of arguments and we have perused the same.

8. In support of his various contentions, the learned counsel for the petitioner has relied on the following decisions:

- (i) A.Sagyanathan v. Divisional Personnel Officer, Southern Railway, AIR 1991 SC 424;
- (ii) Kuldeep Chand v. Union of India, AIR 1996 SC 706;
- (iii) K.C.Pattnaik v. State of Orissa, ATR 1987 (2) CAT 401;
- (iv) Y.G.Sharma v. Union of India, (1991) 17 ATC 82;
- (v) P.Seetharamaiah v. ADG, Health Services, 1988(2) CAT 205;
- (vi) Dr.Avneesh Kumar v. Director, Indian Veterinary Research Institute, 1999 Lab.I.C.2466.

We have perused these decisions. The learned counsel for the respondents has relied on the case of Union of India v. Kishorilal Bablani, AIR 1999 SC 517. We have also gone through this case.

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9. From the above recital of pleadings it does appear that both the sides have relied upon a large number of factual matters in support of their contentions. Before even attempting to delve into these factual aspects, it is necessary to consider the submissions of the respondents that the applicant in this OA has come up with multiple prayers and the petition is not maintainable on that ground as also on the ground of his having not exhausted the departmental remedy as provided under Rule 18 of Railway Servants (D&A) Rules. The applicant's grievance in this case is that because of his non-regularisation in the Construction Organisation or in the Drawing Unit of Open Line, he was reverted from the post of Chief Draftsman to the post of Head Draftsman in the order dated 18.5.1998 at Annexure-12. He has asked for quashing the order of reversion as also for a direction for his regularisation either in the Construction Organisation or in the Open Line. It is clear from this that he was continuing on ad hoc basis in higher post because of his non-regularisation and therefore his reversion and the question of regularisation are interlinked. In view of this, it is held that the applicant has not come up in this petition with multiple prayers. As regards the plea that he has not exhausted the departmental remedy, the relevant provision of Rule 18 of Railway Servants (D&A) Rules which we have quoted earlier provides for appeal against the order of reversion except by way of penalty. As the reversion order was issued on 18.5.1998 and was given effect to immediately, the applicant could not have moved the appellate authority against this order under Rule 18. In view of this, we hold that the application cannot be thrown out on the ground that he has not filed an appeal under Rule 18 of the Railway Servants (D&A) Rules. In any case

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his grievance with regard to non-regularisation of his service is not against any particular order or rather on alleged inaction of the departmental authorities. The question of filing an appeal with regard to this prayer does not arise. In view of this, it is held that the petition in the present form is maintainable.

10. Before coming to the submissions on various factual aspects it is necessary to note the service particulars of the applicant. According to the applicant, he joined as Casual tracer on 1.7.1967 under District Engineer, DBK Railway Project, Waltair and after working for about 8 years from 1.7.1967 to 10.7.1975 as Casual Tracer/Supervising Mistry, he came to Open Line in Mechanical Department for four and half months. The respondents in their counter have stated that he served as Casual Labourer under District Engineer, D.B.K.Railway Project, Waltair, from 1.7.1967 to 5.8.1969 and after a gap of two years, as a casual worker from 4.8.1971 to 17.12.1971 in Steel Plant Survey Works and again after a break of four years he was employed as Substitute Diesel Cleaner in Diesel Loco Shed, Waltair on 11.7.1975 from which date his continuous service under S.E.Railway commenced. In support of their contention the respondents have enclosed at Annexure-R/1 a statement showing particulars of staff which was prepared in connection with screening for regularisation of Class IV Diesel Cleaners in Mechanical Department. The applicant's name appears against serial no.100 and it is mentioned in column 4 that he is continuously working in Mechanical Department from 11.7.1975. In the remarks column his previous service from 1.7.1967 to 5.8.1969 and from 4.8.1971 to 17.12.1971 under District Engineer, D.B.K.Railway Project and Steel Plant Survey Works has been mentioned. This statement has been signed by the applicant on 13.8.1976. The applicant has tried

to impeach this document by stating that as the document has not been signed by any officer of the Railways, this cannot be taken into consideration. At the same time the applicant has not submitted any document in support of his contention that he worked continuously for eight years as Casual Tracer and Supervising Mistry under D.B.K.Railway Project from 1.7.1967 to 10.7.1975. In the absence of any document in support of the above contention of the applicant and in view of the fact that in a document prepared in 1976 his service particulars, as mentioned by the respondents in their counter, have been mentioned and the applicant himself has signed the same, we must accept the service particulars of the applicant as mentioned by the respondents in their counter. The second aspect of the matter is that admittedly the applicant has worked in Construction Organisation from 1.7.1967 to 5.8.1969 and again after a gap of two years, for about 4 months from 4.8.1971 to 17.12.1971 in Steel Plant Survey which presumably is also a Project organisation. The applicant has stated that he worked under District Engineer, D.B.K.Railway Project as Casual Tracer/Supervising Mistry. The respondents have stated that the applicant worked as Casual Labourer under D.B.K.Railway Project and again in steel Plant Survey. The applicant has not brought any material on record to show that he was working as a Tracer at that time. In view of this, it is difficult to accept his contention that from 1967 he was working as Tracer continuously upto 1975 in D.B.K.Railway Project. The respondents have further stated that on 11.7.1975 he was appointed as Substitute Diesel Cleaner in the Loco Shed. The applicant has made a vague statement that he worked for four and half months in the Mechanical Department and though his regular designation was Khalasi he was utilised in

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the Drawing office. In the service particulars at Annexure-R/1 the applicant has been shown as Diesel Cleaner. In the order dated 9.12.1975 at Annexure-R/14 through which he was released at his own request to work under District Engineer, D.B.K.Railway Project, Waltair, it has been mentioned that he is a Substitute Diesel Cleaner and therefore it must be taken that during this period from 11.7.1975 till his release from Open Line in pursuane of the order dated 9.12.1975 he worked in Open Line as Substitute Diesel Cleaner. The next factual aspect is that in order dated 20.1.1984 at Annexure-R/2 he was promoted to the post of Khalasi Helper. In this list the applicant's name appears against serial no.82 and it is mentioned against his name that he is working under C.E. (Survey & Construction Organisation, Waltair). The next development with regard to the applicant in Open Line is that in order dated 8.8.1997 (Annexure-R/3) Skilled Artisans of Diesel Loco Shed, Waltair, were promoted to higher grade. Against the applicant's name at page 2 of this Annexure, it has been mentioned that he has failed in the trade test. We cannot accept the applicant's averment that he was not tested at all because the respondents at Annexure-R/16 have enclosed the papers showing that trade test was actually held. It is important to note that from Annexure-R/16 it appears that the trade test was held on 7.4.1997 in which the applicant appeared. This test was for the purpose of his promotion to the post of Fitter in Mechanial and Electrical Wing. But he failed in the trade test. In view of this, his chance of promotion in the Open Line is dependent upon his qualifying in the test declaring him suitable for such promotion. As regards his regularisation in the Open Line he has already been regularised though in a lower post as Khalasi Helper. There

is however one aspect of this regularisation which has to be taken note of because this has a bearing on his other prayer for getting regularised in the Construction wing.

11. As earlier noted while the applicant was working as Substitute Diesel Cleaner in the Open Line he was released at his own request to work under D.E.N., D.B.K.Railway Project, Waltair. The release order dated 9.12.1975 has been enclosed by the respondents at Annexure-R/14. In pursuance of this the applicant reported for duty and was posted as Temporary Tracer on 27.12.1975 by District Engineer, D.B.K.Railway Project, Waltair, in his order dated 29.12.1975 which is at Annexure-R/4. From these two Annexures R/4 and R/14 it is seen that while the applicant was working as Substitute Diesel Cleaner in Open Line he was released to work under District Engineer, D.B.K.Railway Project, Waltair, at his own request where he was posted as Temporary Tracer which post he joined on 29.12.1975. In the order dated 9.12.1975 releasing him from Open Line it has been specifically mentioned in a note that as the applicant is only a substitute staff his lien will not be maintained in the Open Line and he will cease to be an employee of the Open Line from the date of his release. Notwithstanding this note the departmental authorities as also the applicant have proceeded on the assumption that the applicant had lien in the Open Line and on the basis of that lien he was promoted in 1984 to the post of Khalasi Helper in the order referred to by us earlier. In course of hearing the learned counsel for either side has not thrown any light as to how the applicant was regularised in Open Line as Diesel Cleaner and later on promoted as Khalasi Helper in 1984 when from December 1975 he was working in Construction Organisation and according to the order dated

9.12.1975 issued at the time of his release from the Open Line he had no lien in Open Line. From December 1975 for the last twenty-five years the applicant has been working in Construction Organisation. The respondents have taken the stand that as he has lien in Open Line he cannot be considered for regularisation in the Construction Organisation. As regards the plea of the applicant that several of his juniors who also had lien in the Open Line were regularised in the Construction Organisation, the respondents have stated that A.V.Krishna Rao, B.Danteswar Rao and M.Chandra Kumari were appointed as Tracers in Waltair-Kirandul Railway Electrification Project because of an employment notice dated 21.6.1973. 13 Tracers were appointed on casual basis, 9 of whom were regularised in 1980 and four of them including A.V.Krishna Rao, B.Danteswar Rao and M.Chandra Kumari were regularised as a very special case by the Railway Board and this decision was communicated in order dated 20.9.1985 at Annexure-R/9. From the service particulars of these three persons given by the applicant himself in page 6 of the OA it appears that A.V.Krishna Rao, B.Danteswar Rao and M.Chandra Kumari have been working as Casual Tracers, the first two from November 1972 and M.Chandra Kumari from April 1973. The applicant joined as Casual Tracer on 29.12.1975 as we have already noted. In any case in the present application it is not necessary for us to take a view whether these three persons are senior or junior to the applicant. The applicant in his rejoinder has mentioned that he is not claiming seniority over anybody and therefore such persons are not necessary parties. He is only claiming consideration of his case for regularisation in the Construction Organisation. It is

also to be noted that a person who has lien in the Open Line can be confirmed in the Construction Organisation against PCR post. The very concept of lien presupposes a person working in one organisation having right to a post in another organisation or to another post in the same organisation. Such lien is generally terminated once the person gets permanently absorbed in the organisation/post where he is working. In view of this, the fact that the applicant has lien in Open Line cannot be a ground for not considering him for regularisation in the Construction Organisation. We have already noted that strictly speaking the applicant did not have a lien in Open Line because in the order dated 9.12.1975 releasing the applicant from Open Line it was specifically mentioned that he would not have any lien in Open Line. It is also to be noted that the applicant has worked for twenty-five years in the Drawing Office of Construction Organisation from December 1975 and in view of this, his prayer for regularisation in the Construction Organisation is disposed of with a direction to the respondents that they should consider absorbing the applicant in the Construction Organisation in accordance with his seniority and suitability. The respondents should take a view on absorption of the applicant in the Construction Organisation within a period of 90 (ninety) days from the date of receipt of copy of this order.

12. The last prayer of the applicant is with regard to the order dated 18.5.1998 in which he was reverted from the post of Chief Draftsman to the post of Head Draftsman. From the pleadings of the parties it appears that apparently several persons were promoted on ad hoc basis from one post to another and again from the second promotional post held on ad hoc basis to a third promotional post and to the

fourth, all on ad hoc basis. Apparently such multiple ad hoc promotions were given in the interest of work to man the higher posts. The respondents have explained in their counter that Chief Personnel Officer has decided that persons enjoying more than two ad hoc promotions should be reverted to the post held by way of second ad hoc promotion. Accordingly, the applicant has been reverted from the post of Chief Draftsman to the post of Head Draftsman. The respondents have also stated that persons in respect of whom the reversion order dated 18.5.1998 was subsequently withdrawn were not enjoying more than two ad hoc promotions and therefore their names were included by mistake in the original reversion order dated 18.5.1998. At the time of giving ad hoc promotion to the applicant from the post of Head Draftsman to Chief Draftsman it was clearly indicated that he would not have a right to hold the higher post. Though this ad hoc promotion was made for six months, it was continued till the end of April 1998 but that would not give the applicant any right to continue in the post of Chief Draftsman. The applicant has not mentioned that any person junior to him is continuing in the post of Chief Draftsman on ad hoc basis.

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In view of this, we hold that the order of reversion is based on objective criteria and cannot be questioned. It is also not necessary under the rules that before such reversion a showcause notice should be issued to the applicant. This contention is held to be without any merit. In view of our above discussion we hold that the prayer of the applicant to quash Annexure-12 is without any merit and the same is rejected. In this connection, it is to be noted that the applicant has mentioned in his second rejoinder that during the pendency of the O.A. certain other persons who were covered by the reversion order have been regularised in higher

post. This is one more ground which goes to support our earlier direction to the respondents to consider regularisation of the applicant in the Construction Organisation according to his seniority and suitability within the time indicated by us earlier.

13. In the result, therefore, the Original Application is disposed of in terms of our observation and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM) 28.2.2000
VICE- CHAIRMAN

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