CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS.488 & 489 OF 1998
Cuttack, this the 8th day of January, 2001

K.Rama Rao (OA No. 488 of 1998)
D.Joga Rao (OA No. 489of 1998) ....Applicants

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
8.1.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NOS. 488 & 489 OF 1998
Cuttack, this the 8th day of January 2001

CORAM:

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

.....

In OA No. 488/98

K.Rama Rao, 52 years, son of late K.V.!Suba Rao, Primary School Teacher, M.P.School, Bandhamunda, Sundargarh
..... Applicant

Vrs.

1. Union of India, through General Manager, S.E.Railway, Garden Reach, Calcutta-43.

2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.

3. Divisional Railway Manager, S.E.Railway Chakradharpur, Dist.Singhbhoomi, Bihar

..... Respondents

In OA No. 489/98

D.Joga Rao, 44 years, son of D.Laxman Rao, at present Primary School Teacher, M.P.School, Khurda Road, Jatani, Dist. Khurda... Applicant

Vrs.

1. Union of India, through General Manager, S.E.Railway, Garden Reach, Calcutta-43.

2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43.

3. Divisional Railway Manager, S.E.Railway, Khurda Road, Khurda dist..... Respondents

Advocates for applicants-M/s A.K.Mishra
B.B.Acharya
J.Sengupta
D.K.Panda
P.R.J.Das
G.Sinha

Advocate for respondents-Mr.R.Sikdar

S Som.

O R D E R
(ORAL)

SOMNATH SOM, VICE-CHAIRMAN

In these two cases the petitioners are similarly situated and they have come up with the same prayer. The respondents have filed identical counters, and the applicants have also filed almost identical

rejoinders. As the points for consideration are the same, these two O.As. are being disposed of by a common order. The facts of these two cases, which are more or less similar, are however set out separately. Before doing that it is also necessary to note that in both these cases the learned counsels for the petitioners have filed memo on 5.9.2000 for early adjudication of the matters. This is also one of the grounds prompting us to take up the matters even in the absence of the learned counsels for both sides.

2. In OA No.488 of 1998 the applicant'scase is that he was selected on the recommendation of a duly constituted Selection Committee for appointment as Grade-IV Teacher in Telugu Medium, M.P.School under S.E.Railway, Bandhamunda and as per order dated 12.1.1979 at Annexure-1 he joined on 16.1.1979. While he was working as such, he apprehended that his services would be terminated and he along with others filed a writ petition in the Hon'ble High Court at Calcutta which passed the interim order of stay. On 12.10.1981 the Railway Board issued a circular laying down that substitute Teachers, who have completed three years of service as on 26.9.1981, will be considered for regularisation. A further stipulation was made that period of service will be reckoned proforma right from the date of initial appointment as substitute teacher. In pursuance of the above order, which is at Annexure-2 persons who had completed three years of service as substitute Teacher, were regularised as Grade IV Teacher in the pay scale of Rs.330-560/- with effect

from 24.11.1981. As the petitioner had not completed three years on the cut-off date, i.e., on 26.9.1981, his case was not considered by the departmental authorities. It is stated that one Smt.M.B.Ramayamma was regularised on 11.12.1989 with effect from 7.11.1981 pursuant to the order of the Central Administrative Tribunal in T.A.No.655 of 1986 though the regularisation order was passed on 11.12.1989. On 22.6.1992 the Chief Personnel Officer, S.E.Railway, wrote to Secretary, Ministry of Railways (Annexure-5) stating that some of the substitute teachers who had not completed three years of service as on 26.9.1981 and could not be regularised, had already completed more than ten years of service and the Union had requested for regularisation of such teachers. In view of this, the Chief Personnel Officer sought the approval of the Ministry for conducting a screening test. Pursuant to the aforesaid letter, the Railway Board approved regularisation of eight teachers in which the applicant was at serial no.4. On 29.9.1993 the petitioner after being selected in the screening test, was regularised with effect from 27.7.1993 in the pay scale of Rs.1200-2040/- with the stipulation that seniority would be fixed as per rules. The petitioner felt aggrieved by the order of regularisation only with effect from 27.7.1993 and filed a representation on 3.12.1993 asking for seniority from 16.1.1979. But his seniority was ordered to be fixed with effect from 27.7.1993 by Senior Divisional Personnel Officer, Chakradharpur, in his order dated 20.1.1994. The applicant has stated that one B.V.R.Rao,

who was regularised in order dated 28.1.1993 at Annexure-6 with prospective effect, was regularised as Assistant Teacher with effect from 1.2.1979 pursuant to the order of Central Administrative Tribunal, Patna Bench. It is stated that such regularisation was made on 1.3.1995 pursuant to the order of the Tribunal, dated 20.2.1994. Thereafter the petitioner submitted a representation on 10.6.1997 seeking regularisation like B.V.R.Rao from the initial date of appointment, but no action was taken by the departmental authorities. It is stated that according to the law as laid down by the Hon'ble Supreme Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others, AIR 1990 SC 1607, once an incumbent is appointed to a post according to rule his seniority has to be counted from the date of his appointment and not according to the date of his confirmation, and the corollary to the above rule is that where the 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. The applicant has stated that in view of the above position of law the Railway authorities cannot discriminate against him and he had appeared at a test and has been continuing from 1979 till 1993 when his services were regularised. The applicant has stated that he has filed a series of representations but without any favourable result, and in the context of the above facts, he has asked for a direction to the respondents to regularise his services from 16.1.1979 along with payment of arrear wages.

3. Respondents in their counter to OA No. 488 of 1998, have pointed out that according to rules substitute teachers can be regularised only if they are selected through Railway Recruitment Board or other Railway Recruiting Agency. The applicant was not recruited through the Railway Recruitment Board at the time of his initial engagement nor did he come through a regular selection process. Shortly after his appointment, he moved the Hon'ble High Court at Calcutta on the apprehension that his service would be terminated, and he obtained interim stay on 17.9.1979 restraining the Railways from taking any action for terminating his service. By virtue of this order he continued in service and was regularised with effect from 27.7.1993 in order dated 29.9.1993 at Annexure-7 of the O.A.The respondents have stated that the applicant's representation received on 4.12.1993 was examined at length and a reply was given to him on 3.2.1994 rejecting his claim. It isstated that the cause of action has arisen in 1994 and this OA filed in 1998 is grossly barred by limitation. It isstated that the petition is also not maintainable due to non-joinder of persons who were regularly appointed during 16.1.1979 to 26.7.1993. The respondents have further stated that in 1979 the Divisions were not authorised to make recruitment of Assistant Teachers Grade-IV, which power was given to Divisions only on 11.7.1983. The contention of the applicant that he was selected by a duly constituted Selection Committee has been denied by the respondents. The respondents have stated that it may be a fact that some aptitude test was conducted before the applicant was taken in, but that aptitude test cannot be treated as a selection by a duly constituted

Selection Committee moreso when the Divisional authorities had no power to hold a regular selection. The respondents have referred to the Railway Board's circular about regularisation of those substitute teachers who had completed three years of service as on 26.9.1981, and have mentioned that the applicant'scase could not be considered as he had not put in three years of service by the cut-off date. With regard to the case of Smt.M.B.Ramayamma, the respondents have stated that the applicant should have filed a copy of the order passed in TA No.655 of 1986 to show that the applicant therein has been given seniority from 7.11.1981. The respondents have stated that according to Paragraph 1515 of Indian Railways Establishment Manual, Vol.I, a substitute is entitled to count service rendered as substitute as continuous for all purposes except seniority on absorption against regular post after due selection. The respondents have also admitted that the Railway Board was approached in letter dated 22.6.1992 and the order of the Railway Board dated 28.1.1993 (Annexure-6). They have mentioned that the Railway Board directed regularisation with prospective effect, and accordingly the applicant and similarly situated persons were called for written and oral tests on 27.7.1993 and were selected and regularised with effect from that date. As regards the case filed by the applicant before the Hon'ble High Court at Calcutta, the respondents have stated that the case was transferred to Calcutta Bench of the Tribunal and was registered as T.A.No. 526 of 1987 (V.L.Narasimha Rao and others). In that case the Tribunal directed that the applicant should be

tested by a Selection Board and if successful, should be given regular appointment. The respondents have stated in their counter that a copy of the order of the Tribunal dated 29.3.1993 in that T.A. is enclosed at Annexure-B, but actually Annexure-B has not been enclosed. With regard to B.V.Ramana Rao, it is stated that he was allowed to count his seniority from the date of his appointment as substitute in pursuance of the order dated 2.2.1994 of Patna Bench of the Tribunal passed in OA No. 249 of 1992 and that judgment was taken to be a judgment in personam in relaxation of existing instructions as decided by the Railway Board. The respondents have denied that the applicant is entitled to be regularised with effect from 16.1.1979 by virtue of the decision in **Maharashtra Engineering Case.** They have, on the other hand, stated that the applicant'scase is squarely covered by the decision of the Hon'ble Supreme Court in the case of Dr.Anuradha Bodi and others v. Municipal Corporation of Delhi and others, 1999(1) SLJ 1. On the above grounds, the respondents have opposed the prayers of the applicant.

4. The applicant has filed rejoinder in which he has reiterated his averments made in the OA. He has challenged the reasonableness of fixing the cut-off date on 26.9.1981 and has also challenged the assertion that the judgment in B.V.Raman Rao's case is a judgment in personam and not in rem. He has stated that he should have been given the benefit of the judgment in B.V.Raman Rao's case. On these grounds, the applicant has reiterated his prayers in the OA.

5. In OA No. 489 of 1998 the applicant has made similar prayer for regularising his service from 17.1.1979 and payment of arrears like the applicant in OA No. 488 of 1998. He has also stated that he was selected on the recommendation of a duly constituted Selection Committee for appointment as Grade-IV Teacher in S.E.Railway M.P.School, Bandhamunda. He had also filed a writ application before the Hon'ble High Court at Calcutta and by virtue of the interim stay order had continued. He has also made refrence to the Railway Board's circular for regularising substitute Teachers who had completed three years of service on 26.9.1981. He has also referred to the case of Smt.M.B.Ramayamma in T.A.No. 655 of 1986, the proposal of the S.E.Railway dated 22.6.1992 and the order of the Railway Board, and the fact of his regularisation with effect from 29.9.1993 along with seven other Teachers in which his serial was 6. The applicant has stated that he was regularised with effect from 27.7.1993 and being aggrieved by that he had filed representation. He has referred to the case of B.V.Ramana Rao whose regularisation was given effect to from 1.2.1979 in pursuance of the decision of the Patna Bench of the Tribunal. He has also referred to **Maharashtra Engineering Case** and various representations filed by him.

6. The respondents in their counter have taken identical stands as taken by them in OA No. 488 of 1998 and it is not necessary to refer to all the averments made by the respondents in their counter except to note that with regard to the case of B.V.Ramana Rao it has been mentioned by the respondents that in his case the judgment

was delivered by Patna Bench on 2.2.1994, but Shri Ramana Rao was already regularised in order dated 28.1.1993 at Annexure-6. His regularisation was initially made in order dated 28.1.1993 with prospective effect. But in pursuance of the decision of the Patna Bench of the Tribunal, Shri Ramana Rao was regularised with effect from an earlier date and that judgment being a judgment in personam is not applicable to the case of the petitioner. They have also mentioned that the applicant was not appointed on regular basis as substitute teacher through any regular process of selection. On the above grounds, the respondents have opposed the prayer of the applicant.

7. In the rejoinder the applicant has taken the same stand as has been taken by the applicant in OA No.488 of 1998 and therefore it is not necessary to refer to his averments made in the rejoinder as we have already taken note of similar averments of the applicant in OA No. 488 of 1998.

8. The learned lawyers have abstained from court work from 7.12.2000. We have been intimated from time to time that they will be attending after two to three days. But in this manner this abstention from court work has continued for more than a month. So far we have been accommodating the learned advocates by taking up cases for disposal only where parties were present in person and prayed for early adjudication of their matters. But as abstention from court work has gone on for more than a month and it is not certain when the learned counsels will attend to court work, it is not possible to drag on the matters indefinitely. We have therefore taken up these matters moreso because in these two cases the learned

counsel for the petitioners had filed memo on 5.9.2000 for early adjudication of the matter. In view of this, we have gone through the records and proceeded to deliver the order even though we did not have the benefit to hear the learned counsel for the petitioner and Madam R.Sikdar, the learned Additional Standing Counsel for the respondents.

9. The first point to be noted in this connection is that the applicants in both these cases have stated that they were selected and appointed as Grade-IV Teachers through regular process of selection by a duly constituted Selection Committee. The respondents have pointed out that at that time in 1979 the Divisional authorities had no power to recruit Grade-IV Teachers. This power was given to the Divisional authorities only in 1983. Therefore, it cannot be said that the applicants were selected through a duly constituted Selection Committee. The respondents have also pointed out that under the rules, substitute teachers are to be appointed by the Railway Recruitment Board or any other Railway Recruiting Agency. It is not the stand of the applicants in both these cases that they were recruited through the Railway Recruitment Board or any other duly constituted Recruiting Agency. They have also not indicated as to the nature of selection test which they had to take in order to get selected. The admitted position is that they were appointed for a period of three months and were continued till they obtained a stay order from the Hon'ble High Court at Calcutta and continued by virtue of the stay order. Ultimately, the writ application filed before the Hon'ble High Court at Calcutta was transferred to Calcutta Bench which directed in their order dated 29.3.1993 that the applicants before

them should be tested by a Special Selection Board and if found successful, they should be given regular appointment. Even though the copy of the order of the Calcutta Bench of the Tribunal stated to have been enclosed to the counter as Annexure-B has not been enclosed, this averment with regard to the import of the order of the Calcutta Bench has not been denied by the applicants in their rejoinders. We find from Annexure-6 that the Railway Board ordered for a special screening of eight such substitute teachers including these two applicants through a committee of at least three officers including a Member or Secretary of a Railway Recruitment Board and it was also laid down that screening for this purpose will include a writtentest. Thus the mode of regularisation of these two applicants has been on the same lines as ordered by Calcutta Bench in the above T.A. In this circular at Annexure-6 it has also been provided that regularisation will have prospective effect. Accordingly, these two applicants were regularised in the year 1993. Thus, the cause of action for them has arisen in 1993 and in any case in 1994 when their representations for getting regularised from the initial date of their engagement were rejected. But the applicants have approached the Tribunal only in 1998 after passage of more than four years. They have not indicated any reason for this delay nor have they filed any petition for condonation of delay as required under Rule 8(4) of CAT (Procedure) Rules, 1987.

10. The applicants have relied on the decision of the Hon'ble Supreme Court in **Maharashtra Engineering Case (supra)** for claiming regularisation from the initial date of engagement. The exact import of

sub-paragraphs (A) and (B) of paragraph 44 of the judgment of the Hon'ble Supreme Court in **Maharashtra Engineering Case(supra)** has been considered by the Hon'ble Supreme Court in **Dr.Anuradha Bodi's case (supra)** . It is not necessary to refer to the facts of that case. In this decision, the Hon'ble Supreme Court referred to their subsequent decision in the case of State of West Bengal and others, etc. , etc. v. Aghore Nath Dev and others, etc., etc., (1993) 3 SCC 371. In **Aghore Nath Dev's case (supra)** the Hon'bleSupreme Court held that sub-paragraphs (A) and (B) of paragraph 44 of **Maharashtra Engineering Case(supra)** must be read harmoniously. Their Lordships have also noted that first part of sub-paragraph (A) lays down that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. Sub-paragraph (B) of paragraph 44 lays down that if the initial appointment is not made by following the procedure laid down by the rules but appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, period of officiating service will be counted. The Hon'ble Supreme Court in **Aghore Nath Dev's case(supra)** laid down that the cases covered by the corollary mentioned in sub-paragraph (A) and the cases covered by sub-paragraph (B) are of two different types. Their Lordships have mentioned that conclusion 44(B) cannot include within its ambit those cases which are expressly covered by the

corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other. Their Lordships have also considered the category of cases which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A). The Hon'ble Supreme Court have taken the view that the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, "if the initial appointment is not made by following the procedure laid down by the rules" and the latter expression "till the regularisation of his service in accordance with the rules". In the instant case, reading these decisions together it is clear that as the applicants were not selected either by a duly constituted Selection Committee nor was any regular selection test held in their case, their caes are squarely covered by the corollary in conclusion (A) of paragraph 44 of the judgment in **Maharashtra Engineering Case** and are not covered by sub-paragraph (B) of paragraph 44 of the above judgment. This contention of the applicants is accordingly rejected.

11. The second contention of the applicants is that the cut-off date fixed on 26.9.1981 is unreasonable and in the circular dated 12.10.1981 at Annexure-2 it has been specifically mentioned that the period of service as substitute Teacher shall be reckoned proforma right from the date of initial appointment as substitute teacher, provided the teacher concerned was re-engaged after each spell and the termination was caused at the end of school

session or completion of one year's service as the case may be. So far as the first point about arbitrariness of the cut-off date is concerned, we are not inclined to accept the proposition because this procedure for regularisation of those substitute teachers who had completed three years of service was issued in order dated 12.10.1981 and naturally a cut-off date prior to 12.10.1981 had to be fixed. The two applicants having joined on 16.1.1979 and 17.1.1979 could not have completed three years of service even if the cut-off date was fixed as 12.10.1981. In view of this, we find no merit in their challenge with regard to the unreasonableness of the cut-off date.

12. With regard to the point that in this order at Annexure-2 the services of substitute teachers were ordered to be regularised and the period of service as substitute teachers was ordered to be reckoned proforma right from the date of initial appointment as substitute teacher, we note that this was a special dispensation for substitute teachers who had completed three years of service by 26.9.1981 and accordingly 51 substitute teachers who had completed 3 years of service by the cut-off date were regularised with effect from 24.11.1981 again prospectively. It is only for the purpose of protecting their pay, etc., that their initial service was taken on proforma basis. If the present prayer of the applicants is allowed, then they will stand to become senior to even those teachers whose names were there at Annexure-3 who had completed three years of service as substitute teachers by 26.9.1981 and whose services were regularised with effect from 24.11.1981. In view of above, this contention of the applicants is held to be without any merit.

13. The applicants have mentioned about the case of Smt.M.B.Ramayamma in T.A.No 655 of 1986. A copy of this decision has not been enclosed. Only an order dated 11.12.1989 regularising the service of Smt.Ramayamma with effect from 7.11.1981 as Assistant Teacher has been enclosed at Annexure-4. The respondents have not made any averment with regard to the order at Annexure-4 of OA No.488 of 1998 in which the services of Smt.Ramayamma were regularised with effect from 7.11.1981. The respondents in page 4 of their counter have stated that the applicant should be directed to produce documentary evidence and advised to submit a copy of the order in TA No.655 of 1986 to prove his contention that the applicant therein was given seniority from 7.11.1981 as per the order passed in the T.A. We are not prepared to accept this stand of the respondents because from the order at Annexure-4 it seems that services of Smt.Ramayamma were regularised in pursuance of the order dated 14.8.1989 passed by the Calcutta Bench of the Tribunal in OA No.655 of 1986. It is further noted that in paragraph 4.5 of the counter filed by the respondents in OA No.489 of 1998 the case of Smt.M.B.Ramayamma has been mentioned and the respondents have stated that circumstances of the case of Smt.Ramayamma were dealt with in Adra Division. We are also not prepared to accept this proposition because in the order dated 11.12.1989 at Annexure-4 the Divisional Personnel Officer, Adra Division, S.E.Railway, has specifically mentioned that in terms of S.P.O(W)/Garden Reach's D.O. letter dated 21.11.1989, the services of Smt.Ramayamma have been regularised with effect from 7.11.1981. In view of this, it is clear that services of Smt.Ramayamma have been

regularised retrospectively in pursuance of the decision of the Calcutta Bench of the Tribunal in a case in which General Manager and Chief Personnel Officer, S.E.Railway, were parties and by an order of the Divisional Personnel Officer, Adra Division of S.E.Railway, in compliance with an order communicated by the headquarters of S.E.Railway at Garden Reach. The General Manager and the Chief Personnel Officer are respondents in these two Original Applications before us and counters have been filed on their behalf. In view of this, we cannot but take the view that the respondents have deliberately withheld from the Tribunal the facts of the case of Smt.M.B.Ramayamma. We, therefore, direct that the cases of the applicants should be considered in the light of the decision of the Calcutta Bench of the Tribunal and the decision of the headquarters of S.E.Railway communicated in the D.O. letter dated 21.11.1989, and a view should be taken within 90(ninety) days from the date of receipt of copy of this order and necessary order should be communicated to the applicants within a period of 30(thirty) days thereafter.

14. As regards the case of Shri B.V.R.Rao, here also the applicants have not filed the copy of the decision. The respondents have stated that in his case orders of the Railway Board were obtained and then in relaxation of the extant instructions, the service of B.V.R.Rao was regularised from a back date in pursuance of the order of Patna Bench of the Tribunal. The respondents have mentioned that the decision of the Tribunal in B.V.R.Rao's case is a judgment in personam and not a judgment in rem. The applicants in their rejoinders have

23

pleaded otherwise. In the absence of copy of the order of the Patna Bench of the Tribunal, it is not possible for us to take a view in the matter. It is for the applicants to prove their case and therefore, this contention of the applicants is held to be without any merit and is rejected.

15. In the result, therefore, both the Original Applications are disposed of in terms of our observation and direction above but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

January 8, 2001/AN/PS