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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 365 OF 2000
Cuttack, this the 27th day of August, 2001

Shri C.Subba 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
SOMNATH SOM)
VICE-CHAIRMAN
27.8.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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CORAM:

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

.....
Sri C. Subba Rao, aged about 46 years, son of Sri Sree Ramulu, presently working as Junior Engineer-I (Works), Koraput, Works/Con. Office of the Dy. Chief Engineer (Con.), S.E. Railway, Visakhapatnam.... Applicant

Advocates for applicant - M/s A. Kanungo
S. K. Misra
BSH Rao
B. Ray


Vrs.

1. Union of India, represented through General Manager, S.E. Railway, Garden Reach, Calcutta-43.
2. Chief Administrative Officer (C), S.E. Railway, Chandrasekharapur, Bhubaneswar.
3. Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta-43.
4. Chief Engineer (Construction), S.E. Railway, Chandrasekharapur, Bhubaneswar.
5. Dy. Chief Engineer (Construction), S.E. Railway, Visakhapatnam.
6. Divisional Railway Manager, S.E. Railway, Waltair...
..... Respondents

Advocate for respondents - Mr. D. N. Misra, SC (Rly)


O R D E R
SOMNATH SOM, VICE-CHAIRMAN

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In this O.A. the petitioner has prayed for a direction to the respondents to regularise the applicant in Construction Organisation, with effect from the date he is promoted to the grade or cadre and to allow him to continue as Junior Engineer Grade-II (Works) in the existing scale of pay and to regularise him against Permanent Construction Reserve (PCR) vacancies



of the Construction Organisation. He has also prayed for a direction to promote him to the post of Junior Engineer Grade-I in the scale of pay of Rs.1600-2600/- on the grounds urged in the O.A. The respondents have filed counter opposing the prayers of the applicant, the applicant has filed rejoinder, and the respondents have filed reply to the rejoinder. We have heard Shri B.S.H.Rao and Shri A.Kanungo, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents. The learned counsel for the petitioner has filed written note of submissions along with xerox copies of the decisions relied on by him and these have also been perused.

2. The admitted position is that the petitioner was initially appointed as Casual Supervising Mistry on 4.5.1976 under I.O.W.(Construction), Jagadapur and worked in various capacities. While he was working in Construction Organisation he was screened for absorption in Group-D post in Open Line. Having been found suitable in the screening, he was released to Open Line on 19.7.1986 and was absorbed as Khalasi in the Steam Loco of Mechanical Department of Waltair Division in the order dated 22.7.1986. The applicant has stated that by the time he came to the Open Line he had been given promotion to the level of Supervising Mistry Grade-I on 16.5.1985. The applicant worked in the Open Line from 22.7.1986 to 15.10.1986 when he was brought back to Construction Organisation. The applicant has stated that Deputy Chief Engineer (Construction) required his services back in the Construction Organisation and after working in Open Line from 22.7.1986 to 15.10.1986, he again came back to Construction Organisation. In the



Construction Organisation he was given ad hoc promotion to the post of Work Mistry with effect from 1.3.1987 after he cleared the trade test. According to the applicant he was further promoted to IOW Grade-III initially for a period of three months from 1.6.1989 to 1.9.1989. Later on in order dated 16.5.1990 he was promoted and allowed to continue as IOW Grade-III. This promotion, according to the applicant, was also given after he cleared the trade test. The applicant has stated that in order to regularise the locally recruited Group C and Group D staff, the Ministry of Railways created PCR posts to the extent of 40% of the construction cadre as on 1.4.1973. This was reviewed on 1.4.1984 and again has been increased to 60% of the construction cadre from 1.4.1984. He has stated that several staff holding lien in Open Line have also been confirmed from retrospective effect terminating their lien in Open Line in Waltair Division, but the applicant has been treated in a discriminatory fashion in so far as he has never been confirmed in Construction Organisation. It is further stated that as the applicant has all along remained in Construction Organisation from 1976, except for about three months when he worked in Open Line, his juniors in the Open Line have acquired several promotions and he has also been discriminated against in the Open Line.

3. It is not necessary to refer to all the averments made by the respondents in their counter and in the rejoinder and reply to the rejoinder. The main stand of the respondents is that the applicant being a lien holder in Open Line he cannot claim absorption in Construction Organisation against PCR post. They have

also stated that his claim for regularisation in different posts in Construction Organisation to which he was given ad hoc promotion from time to time is also barred by limitation because he has approached many years after such ad hoc appointments. The respondents have stated that according to Rules, a lien holder from Open Line on secondment to the Construction Organisation is not eligible to get regularised in Construction Organisation. He has to seek his promotions in the Open Line to which cadre he belongs. Respondents have further stated that a large number of persons working in Construction Organisation have been given several ad hoc promotions from one post to the next higher post. This was reviewed by the General Manager and a policy decision was taken to review all cases where more than two ad hoc promotions have been given. As the applicant had enjoyed more than two ad hoc promotions in the Construction Organisation, his case was also due to be reviewed for the purpose of his reversion in the Construction Organisation to a lower post. The respondents have stated that faced with this prospect the applicant has come up in this petition for his regular absorption in the posts in Construction Organisation to which he had been promoted on ad hoc basis from time to time.

4. From the above recital of pleadings of the parties, it is clear that the applicant was initially recruited in the Construction Organisation. Originally staff in the Construction Organisation were entitled to be absorbed/regularised in Open Line in Group-D post. After creation of PCR posts, locally recruited staff in Groups C and D became entitled for regularisation against PCR posts. The applicant himself has mentioned in

paragraph 4.8 of the O.A. that PCR posts were created for the purpose of regularising locally recruited Groups C and D staff. It is also the admitted position that even though PCR posts were created with effect from 1.4.1973 on the basis of 40% of the construction cadre as on 1.4.1973, orders creating the posts were issued in 1978. At the relevant point of time the applicant was working in the Construction Organisation. He had got ^{himself} absorbed in ^{J.S.M.} Open Line on 22.7.1986 after appearing at the screening. The respondents have stated that the applicant had appeared at the screening on his own volition. The applicant in his rejoinder has stated that he did not request for absorption in the Open Line. In that event, it was open for him not to appear at the screening for absorption in Open Line. Therefore, it must be held that the applicant got absorbed in Open Line on his own volition. He again came back to Construction Organisation in October 1986. But at this time his status in the Construction Organisation is that of a lien holder. The Railway Board in their circular dated 3.1.1962 at Annexure-R/1 have made it clear that non-gazetted staff who are temporarily transferred to other Railways (Projects or other Railway Organisations) can be considered for promotion in the borrowing organisation. But it should be made clear both in calling up the persons for selection and in the final orders that any promotion in the borrowing Railway is purely a temporary one for so long as they are on deputation with the borrowing Railway organisation. Such promotion will not allow the persons concerned to any preferential treatment in his own parent cadre. It is because of this position

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that such persons on deputation/secondment to another organisation should get their promotions in the parent Railway. It was provided in Railway Board's Establishment Serial No.144 of 1988 that such persons drafted from other organisation can at the most be granted one grade above that held by them on regular basis in their parent cadre and in no cases should any double ad hoc promotion be allowed to them. In this circular also the following has been clearly provided:

"ii) The posting in the construction organisation will be treated as on purely ad hoc basis and they will have no claim for the post or the grade held by them therein."

As the applicant has been absorbed in Open Line, he cannot again claim for absorption against PCR post in Construction Organisation. The applicant has enclosed several orders where Group-C staff, who were lien holders in Open Line, have been absorbed in the Construction Organisation against PCR posts. One such order is at Annexure-11. As earlier noted, the PCR posts were created in 1978. Respondents have stated that when PCR posts were increased from 40% to 60% of the cadre from 1.4.1988, additional posts were filled up in the year 1989. The original PCR posts must have been filled up much earlier. At that time the applicant had not asked for absorption against PCR post and has approached the Tribunal for the first time in 2000. In the circular dated 17.3.1989 (Annexure-R/4) it has been specifically provided that personnel having lien in Open Line will not at all be eligible for confirmation against Construction Reserve posts since these posts are meant for confirming

the locally recruited personnel in Construction Organisation who have no lien or permanency status or those who are confirmed against Construction Reserve posts in lower cadre. Earlier to this, apparently persons having lien in Open Line could get confirmed against PCR posts because in paragraph 2 of this circular it has been mentioned that the practice in vogue in SE Railway was that persons having lien in Open Line would be confirmed against Construction Reserve posts provided they have opted specifically for severing their lien in Open Line to enable them to be confirmed against the Construction Reserve post. In the instant case the applicant had never asked for confirmation/regularisation against a PCR post after severing his lien in the Open Line prior to March 1989 and in this circular of March 1989 it was made clear that such lien holders will not be absorbed against Construction Reserve post. In view of this, we hold that the applicant is not entitled to be considered for absorption against permanent construction reserve post.

5. The applicant has stated that he has worked for long years in Construction Organisation and in the meantime his juniors in Open Line have been promoted to higher levels. The respondents have pointed out that regular Engine Cleaners can be considered for running cadre on their exercising option. The applicant was absorbed in the post of Khalasi in Steam Loco Shed. With the abolition of Steam Loco and closure of Steam Loco Shed, the eligible staff working in the Steam Loco Shed were considered for coming over to running side as per their option. The applicant never submitted such option at the material time. The respondents have also stated

that none of his juniors in Open Line has been promoted in the normal promotional channel to any higher post. Those who have been promoted have gone over to running cadre after exercising their option. In any case, the question of applicant's promotion in Open Line is not the subject-matter of the present applicant.

6. The learned counsel for the petitioner has enclosed copies of decisions relied upon by him. In Mast Ram v. State of H.M. & Others, 1995(1) AISLJ (CAT) 268, it has been held that it is not proper to regularise a person in Class IV who has always worked in Class-III. In the instant case the applicant has already been regularised in Group-D post from 1986 in Open Line and he has never objected to the same and therefore, this decision is of no relevance to his case. In G. Indira Ramana Murty v. Government of India and others, 1995(3) AISLJ (CAT) 99, the applicant was a surplus staff of Steam Loco Shed and he came up for getting absorbed against the post of Welfare Inspector. This decision is also of no relevance to the present case. In the case of Shri Kamal Kumar v. General manager and others, 1999(2) AISLJ (CAT) 185, the applicant's substantive status was Group-D in Open Line and he had worked as Clerk and Senior Clerk for 18 years on ad hoc basis in Construction Organisation. The Tribunal noted that the applicant before them had worked in the clerical cadre for eighteen years on ad hoc basis and the Railways have allowed him to continue for 18 years on ad hoc basis violating their instructions for not continuing ad hoc appointment for long years and therefore, directed that the applicant's case should be considered for promotion to the post of

Senior Clerk by a review DPC. As we have noted earlier, the applicant has come up with the prayer for absorption in Construction Organisation only after the Railways have taken a decision to review all cases of more than two ad hoc promotions. His prayer for absorption in Construction Organisation is also therefore highly belated. He has also asked for regularising him in the post or grade in Construction Organisation to which he has been promoted from time to time. This prayer is also quite belated. The applicant has relied on a decision of this Bench in OA No.285 of 1998, disposed of on 28.2.2000. We have gone through this decision. In that case it was held by the Tribunal that the applicant has ceased to be a lien holder in Open Line at the time of his deputation to Construction Organisation. We have earlier mentioned that a lien holder in Open Line can be considered for absorption on his giving option. In the circular dated 17.3.1989 this practice of absorbing the lien holders in Open Line, in the Construction Organisation has been done away with. This circular was not noticed by us while deciding OA No.285 of 1998.

7. In view of all the above, we hold that the applicant is not entitled to the reliefs claimed by him in the O.A. which is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
27.8.2001
VICE-CHAIRMAN

27th
CAT/Cutt.Bench/ August, 2001/AN/P.S