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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 382 OF 2000

Cuttack, this the 5th day of September, 2001

Sri M.C.Sukumaran

Applicant


Vrs.

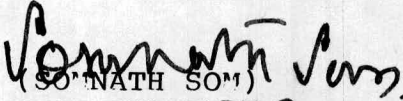
Union of India and others

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
5.9.2001

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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 M.C.Sukumaran, aged about 52 years, son of late
M.C.Kumaran, presently working as Head Typist, Office of
the Dy.Chief Engineer (Con.), S.E.Railway, Rayagada ...
..... Applicant

Advocates for applicant - M/s J.Patnaik
A.Kanungo
S.R.Misra
B.Ray
M.K.Biswal

Vrs.

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

.....

Respondents

Advocates for respondents - M/s D.N.Misra
S.K.Panda
S.Swain.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.S.M.

In this O.A. the petitioner, who is now
working as Head Typist in the office of Deputy Chief
Engineer (Construction), S.E.Railway, Rayagada, has prayed
for a direction to regularise the applicant in the

Construction Organisation with effect from the date he was promoted to the grade and/or cadre allowing him to continue as Head Typist in the existing scale of pay or to regularise him against PCR vacancies of Construction Organisation in the existing grade or cadre. The second prayer is for a direction to promote the applicant to the post of Chief typist in the pay scale of Rs.5000-8000/- considering the length of his service for more than fifteen years in the existing grade.

2. In order dated 5.10.2000 by way of interim relief a direction was issued that if the respondents decide to revert the applicant by 18.10.2000, then such reversion shall be done only with the leave of the Tribunal. This interim order has continued till date.

3. The case of the applicant is that he originally joined in August 1971 as Multipurpose Gangman in S.E.Railway in Open Line under Assistant Engineer, Koraput. In 1972 he was confirmed as L.R.Helper in Open Line under Assistant Engineer, Koraput. While he was working as such in 1973 he was transferred to Waltair-Kirandul Railway Electrification Project (WKRE Project). In 1982-83 WKRE Project was merged with Construction Organisation and the applicant came to Construction Organisation in August 1982 as Junior Typist. While working as such he was promoted as Steno-Typist on 2.7.1973 in the Construction Organisation and was subsequently empanelled as Junior Typist in the order dated 7.4.1974. While he was working as Junior Typist he was transferred and posted in the same grade on 16.8.1982 in the office of Deputy Chief Engineer (Construction),

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Koraput. The applicant has been continuing in Construction Organisation and was promoted as Ad hoc Senior Typist on 1.1.1983 and as ad hoc Head Typist on 11.1.1985. The applicant has stated that except for a period of two years from 28.8.1972 to 7.8.1973 when he served in Open Line, he has all along worked in WKRE Project/Construction Organisation for about 27 years but he has never been confirmed in the Construction Organisation. It is stated that in order to regularise the locally recruited Groups C and D staff in the Construction Organisation, the Ministry of Railways created Permanent Construction Reserve (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 with effect from 1.4.1988. The applicant has stated that several staff holding lien in Open Line have been "continued" from a retrospective date terminating their lien in Open Line in Waltair Division. The applicant has enclosed two orders dated 17.7.1984 at Annexures 5 and 5/A confirming staff in the Construction Organisation terminating their lien in Open Line.

4. Respondents have filed counter opposing the prayers of the applicant and the applicant has filed a rejoinder and an additional rejoinder. For the purpose of considering the petition it is not necessary to refer to all the averments made by the respondents in the counter and the applicant in his rejoinder and additional rejoinder. These will be referred to while considering the submissions made by the learned counsel for the petitioner.

5. We have heard Shri B.S.H.Rao, the learned

counsel for the petitioner and Shri D.N. Mishra, the learned Standing Counsel(Railways) for the respondents and have perused the records. The learned counsel for the petitioner has filed written note of submission and on the date of hearing the respondents have filed reply to the rejoinder which have also been perused.

6. Before considering the submissions made by the learned counsel for the petitioner it is necessary to note that prior to creation of PCR posts, persons locally recruited in the Construction Organisation were also entitled to be regularised against regular posts in Open Line. But as this facility for absorption of staff of Construction Organisation against posts in Open Line did not work out effectively and as because of the continuing projects with the Railways, construction work was taken up more or less on a permanent basis, PCR posts representing 40% of the construction cadre as on 1.4.1973 were created with effect from 1.4.1973 but in 1978. The strength of PCR posts was further increased in 1984 and 1988. The second admitted position is that in the Construction Organisation there were broadly two categories of staff, Groups C and D, those who have been locally recruited by the Construction Organisation and those who had come from other organisations mainly Open Line on secondment as it were. The admitted position is that the applicant is one such staff. He was originally recruited in Open Line. He was also confirmed in Open Line. But only after working for about two years from August 1971 to 1973 he came to WKRE Project which was merged with Construction Organisation in 1982-83. The respondents have stated that

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the applicant is a lien holder in Open Line and as lien holder in Open Line he came to Construction Organisation. They have also stated that as a lien holder in Open Line he has to seek his regular promotion in Open Line organisation and none of his juniors has been promoted in the Open Line. It has been submitted by the learned counsel for the petitioner that the applicant's lien was not maintained in Open Line. In support of this the learned counsel for the petitioner has produced the seniority list of Artisan staff maintained by Junior Engineer, Permanent Way at Padua and has shown that in this list the applicant's name does not appear. The learned counsel for the petitioner has also contested the averment of the respondents in page 11 of the counter that the applicant had appeared at the general departmental selection for the post of Junior Typist in the year 1988 but he failed in this test and could not be included in the panel which was published on 10.5.1988. The respondents have enclosed in support of their averment a letter dated 18.5.1994 of Divisional Personnel Officer, Waltair, addressed to the Branch Secretary of the Union in controverting the above averment of the applicant. The learned counsel for the petitioner has enclosed at Annexure-15 a list of staff who were called to the written examination for the post of Junior Typist which was held on 10.10.1987. In view of this it has been submitted that the averment made by the respondents that the applicant appeared at the selection test in Open Line for promotion to the post of Junior typist is not correct. Whether or not the applicant appeared at the selection test for the post of Junior Typist in Open Line is not relevant for the

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present purpose. The fact of the matter is that the applicant is a lien holder in Open Line. The seniority list enclosed by the applicant is a list maintained by Junior Engineer, Padua. He has obviously prepared the list of persons who are obviously working in his Unit. The applicant has not enclosed the seniority list maintained at the Divisional level showing that he has been left out of the list. In any case in this O.P. the petitioner has stated that he is a lien holder in Open Line. Therefore, the point for determination is whether as a lien holder in Open Line he is entitled to be considered for absorption in Construction Organisation against PCR post. The applicant has enclosed at Annexures 5 and 5/A the orders dated 17.7.1984 confirming some lien holders of Open Line in the Construction Organisation and has stated that by not taking up his case he has been discriminated against. The respondents have pointed out that such staff were confirmed on their giving option for terminating their lien in Open Line and the applicant has never given such option. In the O.A. the petitioner has not stated that in 1984 when other lien holders of Open Line were confirmed in Construction Organisation on their giving option for terminating their lien in Open Line, the applicant also opted for getting his lien in Open Line terminated and getting absorbed in Construction Organisation. In view of this, the ground of discrimination against the applicant is held to be without any merit and is rejected.

7. The next point urged by the learned counsel for the petitioner is that the applicant has worked for long 27 years in the Construction Organisation and has got several ad hoc promotions and therefore, in

due course he should have been considered for confirmation in the Construction Organisation. The respondents have pointed out that in accordance with the circular dated 17.3.1989 (Annexure-R/5) the persons having lien in Open Line are not at all eligible for confirmation against PCR posts because these posts were meant for confirming the locally recruited personnel in the Construction Organisation who have no lien or permanency status. In this circular in paragraph 2 it has been mentioned that there was a practice in vogue in S.E. Railway for confirming lien holders of Open Line in Construction Organisation on their giving specific option for severing their lien in Open Line. Apparently, the two orders at Annexures 5 and 5/A have been issued in view of this prevailing practice in S.E. Railway. In this circular it has been specifically provided that lien holders will not be entitled to confirmation and therefore, the applicant being a lien holder in Open Line is not entitled to confirmation against PCR post in the Construction Organisation.

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8. The respondents have pointed out in their counter that these lien holders of Open Line who came to Construction Organisation on secondment were given several ad hoc promotions even though according to Railway Board's circular dated 24.5.1988, circulated as Establishment Serial No. 144 of 1988, it was directed that the persons drafted from the Zonal railways to the Construction Organisation can at the most be granted promotion to one grade above that held by them on regular basis in their parent cadre and in no cases any double ad hoc promotions should be allowed to them. The respondents have stated

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that as a matter of fact several such lien holders in the Construction Organisation have got more than three or four ad hoc promotions. 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. The fact that such a decision has been taken and cases of persons enjoying more than two ad hoc promotions are being reviewed has also been admitted by the petitioner in his O.A. As the Railway Board's circular specifically provides that not more than one ad hoc promotion should be given, but as a matter of fact several persons are enjoying more than two ad hoc promotions, we find no illegality in the respondents' action in reviewing the cases of more than two ad hoc promotions. It is also clear that faced with the possibility of his reversion from the post held by him on ad hoc basis after getting more than two ad hoc promotions in the Construction Organisation, the applicant has approached this Tribunal in the O.A. with the above prayer. As we have already held that under the extant Rules the applicant as a lien holder in Open Line is not entitled to confirmation against PCR post, this prayer of the applicant is accordingly rejected.

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9. Necessarily, therefore, his second prayer to give him a still further promotion to the post of Chief Typist in the Construction Organisation after regularising him in different posts held by him in the Construction Organisation also fails.

10. It is also to be noted that the applicant has got these ad hoc promotions in different

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years as mentioned by us above and he has approached the Tribunal in 2000 in this O.A. for getting regularised against those posts to which he was promoted in 1988 and earlier on ad hoc basis. On the point of limitation also, this prayer is not liable to be considered.

11. In view of all the above, we hold that the O.A. is without any merit and the same is rejected but without any order as to costs. The interim order dated 5.10.2000 stands vacated.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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5.9.2001
VICE-CHAIRMAN

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