

14

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 229 Of 2001
Cuttack, this the 24th day of September, 2001

Madhu alias Madhu Satapathy ... Applicant

Vrs.

Union of India and othersRespondents

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

24.9.2001

15
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 229 OF 2001
Cuttack, this the 24th day of September, 2001

CORAM:

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

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Madhu alias Madhu Satapathy, aged about 54 years, son of late Dinabandhu Satapathy, presently working as P.W.M. (Permanent Way Mistry) under Deputy C.E. (D) II/Bhubaneswar, At-Bhubaneswar, District-Khurda

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APPLICANT

Advocate for the applicant - Mr. Pravakar Jena

Vrs.

1. Union of India, represented through the General Manager, S.E. Railway, Garden Reach, Calcutta.
2. Chief Administrative Officer (Con.), S.E. Railway/Bhubaneswar-751 023, Dist. Khurda.
3. Chief Engineer (Con.) II, S.E. Railway, Bhubaneswar-751 023, Dist. Khurda.
4. Dy. Chief Personnel Officer (Con.), S.E. Railway, Bhubaneswar-751 023, Dist. Khurda.
5. Dy. Chief Engineer (Con.) III, S.E. Railway, Bhubaneswar-751 023, Dist. Khurda

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Respondents

Advocate for respondents - Mr. Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this O.A. the petitioner has prayed for quashing the order dated 16.5.2001 (Annexure-2) so far as he is concerned. He has also prayed for a declaration that the reversion order is illegal and for a direction to the respondents not to revert him from the post of P.W.M. and to protect the pay of the

applicant in the pre-revised scale of Rs.1400-2300/-. By way of interim relief, the applicant had prayed for staying the order dated 16.5.2001. On the date of admission on 13.6.2001 the order of reversion was stayed so far as the applicant is concerned in case he had not been reverted already by that date. After filing of the showcause by the respondents and the reply affidavit by the applicant and additional affidavit by the respondents, in order dated 6.8.2001 the interim order was continued. The respondents had stated in their showcause that before issuing of the interim order dated 13.6.2001 the applicant had already been reverted and the interim order had become infructuous. Respondents have filed counter opposing the prayers of the applicant. The applicant has filed a reply to the additional affidavit as also a rejoinder. Before passing the order dated 6.8.2001 we had called for the Service Book and verified the entries relating to the applicant in his Service Book/Register and these entries have been mentioned in our order dated 6.8.2001.

2. The case of the applicant is that he was appointed on 24.1.1972 as Casual Khalasi under P.W.I(Construction), Cuttack and with effect from 8.2.1972 promoted to the post of Permanent Way Mate. The applicant has stated that he has been drawing the salary of P.W.Mate from the date of his joining in service. In the order dated 26.12.1990 (Annexure-1) he was promoted on ad hoc basis to the post of Permanent Way Mistry with effect from 20.12.1990. The applicant has stated that he was regularised as Khalasi with

effect from 1.4.1973, but he has all along been drawing the salary of Permanent Way Mate from 24.1.1972 to 19.12.1990 till he was promoted to the post of Permanent Way Mistry on 20.12.1990. The applicant has stated that a decision was taken by the authorities to review the cases of all persons who have got more than two ad hoc promotions. The applicant's case is that he has not got more than two ad hoc promotions. But in the impugned order at Annexure-2, cases of sixteen persons including his case have been reviewed. The applicant has stated that amongst these 16 he is the only person who has been regularised in Construction Organisation, having worked in the Construction Organisation all along. The other 15 persons are lien holders in Open Line but are working in the Construction Organisation. The applicant has stated that as he has not got more than two ad hoc promotions, his case should not have been reviewed and he should not have been reverted, and in the context of the above, he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant was initially engaged as a Casual Mate on daily wages on 24.1.1972. He was granted temporary status with effect from 1.1.1981 in a Group-D post. He has been regularised in the post of Khalasi in the scale of Rs.750-940/- against PCR cadre with effect from 24.8.1990. This regularisation has been put back to 1.4.1973 subsequently. They have

stated that such regularisation has been done in accordance with Paragraph 2006 of the Indian Establishment Manual, Volume II and is supported by Establishment Serial No. 75 of 1997. It is stated that the applicant never contested his PCR regularisation against a Group-D post. The respondents have stated in their showcause that a policy decision was taken on the instruction of General Manager, S.E.Railway, to review ad hoc promotion and revert all those staff who are enjoying more than two ad hoc promotions. The respondents have stated that the applicant has been regularised in Group-D post as Khalasi and is now working as Permanent Way Mistry on ad hoc basis. The respondents have stated that from the post of Khalasi, the next promotional post is Gangman, thereafter to Senior Gangman, thereafter to Key Man, and thereafter to Gang Mate, and from the post of Gang Mate promotion is made to the post of Permanent Way Mistry. Accordingly, it has been argued that the applicant is enjoying more than two ad hoc promotions. It is further stated that in order dated 23.5.2001 the applicant has been reverted from the post of Permanent Way Mistry in the scale of Rs.4500-7000/- to the post of Permanent Way Mate in the scale of Rs.3050-4590/- . With regard to the averment of the applicant that in the meantime the applicant has qualified in the trade test and suitability test for regularisation against higher level PCR post, the respondents have stated in their counter that before his ad hoc promotion to the post of Permanent Way Mistry he has not been subjected to any suitability or trade test. The respondents have

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not made any averment with regard to the assertion of the applicant that he has appeared and qualified in the trade test for absorption against a higher level PCR post. The respondents have further stated that on reversion to the post of Mate, the applicant's seniority has been protected. They have further stated that the policy decision of reverting persons who are enjoying more than two ad hoc promotions has been uniformly applied and no exception can be made in case of the applicant. On the above grounds, the respondents have opposed the prayer of the applicant.

4. It is not necessary to refer to the submissions made by the applicant in his rejoinder because these will be taken note of while considering the submissions made by the learned counsel of both sides.

5. We have heard Shri Pravakar Jena, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel (Railways) for the respondents and have perused the pleadings of the parties and the enclosures to the pleadings filed by both sides.

6. The admitted position is that the petitioner is not a lien holder in the Open Line. He was originally recruited in the Construction Organisation and has remained all along in the Construction Organisation. He was initially recruited as Casual Mate on 24.1.1972 and was promoted to the post of Permanent Way Mate on 8.2.1972, i.e., after a period of 15 days. The applicant has stated and this has not been denied by the respondents that right from

the date of his joining he has been receiving the salary of Permanent Way Mate. Thus, it is clear that prior to his promotion as Permanent Way Mistry in the order at Annexure-1, he has been working as Permanent Way Mate throughout his service in the Construction Organisation. For regularisation of persons locally recruited by the Construction Organisation, Permanent Construction Reserve (PCR) posts were created to the extent of 40% of the cadre strength initially and this was later on increased to 60%. Admittedly, the applicant was absorbed in the Construction Organisation against PCR Group-D post of Khalasi in the pay scale of Rs.750-940/-. But he continued to work as Permanent Way Mate in the scale of Rs.950-1500/- till his promotion to the post of Permanent Way Mistry. It is also the admitted position that a policy decision has been taken to revert all persons who are enjoying more than two ad hoc promotions. As this is a policy decision taken in

observing norms of personnel administration, the scope of interference by the Tribunal in such policy decision is limited. Moreover, the applicant has also not challenged the above policy decision. His stand is that he is not enjoying more than two ad hoc promotions. The respondents' stand, on the other hand, is that the applicant is enjoying five ad hoc promotions. During the pendency of this O.A. we had directed the respondents to produce the promotional orders by which the applicant has been given one after another five ad hoc promotions, but no such promotional orders have been produced. The

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respondents' stand is that as the applicant has been absorbed as Khalasi, there are several levels above the post of Khalasi till he could be considered for promotion to Permanent Way Mistry. But the applicant was originally appointed as Casual Mate and he has all along received the salary of Mate till his promotion as Permanent Way Mistry. For whatever reasons he was promoted on ad hoc basis to the post of Permanent Way Mistry, in effect he was promoted from the post of Permanent Way Mate to the post of Permanent Way Mistry. This is also clear from the order at Annexure-1. In view of this, it is not possible to hold that by such promotion the applicant has been given five ad hoc promotions notionally promoting him to the different intermediate levels noted by us easrlier. On the basis of records it is clear that his original appointment was as Casual Mate which is again admitted by the respondents in their counter and his promotion was to that of Permanent Way Mistry on ad hoc basis. The fact that he was absorbed against Group-D PCR post does not change this position in any way. We have gone through Paragraph 2006 of the Indian Railway Establishment Manual, Vol.II, under which it is provided that casual labourers are to be absorbed in Group-D establishment. Paragraph 2007 provide for employment of casual labourers in skilled category. The absorption of the applicant in Group-D PCR post does not change his position as Permanent Way Mate to which post he was originally recruited. Because of his regularisation against a Group-D post, it cannot mean that he has been given five ad hoc promotions when he was promoted on ad hoc basis to the post of

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Permanent Way Mistry. In view of the above, we hold that the applicant has not got more than two ad hoc promotions and his case is not covered by the above policy decision for reverting those who have got more than two ad hoc promotions. In view of this, we quash the order at Annexure-2 for reviewing the case of the applicant for his reversion as also his order of reversion. We had directed that he should be continued in the post of Permanent Way Mistry. It is, however, made clear that admittedly the applicant is working as Permanent Way Mistry on ad hoc basis. An employee appointed to a post on ad hoc basis has no right to continue as such. In view of the above, we make it clear that the respondents will be free to revert the applicant from his ad hoc post on any other legal ground than his enjoying more than two ad hoc promotions.

7. In the result, the Original Application is disposed of with the observation and direction above. No order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)

24.9.2001
VICE-CHAIRMAN

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