

04/578/01

O.A.NOS. 577 & 578 OF 2001

Order dated 21.12.2001

The prayer for continuation of the interim order and the M.As. filed by the respondents for vacation of the ad interim orders passed in these two O.As. have been heard separately. But as the points for determination for continuation or otherwise of the interim orders are the same, one order will cover these cases.

2. For the purpose of considering the prayers of both sides, a few facts of the O.As. will have to be referred to. The two applicants in these two O.As. were initially appointed as Pipeline Fitter and Driver-Helper respectively on daily wage basis in Construction Organisation of the S.E.Railway under the respondents. In due course they were promoted on ad hoc basis to the post of Driver Grade-III and later on again on ad hoc basis to the post of Driver Grade-II. Applicant in OA No.578 of 2001 was regularised in Group-D with effect from 14.5.1993 in order dated 8.11.2000. In these two O.As. the petitioners have come up with the prayer to regularise their promotion as Grade-II Driver with effect from 27.8.1996 and 22.6.1994 respectively. They have stated that in order dated 13.11.2001 enclosed by both the applicants in their respective O.As the railways have taken a decision that all second or more ad hoc promotions should be terminated with effect from 1.12.2001. In other words, the decision of the Railways is that persons should be allowed only one ad hoc promotion and not more. By way of interim relief both the applicants had prayed that they should be allowed to continue as Grade II Driver.

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At 5781<sup>01</sup>

In order dated 4.12.2001, as an interim measure, the respondents were directed to allow the applicants to continue in the post of Driver Grade-II till 12.12.2001. This order has continued till date. The respondents have filed MA Nos.1058 and 1066 of 2001 praying for vacation of stay. Both the M.As. are identical and therefore, we are only referring to MA No.1058 of 2001 filed in OA No.577 of 2001. The stand taken by the respondents is that General Manager, S.E.Railway, has taken a decision for reviewing all cases of more than one ad hoc promotion. According to the Railway Board's instruction wherever ad hoc promotions are to be given in view of exigency of service it can be given only for four months and no case of second ad hoc promotion should be allowed under any circumstances. It is further stated that Principal Director of Audit, South Eastern Railway has raised an audit objection pointing out that from 1996 to 2000 due to granting of multiple promotions which are not in conformity with the above guidelines an expenditure of Rs.3.95 Crore has been incurred. In Establishment Serial No.144 of 1988 issued on 9.6.1988 it has been laid down that persons drafted from Zonal Railways can at best be granted ad hoc promotion to one grade above the post held by them on regular basis in their parent cadre and in no case double ad hoc promotions should be given. It is further stated that in pursuance of the above policy decision orders were issued on 30.11.2001 reverting these applicants from the level of Driver Grade II to Driver Grade III with effect from 1.12.2001 prior to passing of the interim order dated 4.12.2001 by the Tribunal and as such the petitioners having been already reverted the interim orders have become infructuous.

3. We have heard Shri P.Jena, the learned counsel for the petitioners in these two cases and Madam C.Kasturi, the learned Additional Standing Counsel for the respondents in OA No.577 of 2001 and Shri B.K.Bal, the learned Additional Standing Counsel for the respondents in OA No.578 of 2001.

4. The larger issue of lien-holders in Open Line coming to Construction Organisation and getting multiple ad hoc promotions is not involved in these two cases because the applicants in both these cases are recruits of Construction Organisation without any lien in Open Line. At the interim stage it will not be proper for us to consider the merits of the stands taken by the parties on points which will have a bearing on final determination of the disputes. The undoubted legal position is that an ad hoc appointee has no right to continue in the post to which he is appointed on ad hoc basis. But at the same time, while reverting ad hoc employees from promotional post to the lower post, only the juniormost persons have to be reverted. Applicants have made no averment that orders have been issued reverting them from the post of Driver Grade-II to the post of Driver Grade-III, persons junior to them are continuing as Driver Grade-II. Prima facie it appears that Railway Board's instructions are that more than one ad hoc promotion cannot be given. The applicants in both these cases were prima facie enjoying more than one ad hoc promotion. In view of this, we find no reason to continue the interim orders of stay any further and these orders are accordingly vacated. While doing so, it has to be noted that the respondents in their M.As.

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have made no averment with regard to the circular dated 29.11.2001 enclosed by the applicants at Annexure-10.

Copy of order may be given to both the execs.

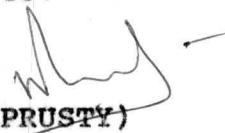
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Paragraph 2 of this circular provides that directly appointed casual Artisans who have been regularised in Group-D category against PCR cadre due to want of requisite Group-C posts in PCR Cadre should not be reverted from the 2nd ad hoc promotion in relation to their substantive status in Group-D. The applicant in OA No.577 of 2001 was promoted as Grade III and Grade II Driver but he had been regularised against 60% PCR posts in Group-D post. In view of this, while vacating the interim orders of stay, we direct the respondents that they should examine if these two applicants are entitled to the benefit of paragraph 2 of the circular at Annexure-10 of OA No. 578/2001 and Annexure-6 of OA No. 577 of 2001. A view on this should be taken by the respondents within a period of 20 (twenty) days from the date of receipt of copy of this order. The two M.As. filed by the respondents are accordingly disposed of.

Registration

Copy of this order be given to both sides.

  
(N. PRUSTY)

MEMBER (JUDL.)

  
Somnath SCM  
21/12/2001  
VICE-CHAIRMAN