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ORDER DATED 21.03.2002.

O.A.NOS.320/2000,321/2000,569/2000
509/2001,561/2001,562/2001,
567/2001,568/2001,569/2001,
570/2001,571/2001,573/2001,
574/2001,575/2001,596/2001,
597/2001,598/2001,603/2001,
130/2002,131/2002,132/2002.

Applicants (a set of Railway employees, presently engaged in the Construction Organisation of South Eastern Railway) have filed these Original Applications, mainly, seeking regularisation of their services in the Construction Organisation. In all these cases, the Applicants were engaged as temporary hands in Construction Organisation from very begining and, later, they were taken to open-line(Permanent) Establishment of South Eastern Railways from the Construction Wing. It is the case of the Applicants, as also admitted by the Respondents, that after continuing for some period in open line(permanent) Establishment of the Railways, they were brought to the Construction Organisation, where they had to face a departmental test and received several stage of promotions to different grades/higher posts, where they are continuing for years together without being regularised. For the reason of a decision taken at a very higher level of the Railways to un-do the Ad-hoc promotions given for more than two Ad-hoc stages (later, modified to one Ad-hoc stage), the applicants have faced reversions at their respective Divisions. Their grievances, as disclosed in course of hearing, are that simple because they were in Open-line (permanent) establishment, for some time or other, their regular promotions were arbitrarily branded as "Ad-hoc" and that before reverting them from their so-called Ad-hoc promotional posts,

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they were not given any notice to have their say in the matter and, that, therefore, the reversion order must go/be quashed, for the same were issued in gross violation of the principles of natural justice/ provisions of Article-14 of the Constitutionof India. Their case, at the hearing, are also that had opportunity been given to them (before reverting them from the promotional posts), then they would have pointed out that the Construction Organisation (which takes-up various projects from time to time and create posts, including promotional posts, for such project work) do grant promotions for the periods to run co-extenso with the project work and that, therefore, the promotees should not face demotions before closer of the Project not for the reasons as has been given out by the higher authorities. It is known that construction organisation of Railways is itself a temporary Organisation having only a 40% (now 60%) of its strength being permanent called 'Permanent Construction Reserve' (in short "PCR") staff. It is the case of the Respondents (Railways) that since under the Rules governing the field, Ad-hoc Promotions are not to be given to an individual for more than one occassion successively and, that is why,when commented by the Audit, a Circular was issued to undo more than one Ad-hoc promotions. It is apparently, the case of the Applicants that while they are in promotional posts of the project, they could not have been reverted from the promotional posts, during continuation of the Projects, for any reason other than that, without following the principles of natural justice. It is the further case of the Applicants that since they continued for long period in promotional posts in Construction Organisation and since the Construction Organisation of Railways is continuing to function/ exit for last fifty years, the Applicants ought to have been suitably

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considered for being absorbed on Permanent basis in the promotional posts of ConstructionOrganisation of the Railways, especially when their cases have not received any consideration for promotionin Open-line (Permanent) Establishment.

2. We have heard the Counsel for the parties at length, separately, one after the other and given our anxious consideration to the rival contentions raised by giving due regard in extenso to the facts involved in the cases and to the provisions of law and various judicial pronouncements placed in the Bar. For the sake of convenience, however, we proceed to dispose of all the Original Applications through this common order, since the issues raised in all the Original Applications are same.

3. While opposing the stand/prayers of the Applicants, Senior Advocate Mr.B.Pal and Advocate Shri Ashok Mohanty(being assisted by other RailwayCounsels appearing in the respective cases) for the Respondents, stated that since the Applicants had their ~~kkx~~ lien in Open-line (Permanent) establishment of the Railways, they could not have been (and should not be) regularised in Construction Wing of the Railway and that the said aspect of the matter was examined in extenso by this Tribunal in a Bench at Cuttack ((in O.A.No.513/2000 decided on 12-10-2001 in the case of Chintamani Mohanty and others vrs. Unionof India and others) and by the Principal Bench of the Central Administrative Tribunal,New Delhi in a batch of cases (in O.A.No.1289 of 2001of Kanhaiya Prasad and others Vrs. Union of India and others and other connected matters decided on 01-10-2001 and that in those cases, the prayers for regularisation(of similarly placed Open-line) in Construction Wing were dismissed. While in the

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Cuttack Bench cases (Supra) the prayer was for regularisation w.e.f. 1973, in the case at Principal Bench (supra), the Applicants were repatriated to Open-line establishment from Construction Wing and, at that stage, their prayer for regularisation was turned down. In the case in hand, Applicants are still in Construction Organisation (now holding one promotional post, after being reverted) and yet, their prayer for regularisation/permanent absorption in PCR posts in Construction Organisation, in our considered view, can not be granted for the self same reasons, for which the Original Applications (supra) were dismissed in Cuttack and Principal Benches of this Tribunal. Their prayer for a direction from this Tribunal to the Respondents/ Railways for their permanent absorption in promotional posts in Construction Organisation can not also be granted as was done in the case of KAMAL KUMAR VRS. UNION OF INDIA AND OTHERS - reported in 1999 (2) CAT 185. In the above case, a Division Benchof the Tribunal, at New Delhi, took note of long continuance of the Applicants of that case in Construction Organisationon Ad-hoc basis and directed for their regularisation in promotional posts in the Construction Organisation. It is the well settled position of law by now that " once ad-hoc; always ad-hoc" and "continuance on Ad-hoc basis for a very long time do not, per se, makes one regular." On the face of this settled/position of law, no direction can be issued to the Respondents compelling them to regularise the Applicants in promotional posts in Construction Organisation of Railway. However, the Respondents, in the peculiar circumstances, in which the Applicants are placed, can always give considerations to the grievances of the categories of their employees (like the Applicants) and to explore the possibilities of drawing a policy decision to suitably absorb such categories of

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employees who are continuing for long years in promotional posts in Construction Organisation being brought from Open-line establishment.

4. In Original Application Nos.509 and 603 of 2001 it has been disclosed that the Applicants, while continuing as Junior Clerks/Jr. Typists, on Ad-hoc basis from 1985, they were asked to face a centralised selection against a limited departmental promotional quota posts in the year 1989 and, upon being qualified in the said test, they were empanelled in the year 1990, as per the Advocate for those Applicants, to be treated as regular Jr. Clerks/Jr.Typists as against the 'PCR' posts of the Construction Organisation and it is alleged that from 1990 onwards, they were treated as PCR staff. It is the case of the Applicants, that once they cleared in the test in question and allowed to continue in the PCR posts, they no longer remained Ad-hoc Jr.Typist/Clerk and, as a consequence, they lost their lien in Open-line Establishment and, therefore, for all purposes they should have been taken to be the 'PCR' staff of Construction Organisation. From the facts and circumstances, as given out in the cases in hand, everything points at one conclusion that from 1990, the Applicants became members of the staff of Construction Organisation and automatically lost their lien in Open-line; especially when they were not even considered for being called to face departmental tests/notconsidered for promotion in Open-line organisation. But the Advocates for the Respondents state that in absence of the regular appointment orders(appointing the Applicants in Jr.Clerks/Jr.Typists posts in the year 1990) being produced, the claims of Applicants that they were absorbed as PCR staff ought not to be accepted. To this, the Advocate for the Applicants in

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O.A.Nos.509 and 603 of 2001 drew out attention to annexure-3 to the O.As; by which two of the Applicants were given regular appointments and postings without any mention that such appointment/posting to be 'Ad-hoc'. It has been explained to us that other applicants of those two cases, were continuing on Ad-hoc ~~xxxx~~ basis under Annexure-1, dated 05-02-1985 in Construction Organisation and their regularisation as Jr.Clerk/Jr.Typist were ordered to be noted in their Service Books, as is seen from Annexure-3 dated 7.6.1990. In the last line of the said Annexure-3(2nd page) it was cleanly ordered as "OS(E)/CTC to see that necessary entry is made in P/file of the Staff concerned". Therefore, non-production of any individual appointment order of th e Applicant, can not be taken to their prejudice. In the said premises, there are no reason not to accept the Applicants of these two cases (and similarly placed other Applicants) not to have lost their lien in open line. Once we take the Applicants in OA Nos. 509 and 603 of 2001 (and similarly placed other Applicants) to be in PCR posts of construction Organisation, there were no reason to treat their promotion to be "Ad-hoc". (As it appears, by treating the applicants to be contining with their lien in open line, the Respondents branded the promotions granted to those Applicants to be "Ad-Hoc"). Thus, we are inclined to hold those Applicants had regularly been absorbed/ appointed in Gr.'C' ~~x~~ posts in Construction Organisation and, if the Respondents have not taken them to be in the regular/PCR posts of Construction Organisation as yet, then they should treat them as such. Therefore, before reverting the applicants from promotional posts, the Respondents ought to have given the notices to the Applicants to have their s y in the matter. Such opportunity having not been given to them before reverting the Applicants from service,

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there were violation of Principles of natural justice/Article 14 of the Constitution of India; as we have already held that the promotions granted to the Applicants in these two cases (and other similarly placed Applicants) were in real sense not on Ad-hoc basis. In the peculiar facts and circumstances of the case, the objections raised by the Advocates for the Respondents that "no notice was required at the time of reversion of the Applicants" is over-ruled; as the applicants were in real sense not on adhoc promotions. As a consequence, the reversion orders passed against the Applicants in OA Nos. 509/2001 and 603/2001 (and against the other similarly placed applicants) are hereby set aside and they are to be treated as regular 'PCR' staffs of Construction Organisation for all purposes and consequential relief need be given to them within a period of three months hence.

5. In O.A.No.597/2001 - B.V.Sanyasi Vrs. Union of India and others it is the case of the Applicant that while implementing the policy/revised policy and reverting the so-called Ad-hoc promotees, he has been reverted wrongly to a lower post than what has been desired in the policy/revised policy. We are sure, the authorities would reconsider the case of the said Applicant within a period of three months from the date the said Applicant submits a representation to that effect. This Applicant need submit a representation for ~~xxx~~ redressal of his grievances within ten days hence.

6. The Advocates for the Applicants in all the cases state that while reverting the Applicants several others (who received promotions like them) have not been reverted and that has been done (simply because the Applicants were taken to be personnel of Open-line establishment for some time) discriminatorily. This aspect

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of the matter ought to be examined by the Respondents before taking any further step as against the Applicants, for which we hereby direct.

7. In the result, therefore, the prayer for a direction to the Respondents to regularise the Applicants in Construction Organisation (or in the Promotional posts thereof) is dismissed. However, subject to other observations and directions, all the Original Applications are disposed of. No costs.

A copy of the order be kept in other connected OAs.

SD/-M.P.SINGH
MEMBER(A)

SD/-M.R.MOHANTY
MEMBER(J)

Compared by