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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.635 of 2003
Cuttack, this the 26th day of June, 2007.

Smt. Meera Rao ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Smt. Meera Rao, W/o. Sri M.J.Bhagawati Rao, Aged about 50 years,
Hindi Teacher, E. Co. Railway, M.H.S.School, Khurda Road, Jatni,
Residing at Qr.No.G-58/B.New Colony Khurda Road, Jatni-752 050,
Dist. Khurda.

..... Applicant.

By legal practitioner: Dr. V.Prithivi Raj, S.R.Jena,
S.Pattnaik, K.V.S.B, Trinath Kumar,
Advocates.

-Versus-

1. Union of India represented through General Manager, S.E.Central Railway, Garden Reach, Calcutta-700043 NOW General Manager, East Coast Railway, Chandraekharpur, Bhubaneswar.
2. The Chief Personnel Officer, S.E. Central Railway, Garden Reach, Calcutta NOW the Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar.
3. The Divisional Railway Manager, S.E. Central Railway, Khurda Road- 752 050 NOW the Divisional Railway Manager, East Coast Railway, Khurda Road, Jatni-752 050.
... Respondents.

By legal practitioner: Mr. R.C.Rath, Advocate.

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ORDER

MR.B.B.MISHRA, MEMBER(A):

Succinctly stated, the case of the Applicant is that, the Applicant is a regularly recruited teacher of the South Eastern Railway Mixed Higher Secondary School Khurda. While working in the post of Craft Teacher with effect from 20.08.1970, as per the Rules, she, having been found suitable, was promoted in a regular manner to the post of Teacher Grade II (Hindi) vide order dated 26.10.1983. Thereafter, taking into consideration her place and position in the feeder grade of Teacher Grade II (Hindi), she was allowed to hold the post of PGT Gr.I (Hindi) with effect from 27.02.1985 purely on ad-hoc basis. She continued in the higher post of PGT Gr.I (Hindi) on such Ad-hoc basis till May, 1997 and according to her, during this period of service, she was imparting teaching to the students of Classes XI and XII. But without giving any opportunity or even putting her any notice, Respondent No.2 passed order dated 06.05.1997 reverting the Applicant to her former post of TGT (S/M.Arts). On 02.09.2002, she made a representation praying for consideration of her case for promotion to the post of PGT



Grade I (Hindi) as per the criteria spelt out under Annexure-4. Alleging non-consideration of her representation, she filed OA No. 1033 of 2002 before this Tribunal. On 17.12.2002, the aforesaid OA was disposed of by this Tribunal by directing the Respondents to take a view on the pending representation of Applicant within a period of three months. Alleging non-compliance of the orders of this Tribunal, Applicant filed CP No. 31 of 2003 but, on the submission of the Respondents that the representation of the Applicant has already been disposed of on 09.05.2003 (Annexure-1), the CP was dropped by this Tribunal. However, being aggrieved by the reason given under Annexure-1 for non-promotion of the Applicant to the post of PGT Gr.I (Hindi) is the subject matter of challenge in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 praying therein as under:

"8. RELIEF(S) SOUGHT FOR:

Therefore in the above said facts, circumstances and grounds stated in the paras 4 & 5 (supra), it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to direct the Respondents to take appropriate steps to give her all service benefits like promotion, seniority in the post of PGT Grade-I (Hindi) w.e.f. 27.05.1985 appreciating that her case comes under the purview of the Railway

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Board Letter No.E(P&A) I-71/PS-5/PE, dated 17.07.1975 (Establishment Serial No.201/75) in Annexure-5 by quashing the impugned Order dated 09.05.2003 in Annexure-1 of the OA;

And/or allow her claim of posting in the promotional post of PGT Gr.I (Hindi) from the date she obtained the requisite criteria under the Railway Board's letter dated 17.-07.1975 (Annexure-5) i.e. w.e.f. August, 1984 (MA)(Hindi)(Certificate issued on 08.03.1985);

And/or w.e.f. 27.05.1985 when she was given ad-hoc promotion to the post of PGT Gr.I (Hindi) and/or w.e.f. the date which this Hon'ble Tribunal finds that she is found to be entitled to posted in the post of PGT Gr.I (H8indi) and to provide her all consequential service benefits."

2. Besides on merit, the Respondents have strongly opposed the very maintainability of this OA; for the same being barred under Section 21 of the Administrative Tribunals Act, 1985.

3. Applicant by placing on record rejoinder, additional Memo and notes of argument, has tried to convince this Tribunal that this case is not barred under section 21 of the A.T. Act, 1985. She has also tried to convince us that she was illegally denied her right of promotion/regularization in spite of existence of Rules and without complying with the basic principles of natural justice.

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4. Fact remains that, the post of PGT Gr.I (Hindi) is "selection" post is not in dispute by either of the parties. However, it has been argued by Learned Counsel for the Applicant that there was no reason to allow the Applicant to continue in the post in question for twelve years when the Rules (Esstt. Sl. Nos. 206/1988, 161 of 1979, 213 of 1983 and 161 of 1991) clearly mandate the authorities that instead of managing the work of promotional post by ad-hoc appointment, expeditious steps should be taken to fill up promotional posts on regular measure. It was his argument that Railway Board instructions under Annexure-A/11 clearly provides that any person who is permitted to continue to officiate beyond 18 months cannot in future be reverted for unsatisfactory work without following the procedure prescribed in the Disciplinary Appeal Rules. But though the Applicant had continued more than twelve years in the promotional post, the Respondents reverted the Applicant in an unceremonious manner, by giving a complete go bye to the above instructions of the Railway Board under Annexure-A/11. His argument is that the Applicant was having the all eligibility criteria as per the pre-amended Rules under Annexure-5&6. Had the Respondents taken steps to fill up the promotional post at that relevant time, she would have been promoted to the

higher post and they having not done so, the order of reversion under Annexure-8 being contrary to the Railway Board's instructions is liable to be set aside. In support of his prayer that Rules/instructions available at the time of vacancy should be the governing factor for judging the merit of the candidate, Learned Counsel for the Applicant had relied on the following decisions:

1. Y.V.Rangaiah and others v. J.Sreenivas Rao and Others, AIR 1983 SC 852;
2. Dhaneswar Samal v. Union of India and others, 99 (2005) CLT 18 (ATC (CAT) (Cuttack);
3. K.Satyanarayana Murty and Others v. Union of India and others, 2004 (I) ATJ 84 (Mumbai Bench);
5. Similarly it has been argued by Learned Counsel for the Applicant that long continuance of Applicant (12 years), itself gives a right to the Applicant to be regularized. In support of this prayer, Learned Counsel for the Applicant has relied on the following decisions:

1. Ajit Kumar Rath, AIR 2000 SC 85;
2. Jagdish Chandra Patnaik, AIR 1998 SC 1926;
3. DIRECT Recruit Class II Engineering Officers Association, AIR 1990 SC 1607;
4. O.P.Singla Case, AIR 1984 SC 1595;
5. Aghorenath Dey, (1993) 3 SCC 371;
6. T.Vijayan, AIR 2000 SC 1766;



7. Piara Singh, AIR 1992 SC 2130;
8. Jaya Quddusi, 1994 Supp.(2) SCC 33;
9. M.A.Hameed vrs. State of A.P. Another (2001) 9 SCC 261;
10. P Chand Yadav vrs. Union of India and Others, 2006 (2) ATJ 249;
11. Bhagawati Prasad v. Delhi State Mineral Development Corporation, AIR 1990 SC 371;
12. V.K. Singh v. Union of India and others, 2005 (3) ATJ 241.

(copies not supplied)

6. He has, therefore, vehemently argued that since the entire action of the Respondents is against the Rules/Laws, the order of reversion under Annexure-8 and Annexure-1 need to be quashed with direction to the Respondents to regularize the Applicant in the post of PGT Gr. I retrospectively with all consequential benefits.

7. Per contra, Learned Counsel for the Respondents has argued that admittedly, the Applicant was promoted to the post of PGT Gr. I on 17.05.1985 purely on ad-hoc basis as a stop gap arrangement in order to man the work. Though she participated in the selection held during 1989 for the post of PGT Gr. I, she failed to qualify in the test. However, she was reverted to the post of TGT Gr. II with effect from 06.05.1997 (Annexure-8) in

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order to create room for the regularly recruited employee. She did not make any objection at that relevant time nor did she challenge it before any Court of Law. However, she wanted to reopen the matter, which was set at rest long before, through her representation filed only on 02.09.2002. It being a stale claim, ought not to have been entertained by the Respondents but as per the directions of this Tribunal, the same was entertained and disposed of under Annexure-1 rejecting the claim of the Applicant. Hence, it was argued by the Learned Counsel for the Respondents that since the order under Annexure-1 was passed pursuant to the direction of this Tribunal, this will have no effect on the law of limitation prescribed in section 21 of the A. T. Act, 1985 so as to enable this Tribunal to entertain this OA at this long distance of time. He has argued that Annexure-A/11 is of no help to the Applicant; because the termination of the applicant was not for her unsatisfactory work but to allow space to the regularly promoted candidate to join. He has argued that the post in which the applicant was continuing is no more available. Therefore, in absence of the challenge of the selection and appointment of the candidate who was allowed to hold the post vacated by the Applicant, it will be of no help, even if it is held that rules existing at the

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time of vacancy should be the governing factor for judging the suitability of the employees. On the above ground, he has opposed the prayers of the applicant.

8. Having heard the parties at length, we have minutely gone through the materials placed on record. We may record that while Article 14 of the Constitution deals with regard to equality, Article 16 specifically provides for equality of opportunity in the matters of public employment. Similarly, Article 309 of the Constitution provides that subject to the provisions of the Constitution, the Acts of the Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. The Constitution does not envisage any employment outside the constitutional scheme and without following the requirements set down therein. From the facts of the matter, it is now clear that as per the Rules, the post of PGT, Gr.I is meant to be filled up by means of Selection. It is needless to observe that where rule specifically provides that the post should be filled up by way of 'selection', merit is the pre-determining factor to allow a person to hold the post. But from the pleadings we do not find any clue that the Applicant's promotion to the post of PGT Gr. I was after adjudging the merit of the

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applicant along with other similarly situated candidates. It is the case of the Applicant that instead of allowing her to continue on ad-hoc basis, the authorities ought to have taken steps to fill up the post on regular basis pursuant to the instructions of the Railway Board. If it is so, as an obedient Government servant, she should have brought such fact to the notice of the authorities requesting to come to an end her ad-hoc continuance as the same beyond the Rules. She also did not raise any objection at the right earnest when she was reverted from the post in the year 1997. She also did not raise any objection of her non-selection during the year 1989. She is out of the post of PGT, Gr. I since 1997. Besides the above, if direction is given to regularize the applicant with effect from the date of her ad-hoc promotion, it will have adverse impact on the seniority position of many of the PGT Gr. I employees who have been holding such post on regular basis after following due procedure of Rules. Law also clearly prohibits for doing so without hearing the persons who might be affected by any direction given by Tribunal. None of them have been made as parties in this case. Therefore, without hearing the persons who would be affected by virtue of the directions of this Tribunal as parties to this OA, it would be unfair to give any such

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direction as prayed by the applicant in this OA; because while removing injustice, if any caused to the applicant, this Tribunal should not step ahead to cause hardship to any of the employees. In case this OA is allowed by directing the Respondents to grant the applicant promotion and seniority retrospective, it would certainly tantamount to unsettling a settled thing which is against all canons of justice, equity and fair play. By allowing time to elapse, itself proves that the Applicant is not vigilance to her own right. Law is well settled that the person who is not vigilant to her own right is not entitled to claim equity (Ref: **U.P. Jainigam and Another v. Jaswant Singh and Another**, (2007) 1 SCC (L&S) 500).

We have also gone through the decisions relied on by the Learned Counsel for the Applicant. The facts/factual aspects of those decisions are altogether different than the present case. Rather the *ratio deinceindi* of the Hon'ble Apex Court in **Secretary, State of Karnataka and others v. Umadevi and others**, 2006 AIR SCW 1991 which has been followed in many other case by the Hon'ble Apex Court that ad-hoc appointee de hors the Rules has no right to claim regularization, has fullest application to the present case.

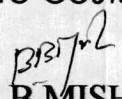


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10. In view of the discussions made above, this Original Application is bound to fail both on merit as also limitation and is accordingly dismissed. However, in the circumstances of the case, we pass no order as to costs.


(N.D. RAGHAVAN)
VICE-CHAIRMAN


(B.B. MISHRA)
MEMBER(A)

KNM/PS.