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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 17/04/2008

O.A. No. 1115 of 2003

Satyabrata Nayak & Ors. Applicants
Vs.
Union of India & Ors. Respondents

(FOR INSTRUCTIONS)

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

[Signature]
(C.R. MOHAPATRA)
MEMBER(A)

[Signature]
(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Date of order: 17/04/2008

PRESENT:

THE HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN
AND
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

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O.A. No. 1115 of 2003

Satyabrata Nayak & Ors. Applicants
Vs.

Union of India & Ors. Respondents

(Particulars of parties are attached in separate sheet)

For the Applicants :M/s.B.Dash, M.R.Nayak, S.K.Nayak, Counsel

For the Respondents. :Ms.S.L.Patnaik, Counsel

ORDER

Per MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN:

Alleging illegality in the matter of filling up of the posts of Jr. Engineer II, by strictly adhering to the Rules/Guidelines, on the subject, i.e. 66.2/3% by way of direct recruitment and 33.1/3% by way of promotion from the post of Supervisor, and non-consideration of the cases of Applicants for promotion to the post of Junior Engineer, this Original

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Application U/s.19 of the Administrative Tribunals Act, 1985 has been filed by Satyabrata Nayak along with seven others seeking the following relief:

“8. RELIEF SOUGHT(S):

- (i) The Respondents may be directed not to recruit any JE-II (P.Way) against direct recruitment quota by the Railway Recruitment Board till such time the shortfall of promotion quota is fulfilled by promoting half of the number of direct recruits to the post of JE-II (P.Way);
- (ii) The Respondents may be directed to consider the cases of the Applicants for promotion to the post of JE-II retrospectively to maintain the quota of 33.1/3% of the total posts;
- (iii) The Respondents may be directed to fix the seniority of the applicants in the gradation of JE-II (P.Way) in terms of the Rules by calculating 33.1/3% of posts for promotion and 66.2/3% for direct recruits;
- (iv) The Respondents may be directed to revise the seniority list of JE-II (P.Way) after giving retrospective promotion to the applicants from the day when posts were available to be filled up by Departmental promotees;
- (v) The Original Application may be allowed with heavy cost and such other order(s)/direction(s) may be issued giving complete relief to the Applicants.”

2. Respondents have filed detailed reply statement contending that as per the Rules/Guidelines of the Railways, 66.2/3% posts in the grade of Supervisor (P.Way) are/were meant to be filled up by way of direct



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recruitment through RRB and 33.1/3% by way of promotion from the feeder cadre. The Applicants were appointed in the Engineering Department of Chakradharpur Division through Railway Recruitment Board as Supervisor (P. Way) in the scale of Rs. 4,500-7,000/-. Continuous service of three years in the grade of Supervisor (P.Way) is the essential requirement, as per rules, subject to availability of vacancy, for promotion to the post of Junior Engineer Grade II, out of the promotional quota of 33.1/3%. Fourteen Supervisors, senior to the Applicants have been promoted to JE II till date. It has been explained that only three applicants out of eight are eligible to get the financial up-gradation under the ACP scheme, for having completed pre-requisite 12 years of continuous service in the grade of Supervisor. As against the direct recruitment quota of 66.2/3%, only four candidates in JE II grade have been appointed. According to Respondents in order to fill up the shortfall vacancies of direct recruitment quota candidates from Railway Recruitment Board were sought for when vacancies arose. They have shown the percentage distribution in the category of Supervisor (P.Way) as under:

Direct Promotional quota	50%
Limited Departmental Competition	25%
Direct Recruitment Quota	25%

It has been stated that in order to meet the exigency of work 14 supervisors (P.WI) in the scale of Rs.4500-7000/- of Engineering Department were promoted to JE II on adhoc basis, out of which 10 JE II, being found

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suitable, have been regularized in the meantime. Due to non-availability of vacancies under the promotional quota the cases of applicants could not be considered for promotion to JE II and, thereafter to JE I in the scale of Rs.5500-9000/- in the ratio 1:1. Applicants and some others have applied for promotion, under the quota meant for them, to the post of Junior Engineer-II but due to non-availability of vacancies they could not be promoted. However, all the applicants except Shri Santan Sahu, Applicant No.7 have been promoted consequent upon 17.27% merger of the post of supervisor (P.Way) in scale of Rs.4500-7000/- + Rs.100/- (RSRP) into Junior Engineer-II (P.W.I) in scale of Rs.5000-8000/- (RSRP) in terms of Railway Board's letter No. FC-III/2003/CRC/06 dated 09.10.2003 circulated vide Chief Personnel Officer/GRC's Estt. Sl. No. 157/03-04 which effect from 01.11.2003 under re-structuring cadre of posts. From amongst seven number of promotees under restructuring cadre, Shri Bijay Kumar Kund and Shri Subrata Nayak have also been extended financial up-gradation under ACP scheme of Railway vide Office Order dated 09.09.2004 which is extended to a Railway employee on rendering 12 years of continuous service in a particular post. It has been submitted that since the applicants have already been promoted this Original Application is becoming infructuous and is liable to be dismissed. However, on 04.03.2008 an additional counter was filed by the Respondents, stating therein as under:

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- “2. That the applicants through promoted vide order dated 13.08.2004 and 09.09.2004 under Annexure-R/1 and Annexure-R/2 respectively but the retrospective effect has not been given due to non-availability of vacancy in the departmental promotional quota (DPQ);
3. That the ratio of 66.2/3% towards direct recruitment quota (DRQ) was maintained for the selecton of JE-II (P.Way) in scale of Rs.5000-8000/- (RPS) whereas the proportion at 33.1/3% towards DPQ could not be maintained because vacancy could not be accumulated in DPQ for the period from 01.04.1991 to 14.07.2001 for the post of JE-II (P.Way). The cadre of JE II is very small cadre; hence the accrual of vacancy in this cadre due to retirement/voluntary retirement/death is very rare as such under 33.1/3% DPQ vacancy did not accrue every year. Later on the ratio was found to have been maintained when 9 senior most supervisor were called for the selection of three JE-II post vide seniority list published as on 15.07.2001 (Annexure-R/3);
4. That so far as allegation that juniors have been promoted before the applicants it is incorrect. The provisional seniority list of supervisors (P.Way) in scale Rs.4, 500-7000/- (RSRP) of Engineering Department in Chakradharpur Division as on 01.01.2005 is placed at Annexure-R/4;
5. That no P.Way Supervisors were promoted to JE-II in scale Rs.5000-8000/- at he ratio of 33.1/3% in DPQ because anticipated vacancy could not be existed on accumulation for the period from 01.04.1991 to 14.07.2001 due to normal retirement/voluntary retirement/death is very rare and vacancy did not occur every year as it is a small cadre. However 9 supervisors were called for the Promotion of 3 JE II on the basis of 3X formula in scale Rs.5000-8000/- (Revised) who were senior most to the applicants on the OA, whose date of appointments are furnished below:

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Sl.No.	N a m e	Date of appointment
1.	Sri Somra	24.04.1965
2.	K.G.D.Kurup	24.04.65
3.	Gangadhar	04.09.65
4.	H.K.Das	24.08.63
5.	C.R.Banerjee	10.12.64
6.	U.Kongari	24.04.65
7.	Chudamani	24.09.65
8.	P.C.Routh	25.01.89
9.	Basant Ku. Mohanta	05.09.89

In the aforesaid selection only item nos.1&2 were regularized as JE II who had been working since 1992 on ad-hoc basis vide O/O. No. E/C/III/Test/JE Grade II/P.Way/335, dated 30.10.2002 except the applicants as they are not senior to the above employees. Again on accumulation of vacancies from the date 15.07.01 onwards 22 supervisors were promoted on merger of post at the ratio of 17.26% to JE II against restructuring with effect from 01.11.03 vide Estt. Srl. No. 157/03 and 4/04;

6. That the cadre of JE-II is very small cadre and as anticipated vacancies did not exist every year for the period from 01.04.1991 to 31.03.2002 due to normal retirement/voluntary retirement/death and also the name of the applicants could not be interpolated in the seniority list published as on 15.01.01 as they were junior most and not eligible for the zone of consideration.”

3. We have heard Mr. Bimbisar Dash, Learned Counsel for the Applicants and Ms. S.L.Pattnaik, Learned Counsel for the Respondents-Railways and perused the materials placed on record.

4. When the matter came up for hearing, Learned Counsel for the Applicants took us through the decisions of this Tribunal rendered in earlier OA No. 651 and 660 of 2002 – Ajeet Kumar Jha and 9 others v Union of



India and others - disposed of on 4th May, 2005 and we have minutely gone through the same. On going through the records as also the orders of this Tribunal, it is seen that the issues involved in this case are exactly the issues questioned and answered by this Tribunal in the case of Ajeet Kumar Jha and others (supra). For clarity relevant portion of the orders in the aforesaid cases is quoted herein below:

“2. The case of the Applicants in short is that they have been recruited as Permanent Way Mistries in the scale of Rs.1400-2300/- and are eligible for promotion by way of career progression to the cadre of Permanent Way Inspector (PWI, in short) Grade III in the scale of Rs.1400-2300/- by selection for which 33-1/3% of the posts for PWI, Grade-III are earmarked. Once, the Permanent Way Mistry (PWM, in short) from the scale of Rs.1400-2300/-, revised to Rs.4500-7000/- are promoted to the grade of PWI, Grade III in the scale of Rs.4500-7000/- (revised) further higher grade posts are available to them in the normal channel of promotion, by selection or non-selection, as the case may be, to first, PWI, Grade-II (Rs.5500-8000/-), next to PWI, Grade-I (Rs.6500-10500/-) and then to Chief PWI (Rs.7540-11500). It is their case that although the sanctioned cadre of JE-II (PW) under Khurda Road Division as on 1.4.01 consisted of 16 posts on open line and 31 posts against work charge establishment since 1985, not a single Supervisor (PW) (now Permanent Way Mistry) has been promoted as JE-II (PW) against the departmental quota of 33-1/3% of the total cadre strength excepting two case of Supervisor (PW), being promoted on adhoc basis on January, 1995 and April, 1995 without conducting any regular selection, although the post of JE-II (PW) is a ‘selection post’. They have further submitted that against this sanctioned post of 47, there were 66 officials on roll as JE-II (PW) and that all these posts have been filled up by the direct recruits.

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According to them, 22 officials from the feeder grade of Supervisor (PW)/JE-II (PW) should have been given promotion under DP quota in terms of para-144 (1) of IREM, Vol.I. They have, therefore, alleged that the Respondents have without any reason broken the quota principle enshrined in the Recruitment Rules, and have, therefore, acted against the interest of the Supervisor (PW)/JE-II(PW) blocking their career progression. They have further alleged that this problem is being compounded further by sending requisition to the Railway Recruitment Board on 18.12.2000 (Annexure-A/4) for recruitment of seven more JE-II (PW) from the open market.

3. The Respondents have contested the OA by filing a detailed counter. They have submitted that prior to 1.1.89 the cadre management for the post in respect of the Permanent Way Inspector Grade-III and others were under administrative control of Respondent No.4. This function was decentralized to the division level and offered to the Khurda Road Division during 1994. They have admitted that the promotion method was not adopted for filling up of the posts in the cadre of PWI, Grade III upto 1994 and even thereafter due to non-availability of physical vacancies and PWI Grade III post holders in Construction Organization in excess of DR quota/lien holders in Khurda Road Division. They have also admitted that the applicants did represent to the authorities for operation of promotion quota by freezing selection of direct recruitments and that their representations were under active consideration. They have also submitted that as per the interim direction of this Tribunal dated 24.07.02, the physical vacancies in the grade of JE-II (PW) had been assessed and three vacancies were available for recruitment under departmental quota and that written test had already been conducted for preparing select list for filling up those posts. They have also taken action for filling up another 11 vacancies by way of departmental promotion postponing further recruitment under DR quota till the shortfall of departmental promotion quota was made good in the division. With regard to the cadre strength of

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JE-II (PW) as on 1.4.01, they have submitted in the counter that the cadre strength was 16 only under the regular establishment and 31 posts on work charge basis. The number of work charge posts was later on reduced to 13 as on 1.4.02. They have also submitted that as the applicants were recruited in the year 1998, they cannot raise question about operation of DP/DR quota since 1985. They have further submitted that there were 23 vacancies in the grade of PWI, Grade III from 1989 till date and thus by applying the quota principle only 8 posts are to be filled up by promotion. To facilitate selection against DP quota, they have decided to stop operations of DR quota.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. The grievance of the applicants is that they have been denied the benefit of career progression in terms of the provisions of the Recruitment Rules as enshrined in para 144 (1) of IREM, Vol.I (Annexure-A/4). This allegation is not disputed by the Respondents. Rather, in their counter they have made a clean breast of the matter stating that the promotion quota was not operated by them for long. However, they have stated that the applicants having been recruited in the year 1998, their claim of promotion cannot be pre dated to 1985. Another point of conflict is that the applicants have in their application claimed the benefit of 33-1/3% of the vacancies stating that the strength of JE-II (PW) for this purpose should be taken as 66. On the other hand, the Respondents have repudiated that there were ever so many posts sanctioned in the grade of PWI, Grade-II/JE-II(PW). They have stated, as on 1.4.01, there were only 16 posts under regular establishment and 31 posts on work charged basis which was reduced to 13 on 1.4.02. They have further submitted in para 9 of their counter that there were 23 vacancies arising during 1989 till 2003 and, therefore, 33-1/3% of DP quota vacancy come to 8 only to be filled up. In other words, they have stated that up to 2003 not more than 8 Supervisor (PW) could be promoted under DP quota and averred that they have taken action to fill up as many posts by promotion.

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6. The dispute raised in this OA is not complicated and is capable of early resolution. We, therefore, direct the Respondents that as the Recruitment Rules have provided for two modes of recruitment to the cadre of JE-II (PW) (erstwhile PWI, Grade III) both by direct recruitment (66-2/3%) and by promotion (33-1/3%), it is incumbent upon them to fill up the vacancies arising every year strictly according to that ratio. It is well settled point of law that Recruitment Rules, being statutory in nature, the provisions made there cannot be varied except by invoking the relaxation clause in public interest for which reasons to be recorded in writing. From the averments made by the Respondents, both in the counter as well as during oral arguments and the records placed before us, it is clear that they had resorted to direct recruitment without keeping in view the number of posts available for recruitment under DR quota. Further, we find that number of JE-II (PW) posts in Construction Organization have been filled up by DR candidates who are to be adjusted against the sanctioned post under regular establishment. Such an averment is patently wrong being violative of all establishment rules and procedures. Construction Organization being a separate entity than the open line regular establishment and the sanctioned post under regular establishment being governed by the Recruitment Rules as framed and enshrined in IREM, Vol. I, the Respondents cannot adjust direct recruits or allow their lien against regular posts. Lien is a tool for protecting the service interest of an appointee after he is appointed against a regular post, and, thereafter, is allowed to move to another post in another cadre/organization. That being not the case in this matter, we have no hesitation to hold that the Respondents have created complications in the matter of management of the cadre of PWI, Grade II, jeopardizing the career interest of the promotees, the applicants in this case, and also bringing sorrows to the administration by mindless and irregular direct recruitment of candidates against work charge posts. The order of lien in all these cases are also irregular ab initio as no one holds any appointment against any regular post. The Respondents,

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therefore, are directed to find out a solution to the problem created by them by irregularly allowing lien to the officials who were recruited directly from the market against work charge establishment. In this case as the parent cadre of this category of recruits is work charge establishment which itself is a temporary phenomenon, the question of lien is not only unrealistic, it is illegal also, as it hurts the interest of the legitimate post holders of the regular cadre. The Respondents are hereby directed to isolate all the post holders in the work charge establishment who are alleged to have lien in the regular cadre. We further direct the Respondents that as the Recruitment Rules itself provides for filling up the posts by DR and DP quota, they are duty bound to hold DPC for preparing year wise panel for the years they have not held DPC for departmental candidates for promotion from the cadre of Supervisor (PW), after calculating year wise vacancy under DR and DP quota from 1989. Once this is done, the Respondents should also consider the cases of the applicants according to their turn, provide they fulfill the other eligibility conditions as enshrined in the Recruitment Rules under para 144 (1) of IREM, Vol.I.

7. The Original Applications accordingly succeed. No costs."

5. We are in respectful agreement with the decisions rendered by this Tribunal quoted above and we, accordingly, hold that the dictum laid down in the judgment is squarely applicable to the present case.

6. In the light of the discussions made above, we direct the Respondents to apply the same ratio and steps that has been taken in the case of **Ajeet Kumar Jha & 9 others** (supra) so far as the present Applicants are concerned and pass appropriate reasoned orders as early as

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possible preferably within a period of four months from the date of receipt of a copy of this order.

7. With the observations and directions made above, this OA stands disposed of . In view of disposal of OA No. 1115/2003, OA Nos. 39/04, 40/04, 41/04, 42/04, 43/04, 44/04 & 45/04 are also disposed of for statistical purposes. There shall be no order as to costs.



(C.R. MOHAPATRA)
MEMBER(A)



(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

KNM/PS.