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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

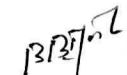
Original Application Nos. 1409, 1410 & 1411 of 2003
Cuttack, this the 22nd day of June, 2007.

Ch. Bhagawati Rao & Ors. ... Applicants
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? yes
2. Whether it be circulated to all the Benches of the CAT or not? no


(N.D. RAGHAVAN)
VICE-CHAIRMAN


(B.B. MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 1409, 1410 & 1411 of 2003
Cuttack, this the 22nd day of June, 2007.

C O R A M:

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

(OA 1409/2003)

Ch. Bhagawati Rao, Aged about 47 years, Son of late Ch. Bhanumurty, at present residing at Hata Bazar, Po/Ps-Jatni, (Khurda Road), Dist. Khurda working as Call Boy East Coast Railway, Khurda Road, Khurda.

(OA 1410/2003)

M.Venkateswar Rao, Aged about 43 years, Son of M.K.Sastry, at present residing at Qr. No. D-27 A/C, Traffic Colony, Po/Ps-Jatni (Khurda Road), Dist. Khurda working as Call Boy, East Coast Railway, Khurda Road, Khurda.

(OA 1411/2003)

Prafulla Kumar Mallik, aged about 38 years, son of Sri Bhimo Mallik, at present residing at Parbatipur, Bolagaon, Po/Ps-Sahalapada, Dist. Puri at present working as Call Boy East Coast Railway, Khurda Road, Khurda.

..... Applicants.

By legal practitioner: M/s. S.S.Rao,

P.K.Mishra and
Ors. Advocates.

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-Versus-

1. Union of India represented through its Secretary, Department of Railway, New Delhi.
2. The Chief General Manager, South Eastern Railway, Garden Reach, Kolkata.
3. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Po/s.Jatni, Dist. Khurda.
5. Divisional Railway Manager, East Coast Railway, Khurda Road, Po/Ps-Jatni, Dist. Khurda.
6. Senior Divisional Mechanical Engineer, East Coast Railway, Khurda Road, Po/Ps-Jatni, Dist. Khurda.

...Respondents.

By legal practitioner: Mr.O.N.Ghosh, Advocate

ORDER

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

Though all these three cases were heard separately one after the other, since fact and law involved in these three cases are one and the same, this common order is passed which would govern all the cases mentioned above.

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2. All the three Applicants are working as Call Boy in the East Coast Railway, Khurda Road. Their grievance is that they having been found suitable in the Psychological, Screening and other Medical tests, as departmental candidates, they were sent for training held at Training Camp at Kharagpur and Tata during 12.12.2002 which is a prerequisite qualification for holding the post of Assistant Driver (in short DDA). They had successfully completed the training along with other departmental as well as outside candidates. But the departmental candidates who were asked to face the psychological test along with applicants but were not found suitable, were absorbed as Assistant Drivers whereas the Applicants have been deprived of the post of DDA. Further the case of the Applicants is that while others were sent for final training i.e. the Foot Plate Training vide memo dated 18.12.2001, in spite of representations, no action was taken by the Respondents to extend such benefits of sending them the Foot Plate Training in order to be eligible to hold the post of DDA. Being aggrieved by such alleged discriminatory action of the Respondents, they have approached this Tribunal in the present Original Applications filed under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:

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- i. to issue direction to the Respondents to send the Applicants to undergo the Foot Plate Training i.e. final Training course for the post of Assistant Driver (DDA) with immediate effect in pursuance of his successful completion of the first training course;
- ii. and upon the applicant's qualifying the said training course to issue appointment orders in his favour for the post of Assistant Driver (DDA).

3. By filing counter, the Respondents have brought to the notice of this Tribunal that the Applicants are now working Call Boy in Mechanical (Loco) wing of the East Coast Railway. The promotional channel of Call Boy in the Mechanical (Loco) wing is as under:

- i. Call Boy - Rs.2550-3200/-
- ii. Sr. Call Boy- Rs.2610-3540/-
- iii. Asst.Cook - Rs.2850-4000/-
- iv. Cook - Rs.3050-4590/-
- v. Sr. Cook - Rs.4000-6000/-.

The post of DDA (Assistant Driver) belongs to Mechanical (Running) Wing of the East Coast Railway. Mechanical Department is one of the Departments of the E.Co. Railways. The duties and functions of this Department are to ensure the smooth running of the Railway Engine and maintenance of Carriage and Wagon. The Mechanical

Department is further sub-divided into three wings viz. Mechanical (Running) whose primary duty is to see the running of Railway Engines; Mechanical (C& W) for maintenance of Carriage and Wagon and Mechanical (Loco) which is responsible for Running Room etc.

4. Respondents further stand is that for absorption of Steam Surplus Staff, Railway Board relaxed the educational qualification and age restriction for conversion training of Surplus Steam Staff in Diesel/Elect. Traction vide its letter dated 15.03.1990 (RBE No. 48/90). Due to closure of Steam Engines/Traction w. e. f. 01.11.1990 in Khurda Road Division of E. Co. Railway, the steam related staff and allied services were declared surplus. Therefore, a taskforce was made to redeploy the surplus staff into Diesel Traction as Assistant Driver (Diesel) in the scale of pay of Rs.950-1500/- (RSP) as the Steam Traction was replaced by the Diesel Traction w. e. f. 01.11.1990. Consequently, vide notification dated 26.10.1990 (Annexure-R/2) options were invited from the Steam Surplus Staff for their redeployment as Diesel Driver Assistant in the scale of Rs.950-1500/-. It was directed by the Chief Personnel Officer, Kolkata vide its letter dated

14.11.1990 (Annexure-R/3) that cases of those Steam Surplus Staff would be considered for redeployment in the posts of DDA provided they fulfill the following conditions stipulated in the letter dated 14.11.1990:

- "1(b) (i) They should be found suitable by a duly constituted Screening Committee comprising of 3 J.A. Grade Officers as nominated by Divisional Railway Manager;
- ii. They should be medically fit for the post of Diesel Driver Assistant;
 - iii. They should be subject to Psychological Test and declared suitable;
 - iv. They should successfully complete the prescribed training for the post of Diesel Assistant."

5. Accordingly, a Screening Committee was constituted. The Screening Committee vide letter dated 14.05.1991, initially called some Steam Surplus Fitters working in the scale of Rs.3050-4590/-(RSRP) of Mechanical Department for Screening Test. On being found suitable, at the beginning sixteen numbers of Steam Surplus Staff were redeployed as Diesel Driver Assistant in the scale of Rs.950-1500/- vide Sr. Divisional Personnel Officer, Khurda Road Memo dated 25.06.1991 (Annexure-

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R/7). Thereafter some more Steam Surplus Staff were redeployed in the post of Diesel Driver Assistants vide memo dated 25.07.1992 and 08.02.1993. Thereafter, vide letter dated 30/3.01.1993 (Annexure-R/11) again option was called from the surplus staff for consideration of their case for redeployment as Diesel Driver Assistant in response to which 30 staffs opted vide letter dated 27.7.1993 (Annexure-R/12).

6. Alleging non-consideration of the case of the Applicants for redeployment in the post of DDA, for want of necessary conversional Training of Diesel Driver Assistant, the Applicants have represented the matter to the Chief Operation Manager, Kolkata through various Unions. On receipt of representations, the Chief Operational Manager, Kolkata vide its letter dated 22.3.1999 asked the Divisional Railway Manager, Khurda Road to send seven Group D empanelled Staff for conversional course training. But the Sr. Divisional Mechanical Engineer, Khurda Road, without verifying as to whether the Applicants were the empanelled group D staff waiting for training course, sent them for training. The mistake of sending the Applicants for training on being

detected was highlighted by the Respondent No.4 in his letter dated 16/19.9.2002 and 25.09.2002 (Annexure-R/15 & R/16). While the Applicants were undergoing the training, the Chief Personnel Officer wrote letter dated 09.12.2002 calling upon the copies of panel of candidates who were screened by the duly constituted screening committee for absorption in the post of DDA (Annexure-R/17). In response to the above letter, the Respondent No.4 in his letter dated 13/18.02.2003 intimated to the Chief Personnel Officer, Kolkata that in spite of his pointing out that the Applicants are not the empanelled candidates to be sent for training, they were released for undergoing the DDA Training at STC, Kharagpur and ELTC/TTA by the Senior Divisional Mechanical Engineer, Khurda Road.

7. It has specifically been averred by the Respondents that no option was called for from Group D staff in the year 2001 for being redeployed in the post of DDA. Successful completion of both Theoretical and Foot Plate Training is a mandatory pre requisite qualification to hold the post of DDA. Since the Applicants were sent for theoretical training wrongly, they were not spared to have

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the Foot Plate Training. It has been stated that as per the policy decisions of the Railways, cent percent of posts of DDA are to be filled up by way of direct recruitment through RRB. The Applicants were undergoing Theoretical Training at STC, Kharagpur and ELTC, TATA along with the RRB empanelled Jr.DDAs and therefore, possibly, the applicants cannot have any claim to be sent for Foot Plate Training when others were sent. In the light of the above facts, the Respondents have opposed the prayers of the Applicant and have prayed for dismissal of this OA.

8. Applicants by filing rejoinder have refuted the stand taken in the counter. It has been averred that they were initially recruited against Group D post in LOCO Group in the office of the Respondent No.5 but as there was surplus staff in LOCO group, the applicants were adjusted as Shed Khalasi and subsequently were given the work of a Call Boy since 1994. Though the applicants are being given all the benefits of a regular employee, yet their services have not been regularized. Pursuant to the option submitted by applicant for being redeployed in the post of DDA, on 25.2.1994, they were called by the Screening Committee consisting of Shri P.K.Sahu, AME, Shri

A.K.Panda, DME and Shri Ch.Anand Rao, Loco Inspector and they were declared fit to undergo the further tests and training. Accordingly, they were also sent for Psychological and Medical Tests and after being declared fit in all respects, they were deputed for undergoing the Training under Annexure-5. On successful completion of the theoretical training vide Annexure-6 they were asked to report at the Division Office of E.CO. Railway, Khurda. But instead of sending them for Foot Plate Training under Annexure-7 they were asked by the authority to go and work in their Unit until further orders. Their case is that the Respondents have deliberately tried to mislead this Tribunal by saying that because of closure of steam engines the surplus steam related staffs were given option for undergoing training to absorb them in the post of DDA. By relying on the document under Annexure-10 it has been averred by them that surplus loco staff and staff of maintenance and running room were also called to undergo different tests and training and after successful completion of training the staff of maintenance and running room were given appointment. In this backdrop, the Applicants have prayed for allowing the relief claimed by them in the OAs.

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9. Through MAs, Applicants introduced a document 28.02.2000/15.5.2000 purported to have been issued by the Senior Divisional Mechanical Engineer, Khurda, to the CMPE(R&L)/GRC stating as under:

"7 Group D staff of Mech branch have been empanelled for the post of DDA. These staff belongs to non-running loco group. All these staff have not been sent for conversion training of diesel assistant. These staff are to be included in the next group for conversion training to diesel assistant at STC/KGP. The names of the 7 staff are given below:

- (1) Shri Ch.Bhagavati Rao Call Boy/KUR
- (2) Shri M.Venkateswar Rao RR Bearer/KUR
- (3) Shri Sk.Manzoor, Cook Helper/KUR
- (4) Shri P.K.Mallik Call boy/PUL
- (5) Shri N.Yadav Rao RR Bearer, BHC
- (6) Shri N.Eswar Rao Khalasi Helper/KUR
- (7) Shri N.Purushotam Rao, Call Boy/KUR

These 7 Group D staff could not be released for conversion training though empanelled along with the other staff."

10. Respondents, by filing reply to the MAs have questioned the genuineness of the above documents by stating that Applicants had neither exercised their options nor had they been called upon to face the screening test,

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not to speak of their empanelment. There is no record to show that the Applicants were ever empanelled for the purpose of redeployment in the post of DDA. The letter claimed to have been written by Senior Divisional Mechanical Engineer, Khurda, was bereft of any records. There is no such letter dated 22.1.1999 issued by the office of the COM/GRC, Kolkata as referred to in this letter of the Sr. Divisional Mechanical Engineer, KUR. In the year 2000 neither was there any Selection Test conducted nor any panel was published for Departmental Promotion Quota as per the Estt. SI.No.208/98. Sr. DME/KUR has erroneously sent the names of applicants to COM/KUR treating them as empanelled candidates without verifying the existence of Selection Panel List. The said act of Sr. DME/KUR i.e. Respondent No.6 was erroneous in nature as a result of which the Applicants were sent for induction training for DDA. In order to establish that the stand of Applicants are false, it has been maintained by the Respondents that Applicants were regularized in Group D posts of Railways on 26.05.1995, and the Applicant in OA No. 1411/03 was empanelled for Gr. D post against SC shortfall vide letter dated 06.04.1994 and posted as Box Boy on 16.04.1994 and then posted as Call Boy on 21.09.1994 and, therefore, according to the Respondents, question of attending the

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Screening Test allegedly held on 25.2.1994 does not arise. On the above grounds they have also opposed the assertion of the Applicants.

11. Heard Mr. S.S.Rao, Learned Counsel for the Applicants and Mr. O.N.Ghosh, Learned Counsel for the Respondents-Railways.

12. Learned Counsel for the Applicants submitted that the Applicants were appointed Group D employees in the LOCO Group of the Railway Department. They were surplus staff of the Non-running Loco Group and as such, Applicant in OA No. 1409/2003 was asked to work against the post of Call Boy. Similarly Applicant in OA no. 1410/2003 and Applicant in OA No.1411/2003 were asked to perform the duty of Running Room Bearer and Call Boy respectively. The Respondents issued instructions to redeploy the surplus staff for undergoing training to be absorbed as Assistant Driver (DDA). Accordingly, the Applicants exercised their options and were screened by a Committee and empanelled to under to the training programme which can be revealed from Annexure-1 to the OA corroborated by the letter under Annexure-11.

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Thereafter, they were sent for the theoretical training. But while deputing the other successfully trained candidates to take part of the Footplate Training, the applicants were deprived of the same on flimsy grounds which are not sustainable in the eyes of law. It has been argued that if the Applicants were wrongly sent for such training, it could have been made known to them earlier. But nothing was communicated to them prior to filing of counter in this OA. His contention is that having sent the Applicant for theoretical training and they having completed the training successfully, the Respondents are estopped under law to deprive them of undergoing the Foot Plate Training for getting the benefits which have been extended to other similarly situated persons. He has also raised the question of violation of legitimate expectation of the Applicants to be absorbed in the post of DDA being surplus staff of the Mechanical Department. By stating so, he has fervently prayed for allowing the prayers of the Applicants made in these OAs.

13. On the other hand, Learned Counsel for the Respondents has pointed out that the Applicants were never declared surplus as claimed by them. He has

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argued that at the relevant time neither any option was called for nor any departmental selection test was conducted or any panel has been made since all the vacancies of DDA are being filled up by 100% Direct Recruitment Quota through RRB. Respondent No. 6 nominated the names of the Applicants for training without verifying the documents. He has stated that the letter dated 24.07.2007 (Annexure-A/20) is sufficient to come to the conclusion that the letter under Annexure I and II was sent on conjecture and surmises without verifying the records pertaining to empanelment of the employees to be sent for training. His next submission is that there can be no estoppel when they were not eligible to be sent for training and the same was done erroneously. He has also argued that violation of legitimate expectation would come into if somebody is denied his promotion within the hierarchy of promotion available in the cadre. Since redeployment of surplus staff in the post of DDA is an exception to the Rules due to the contingencies narrated above, the Applicants can hardly have any right to claim the post when they are not the surplus employees of the Department. In this connection he has also relied on the decisions of the Hon'ble Supreme Court in the case of **State of U.P. v. Neeroj**

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Awasthi and others, 2006 SCC (L&S) 190; **Secretary, State of Karnataka v. Umadevi**, 2006 AIR SCW 1991 and **State of Bihar and others v. Projectuchcha Vidya Sikshak Snagh and others**, (2006) 2 SCC 545. In support of his claim that an order which is void *ab initio* does not give any right to an employee to claim equity and benefits given wrongly against the Rules can be withdrawn at any point of time, Mr. Ghosh Learned Counsel for the Respondents has relied on the decision of the Hon'ble High Court of Kerala made in the cases of **United India Insurance Co. Ltd. V. Roy**, 2005 (2) KLT 63, **Santa Kumari P.J. v. State of Kerala and others**, 2006 (1) ATJ 321 and the decisions of this Tribunal in the case of **Sri Kubera Behera v. Union of India and others** (OA No. 662 of 2005 disposed of on 15.12.2006). Similarly to establish that mistake creates no right for others and cannot be directed to be repeated he has relied on the decision of the Hon'ble Apex Court in the case of **State of UP and others vs. Raj Kumar Sharma and others**, AISLJ 2006 (3) 81.

14. We have given our thoughtful consideration to the arguments advanced by the parties and have gone through the decisions relied on by Mr. Ghosh, Learned Counsel for the Railways.



15. It is needless to repeat the circumstances under which the Respondents have decided to redeploy the steam surplus staff of the Mechanical Department of the Railways in the post of DDA. It would suffice to say that instructions based on which screening test was conducted clearly provide that optees should be screened through various measures and after they being empanelled, should be sent for training which consists of two parts - one theoretical and the other is Foot Plate. It is not in dispute that the training is the pre-requisite qualification before being appointed to the post of DDA. Except the letters of the Sr. Divisional Mechanical Engineer, Khurda under Annexure-1 & 11, no other material has been produced by the Applicants showing that the Applicants had exercised their option to be screened or they were ever screened for sending the training. It is the positive stand of the Respondents that the Senior Divisional Mechanical Engineer, Respondent No.6 had wrongly sent the Applicants for training without verifying the documents as to whether they are the empanelled candidates so as to be sent for training pursuant to the letter dated 22.03.1999 (Annexure-R/14) through which, it was specifically directed as under:



"SERMC in the PNM meeting held at Hd.Qrs. on 17.11.98 had represented that 7 Group-D staff under the Mechanical Branch, who had been empanelled for the post of Diesel Assistant, had not been sent for Conventional Training of Diesel Assistants.

This was accepted by me and the minutes of the PNM meeting circulated to all concerned. A representation has again been received that these 7 Group D staff have not been spared for conventional training. It is requested that they may be released immediately."

16. From this it is clear that on the basis of wrong understanding given by the Applicants that they are the empanelled candidates and have been kept away from undergoing the conventional training of diesel assistant, the authorities in letter under Annexure-R/14 directed to spare them immediately. When it was detected that they are not the empanelled candidates, in letter under Annexure-R/15 and R/16 it was indicated that they should not be sent for Foot Plate Training/should not be absorbed/promoted as DDA as this would lead further complicacies in the way of industrial relation and invite further undue claims from the other Group D staff of Mechanical Department. On perusal of the letter dated

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24.07.2006 (Annexure-A/20), we do not have slightest doubt that the Respondent No.6 had issued letters under Annexure A/1 & A/11 without verifying the documents as to whether the Applicants are the empanelled Group D staff, relieved them for undergoing the conventional Training of Diesel Assistant. The letter dated 24.07.2007 (Annexure-A/20) speaks as under:

"With ref. To your above cited letters, it is to inform you that the following 7 (seven) Group D staff have never been selected through a process of selection or Screening test for the promotion as DDA:

Sl.No. Name of the staff Design & Stn.

- (1) Shri Ch.Bhagavati Rao Call Boy/KUR
- (2) Shri M.Venkateswar Rao RR Bearer/KUR
- (3) Shri Sk.Manzoor, Cook Helper/KUR
- (4) Shri P.K.Mallik Call boy/PUL
- (5) Shri N.Yadav Rao RR Bearer, BHC
- (6) Shri N.Eswar Rao Khalasi Helper/KUR
- (7) Shri N.Purushotam Rao, Call Boy/KUR

Since COM/GRC under his DO Lr.No.MG/50/253 dated 22.3.1999 had given direction to about 07 (Seven) Group D empanelled staff for the post of Diesel Assts, this office has deputed the above staff for induction training as DDA with out verifying any panel/records.

In fact, at the material time, there was no notification issued at this end for calling option from any Group D staff of Mech. Dept. or no panel to this effect was

published. Hence the word i.e. "empanelled" used in this office Lr. No. Mech./TRS/18/22/DDA Training/1160 dt.28.2.2K/15.5.2K is said to be erroneous."

17. From the discussions made above, it cannot be said that the Respondent No.6 is alone responsible for the mistake. As stated above, since the Applicants have given a wrong understanding that they are empanelled candidates, the authorities directed for sending them for conventional training. A wrong cannot be allowed to perpetuate by directing to send the Applicants for further training. It is also settled law that no one can claim equity if a wrong gain is allowed to him. Equally no one can claim estoppel for any act wrongly done or undertaken. The observations made in the case of United India Insurance Co. Ltd (supra) squarely answers the case of Applicants and they are quoted herein below:

"To err is human; to correct an error is also human...It is a large organization where several employees are working and large volume of work is being transacted. In such a situation, human error at times cannot be avoided. Nobody could expect an ideal situation without any error or mistake in the matter of administration. Due to inadvertence or otherwise a mistake has been committed which can always be corrected. Duty to cast

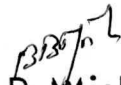
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not only on the administrators but on the beneficiary of the mistake to correct the error. The beneficiary is also part of the administration like the person who had committed the mistake."

18. Besides all the above, we would like to observe that rightly the Respondents had taken steps to adjust the surplus staff in the post of DDA. Had it not been so, they would have either been sent to surplus cell or would have lost their job; which is not the case of the Applicants. Also Applicants cannot claim any equity or estoppel for the training course because, during the period of training, they were not deprived of their salaries and other allowances which they were getting earlier.

19. In view of the discussions made above, we find no merit in these OAs; which stand dismissed by leaving the parties to bear their own costs.


(N.D. Raghavan)
Vice-Chairman


(B.B. Mishra)
Member(A)