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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. NOS. 169 & 202 TO 207 OF 2002
Cuttack this the 30th day of Nov./2004

Balaram Das & Others ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Ys*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Ye*

MoH
(M.R. MOHANTY) 30/11/04
MEMBER (JUDICIAL)

B.N.S.
(B.N. SOR)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

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1. Balaram Das, aged about 50 years, S/o. Bipra Ch. Das, Plot No.1197/Mahanadi Vihar, PO-Mayabazar, PS-Chauliaganja, Dist-Cuttack
2. Binakar Raut, aged about 53 years, S/o. Natabar Raut, At/PO-Jakhpura, Via-Danagadi, PS/Jajpur Road, Dist-Jajpur
3. Debendra Nath Mohanty, aged about 51 years, S/o. N.C.Mohanty, At/Pitamber Pur, PO/Ranadinga, PS-Tritol, Dist-Jagatsinghpur
4. B.Purna Chandra Rao, aged about 54, S/o.Satyanarayan R/O. Khurda Road, Retanga Colony, PO/PS-Jatni, Dist-Khurda
5. Purna Chandra Mishra, aged about 53, S/o.Pravakar Mishra, AT/PO-Panchapali, Dist-Jagatsinghpur
6. V.Y.Naidu, aged about 52, S/o.V.Pentai Naidu, Qr.No.CPC B/4 Railway Colony, PO/College Square Dist-Cuttack
7. Dhamurdhara Kadam Singha aged about 52, S/o.B.K. Singh, At/Kanta Bania, PO-Garh Sanpur, PS-Kanasa Dist-Puri

All of them are working as Sr.Clerk under Chief Project Manager(Con) Headquarter Chandrasekharpur, Bhubaneswar

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Applicants

By the Advocates

M/s.P.Jena
S.B.Jena
A.K.Sahoo
S.Das

- VERSUS -

1. Union of India represented through its General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Chief Administrative Officer (Con), S.E.Railway, Chandrasekharpur, Bhubaneswar
3. Deputy Chief Personnel Officer(Con.), S.E.Railway, Chandrasekharpur, Bhubaneswar

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2. Chief Engineer (Con.), HQ, S.E.Railway,
Chandrasekharpur, Bhubaneswar
5. Chief Engineer (1) (Con.), S.E.Railway,
Chandrasekharpur, Bhubaneswar
6. Chief Engineer (2) (Con.), S.E.Railway,
Chandrasekharpur, Bhubaneswar

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Respondents

By the Advocates

Mr. R.C.Rath

Mr. Ashok Mohanty

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Applicants, Shri Balaram Das and six others have invoked the jurisdiction of this Tribunal being aggrieved by the inaction of the Respondents-Railways in regularising their services as Junior Clerks, Senior Clerks and Head Clerks with effect from 1.4.1984, 1.4.1988 and 18.2.1999 respectively. It is in this background, they have prayed before this Tribunal for the following reliefs:

- "(a) ...an appropriate direction be issued directing respondents to regularise the services of the petitioners as Junior Clerk w.e.f. 1.4.84 and as Senior Clerk w.e.f. 1.4.88 and as Head Clerk w.e.f. 18.2.99; and
- (b) ...to direct the respondents to pay the consequential financial benefits to the petitioners as per their entitlement".

2. The facts in brief, according to the applicants are that consequent upon a written examination conducted by the Respondents-Railways, they came out successful and accordingly empanelled for promotion/regularisation as Junior Clerk against 60% PCR posts. Following to this empanelment, the applicants were regularised as Junior Clerks with effect from 1.2.1992, wherupon they were promoted to the post of Senior Clerk with effect from the date(s) indicated against each of the applicants vide Annexure-3 dated 11.6.1998. The grievance of the applicants

is that whereas their counter-parts working under Chief Engineer(Con), Visakhapatnam have been regularised as Junior Clerk with effect from 1.1.1984 and as Senior Clerks with effect from the date(s) indicated against each of those vide Annexure-5 dated 11.1.1999 and have also been promoted to the post of Head Clerk vide Annexure-6 dated 18.2.1999, their cases have not been considered by the Respondents-Railways and thereby they have been discriminated against. Representations made by the applicants vide Annexure-10 series to the O.A. having not yielded any fruitful result, they have moved this Tribunal with the prayers referred to above.

3. Respondents-Railways have filed their counter ^{rebutting} contesting the application. While (withstanding) the prayer of the applicants, the Respondents-Railways in Para-5 (Page-2) of their counter have stated as under :

"Due to an undue favour shown by an Assistant Personnel Officer(Construction) at Bhubaneswar, these applicants have been given adhoc promotions as Senior Clerk w.e.f. 1.2.1994 and regular promotion as Junior Clerk from 1.2.1992 with ulterior motive, once the results of the written test were published. The applicants were working as Skilled Gr.III, Skilled Gr.II, Skilled Gr.I and as Storeman/Supervising Mistry etc. till 1998. Thus, allowing technical personnel already enjoying higher and higher scales, in the selection test for the post of Junior Clerk was against all laid down procedure."

To make their statements more consolidated, the Respondents in Para-6 (Page-3) of their counter have stated as under :

"... When all these applicants were working in Technical posts with higher scales than applicable to Junior Clerks, allowing them in the selection for the post of Junior Clerks, in 1997 and publishing their panel

in 1998, and giving them retrospective regularisation w.e.f. 1.2.1992 as Junior Clerks is against all extant procedure".

It has been submitted by the Respondents further that this mistake having been noticed by the authorities in the Department, they issued an order dated 24.7.2002 (Annexure-R/2) as a measure of rectification of mistake. The Respondents have stated that by virtue of Annexure-R/2 dated 24.7.2002 the promotions of the applicants to the posts of Junior Clerk as well as their adhoc promotion to the posts of Senior Clerk have been declared null and void and thereby, their status as Junior Clerks or Senior Clerks as the case may be, have been changed to that of their substantive status as Skilled Gr.III, II, I and as Storeman/Supervising Mistry etc. It is in this background, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

4. We have heard Shri P.Jena, learned counsel appearing for the applicants and Shri Ashok Mohanty, learned senior counsel (Assisted by Shri R.C.Rath, learned Standing Counsel) appearing on behalf of the Respondents-Railways and perused the materials adduced before us.

5. This matter came up before the Bench for hearing on admission on 5.4.2002. While directing issuance of notice to the Respondents, as an interim measure, the Tribunal directed that "pendency of this O.A. shall not stand as a bar before the respondents to redress the grievances of the applicants, as raised in Annexure-10 and also in this O.A., within a period of three months".

6. Before we could bring the matter to touch, we feel it inclined to quote what the Respondents-Railways

have indicated in Page-2 (1) of the order dated 24.7.2002 (Annexure-R/2) hereunder:

" This office order is being issued on receipt of representations from the aggrieved staff in Panel No.CPM/Con/HQ/P/PCR/Clerk/98/005-11 dated 22/23.01.98 alleging that some juniors have superseded in promotion unduly and after review by the competent authority to give the promotional benefits from the date of empanelment as Jr.Clerks and as Sr.Clerk on adhoc basis from the date of completion of two years as Jr.Clerk, following the extant instructions on the subject, thereby cancelling the retrospective promotional benefit, which has been given irregularly".

7. From the above it is transparent that the Respondents have disposed of the representations of the applicants not only replying their claims in the negative, but by annulling the promotion and/or regularisation of the applicants as Junior Clerks as well as their next promotion on adhoc basis to the posts of Senior Clerk. While so doing, they have also directed recovery of arrears paid to the applicant on account of giving them promotional benefits with retrospective effect. It is in this backdrop of the issue, it was open to the applicants to bring this order (Annexure-R/2) to the notice of the Tribunal by way of amendment challenging the legality or validity of the same. They having not done so, the instant OA suffers from legal infirmity as by the operation of Annexure-R/2 dated 24.7.2002, the status of the applicants as described by themselves have since been changed, and in the process, the prayers of the applicant as quoted above cannot be acceded to so long as Annexure-R/2 holds

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the field. Besides, with regard to the facts and circumstances of initial recruitment and/or appointment of the applicants that they were recruited as Skilled Artisans and all of them have been drawing their pay and allowances in the scale of the Skilled Artisans, this has been proved by the Respondents by filing a copy of the salary bill for the month of December, 1997 (Annexure-R/1 series) showing their status and positions wherein certain contradictions/irregularities have been highlighted by the Respondents. Firstly, that while they were holding appointments as Junior Clerk/Senior Clerk on ex cadre appointment basis, they were not entitled to be called for ~~employment~~ ^{enhancement} as Junior/Senior Clerk. Secondly, that this mistake/error in recruitment was detected by the Respondents only in 1998, whereafter it was immediately decided to rectify the said mistake. Lastly, that no adhoc promotion order could be made on ^{retrospective} ~~ad hoc~~ basis as ad hoc appointments are only made to overcome unavoidable situations on a stop gap basis. The Respondents have, therefore, submitted that the applicants, who were working against the technical posts in higher scales than that applicable to the Junior Clerks could not have been considered for selection for the post of Junior Clerk in 1997 and giving them retrospective regularisation with effect from 1.2.1992 as Junior Clerks was in total violation of the existing instructions and procedure, and therefore, the same mistake had to be rectified.

8. The above facts have not been rebutted by the applicants in their rejoinders except by stating that "the counter-parts of the applicant at Vishakapatnam are also originally technical staff ..." Lastly, the entire case of the applicants are based on comparative status and service benefits of certain officials at Visakhapatnam project. But none of such individuals having been arraigned as party in this O.A., this grievance raised by the applicants falls flat on the ground.

9. It is now well propounded law by the Hon'ble Apex Court in very many judgments that the action of correcting a mistake in appointment by the competent authority is valid. The Hon'ble Supreme Court has also laid down the law that the appointments which do not come within the ambit of the notified recruitment rules cannot be regularized by any authority and that the Court cannot direct regularization of those employees which is de hors the policy framed by the Government.

10. Before we close, we would also like to refer our decision rendered in O.A. Nos. 483/2000, 378, 463 and 523 of 2001 - disposed of on 16.12.2002 (through a common order) wherein the applicants had challenged the impugned order dated 24.7.2002, cancelling their promotion as Junior Clerks and adhoc promotion as Senior Clerks with effect from 1.2.1992 and 1.2.1994 respectively, and directing recovery of overpayments on that count for the period from 1.2.1992 to 10.6.1998. Following the law laid down by the Hon'ble Supreme Court (as referred to above) in the cases of Sanjeev Kumar Agarwal & Ors. vs.



Union of India & Ors. (1987) 3 SLJ(CAT) 353, K.S.Srinivasan v. Union of India, AIR 1958 SC 419, Subedar Singh v. District Judge, Mirzapur, 2000(5) SLR(SC) 792 and State of Haryana v. Surinder Kumar, AIR 1997 SC 2129, this Tribunal came to ^{the} conclusion that any promotion action taken in violation of the recruitment rules is ab initio wrong and liable to be quashed. While expressing this opinion, the Tribunal also held that ad hoc promotions could not have been done with retrospective effect and that promotion order having been made in violation of the Recruitment Rules was bad and in law.

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II. Having regard to facts and circumstances of the case and also the position of law in this regard, we have no alternative left but to uphold and approve the legality and validity of the Office Order bearing No.91/2002 dated 24.7.2002 issued by the Respondents vide Annexure-R/2. In the result, O.A.Nos.169 and 2002 to 2007 (assigned for statistical purpose) are dismissed, leaving the parties to bear their own costs.

MoH
(M.R.MOHANTY)
MEMBER(JUDICIAL)

30/11/02

BJY

Sub
(B.N. SOM)
VICE-CHAIRMAN