

8

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

O.A.NO. 278 OF 2004  
Cuttack, this the 8<sup>th</sup> day February, 2005

J.Atchibabu

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? NO
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO

  
(J.K.KAUSHIK)  
JUDICIAL MEMBER

  
(B.N.SOM)  
VICE-CHAIRMAN

9

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

O.A.NO. 278 OF 2004

Cuttack, this the 8<sup>th</sup>

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI J.K.KAUSHIK, JUDICIAL MEMBER

**February, 2005**

J.Atchibabu, aged about 43 years, son of late Narayan, residing at Railway Qr.No. 693/A/Ty-II Malahanda Jn. Visakhapatnam (AP), at present working as Mason Gr.II, under Senior Section Engineer (Con.), General Sub Section (G&SS) East Coast Railway, Visakhapatnam (AP)

Applicant

Advocates for the applicant

- M/s P.K.Chand, D.Satapathy,  
B.P.Tripathy

Vrs.

1. Union of India, represented by the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Deputy Chief Personnel Officer ©, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Deputy Chief Electrical Engineer ©, East Coast Railway, Visakhapatnam (AP)
4. Senior Section Engineer (G&SS), East Coast Railway, Visakhapatnam (AP)
5. P.Sreramulu, s/o Erakayya, at present working as Mason, Gr.II in the office of Sr. Section Engineer (Con.), General Sub Station (G&SS), East Coast Railway, Visakhapatnam (AP)
6. K.Adaviraju, son of Erapolady, at present working as Mason, Gr.II in the office of Sr. Section Engineer (Con.) General & Sub Station (G&SS), East Coast Railway, Visakhapatnam (AP)

Respondents

Advocates for the Respondents - Mr.Ashok Mohanty, Sr.Counsel &  
Mr.R.Ch.Rath, Standing Counsel(Railway)

**ORDER**

**PER J K KAUSHIK, JUDICIAL MEMBER**

Shri Shri J Atchibabu has filed this Original Application under section 19 of A T Act. 1985, and has sought the following reliefs:

" That in the facts and circumstances, it is humbly prayed that your Lordships may be graciously pleased to quash the letter dated 5.5.2004 and 28.5.2004 as at Annexure A/2 and A/3, respectively to the extent they apply to the applicant and direct



the respondents No. 1 to 4 to promote the applicant to the post of Mason Gr. III on regular basis from the date his juniors like respondents No. 5 and 6 got promotion to the said post or to consider upgradation of the applicant as per ACP Scheme dt. 1.12.99 (sic 1.10.99) from the date of introduction of the said scheme."

MA Nos. 645/2004 on behalf of the respondents with the prayer of vacation of interim order.

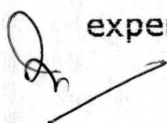
2. We have heard the learned counsel for both the parties at a great length and have bestowed our earnest consideration to the submission thereof, pleadings as well as the records of this case.

3. The indubitable material facts necessitating filing of this case, as culled out from the pleading of the parties depict that applicant came to be engaged as casual Khallasi on dated 31.10.80 in erstwhile Waltair Kirandul Railway Electrification Project and was granted temporary status w.e.f. 1.1.84. He was subjected to a trade test conducted for promotion to the post of Mason Gd. III in the year 1983, in which he was successful and thereafter he enjoyed his promotion to the post of Casual BT Mason Gd. III on ad hoc basis in the pay scale of Rs. 800-1150 and Mason Gr. III scale 950-1500 revised, w.e.f. 16.4.84 and 30.11.1984, respectively. On the other hand, he was also absorbed against regular establishment on PCR Group D Post on dated 1.4.88. He also got another opportunity to advance and

enjoyed the yet another promotion, after passing the requisite trade test, to the post of Mason Gr. II in the pay scale of Rs. 1200-2040 (revised to 4000-6000), on ad hoc basis, w.e.f. 1.11.88. He continued to render an uninterrupted service with utmost devotion and sincerity.

4. The applicant has been ordered to be reverted from the post of Mason Gr. II to the post of Mason Gr. III vide impugned order dated 5.5.2004 with consequential order dated 31.5.2004, without following the principles of natural justice. It has been averred that respondents No. 5 and 6 are junior to the applicant and they are being continued on the post of Mason Gr. II. The applicant has also been allowed the benefits of ACP on completion of 12 years of regular service w.e.f. 1.10.99 in the pay scale of Rs. 2610-3540 on the basis of his substantive group D post vide communication-dated 23.5.2004 (R/5). The impugned orders have been assailed on diverse grounds, which we shall deal a little later in this order.

5. As regards the variances in facts, it is averred in the reply that the Principal Director of Audit SER has pointed out about 1400 staff were given ad hoc promotion in construction organisation under CEO (Con) WE Railway involving a heavy expenditure. A conscious decision was taken by the Railways to





4

12

reduce the ad hoc promotion whereby it has been envisaged that 2<sup>nd</sup> or more ad hoc promotions should be terminated with effect from 1.12.2001. The impugned orders have been the offspring of the said decision and for this purpose the R/III has been placed on records.

6. Both the learned counsel have reiterated the facts and grounds mentioned in the respective pleadings of the parties. The learned counsel for the applicant remained in confusing state of affairs and even at previous occasion, the matter had to be adjourned for clarity. The learned counsel tried to persuade us that the applicant should be given regular promotion from the date his juniors Respondents No. 5 and 6 have been promoted to the post of Mason Gr. III. In the first instance he was not able to apprise the actual date of such promotion but he referred to the rejoinder and submitted that it was 20.2.89. He <sup>was</sup> also questioned as to <sup>how</sup> his such request could be entertained at this stage and as to how he could overcome the question of limitation. He was at difficulty to answer the same and he laid stress on the challenge of the impugned reversion order. He submitted that the Annexure A/4 clearly stipulates that the persons who have not the benefits of Financial Upgradation under ACP scheme should not be reverted. He has endeavoured hard to demonstrate that the case of the applicant is covered

2

5

13

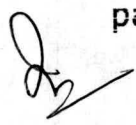
under sub para 1 which is independent of sub para 2 of the instruction issued on dated 29.11.2001 (A/1). He has submitted that the authorities have misconstrued and misapplied the instruction to the disadvantage to the applicant. Had they given correct interpretation to the same, the applicant's case would not have fallen in the mischief of adversities and he could have escaped from the mishap caused due to the impugned orders.

7. Per contra, the learned counsel has strived equally hard to diffuse the contentions raised on behalf of the applicant. He has contended that the cases of the private respondents are quite dissimilar in as much both of them were directly engaged in group C category and have been absorbed in regular establishment accordingly and that too long back. Comparing the case of applicant with such persons would be treating the unequal as equal. He has also submitted that the applicant has submitted some distorted particulars and that too in rejoinder thereby the respondents have not opportunity to refute. He has contended that case of the applicant is not covered by the Instructions at Annexure A/4, for the simple reasons that he does not fulfil both the requisite conditions and therefore no fault can be found with the action of the respondents. He has also contended that true intention of the said instructions has been



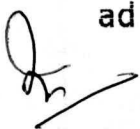
elucidated and explained in the reply. The OA deserves to be dismissed with costs.

8. We have considered the rival submissions and contention put forth by both the learned counsel representing the contesting parties. At the very outset we would like to clear the very desk filled up with overwhelming confusing regarding the claim of the applicant relating to grant of regular promotion to the post of Mason Gr. III from the date the private respondents have been given. We have carried out an incisive analysis and assert frankly that the applicant has become wiser in regard to his regular promotion only after the impugned orders of reversion came to be issued and by adding the said prayer he is seeking a favour in disguise. This aspect is axiomatic from the sequence of events, taken together. There is not even a whisper in the pleading of the applicant that the applicant has ever claimed any such regular promotion, absorption or regularisation. He has never protested against any of the action of the respondents may be relating to his absorption, grant of various promotions, grant of TS, grant of benefits under ACP scheme etc. It would not be an exaggeration, if we assert that the applicant has acquiesced and remained satisfied with whatever was given to him. Perhaps, had the impugned orders of reversion not passed, he would have maintained a pin drop silence. However,



for number of reasons, we are not able to accede to the prayer of the applicant relating to the regular promotion at par with respondents No. 5 and 6. Firstly, we are not satisfied as to on what basis the applicant is calling himself as senior to them. We do not know as to whether the private respondents have been promoted as per the version of applicant or directly appointed as per version of respondents. No seniority list has been annexed and even some distorted information is adduced in the rejoinder, in such situation we cannot expect the official respondents to assist us. No ground is made out in this respect in the OA and we do not find any case in favour of applicant on this count needing our interference.

9. Now we would advert to the main crux of the controversy involved in this case, which related to the challenge of propriety and validity of the impugned reversion orders. While factual aspect is undisputed as regards the status of the applicant who is admittedly holding the post of Mason Gr. II of ad hoc basis. His previous post Mason Gr. III was on ad hoc basis and it is fact that he is enjoying two ad hoc promotions. It is also a fact that he has been granted the financial upgradation under ACP Scheme w.e.f. 1.10.99. The instructions giving certain protection from mischief of the decision to dispense with the two ad hoc promotions are contained in letter-dated 29.11.2001





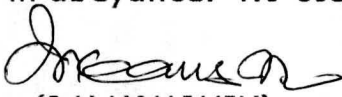
8

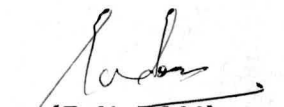
16

(A/4). As per the version of applicant his case is covered under said instructions but converse is the case of respondents. Therefore the controversy boils down to the answer of a question as to whether the case of the applicant falls under the ambit and four corners of the said letter dated 29.11.2001 or not. If the answer to the same were in positive, the applicant would swim and in case it is in negative he shall sink.

10. The bare perusal of the aforesaid letter indicates that the competent authority is yet to make clarification. In other words, the final decision is yet to come. Incidentally, the matter seems to be still under consideration and it would be premature to give our interpretation unless the final decision is taken in the matter by the competent authority.

11. In view of what has been said and discussed above, we arrive at an inescapable conclusion that the Original Application is premature as final decision of the Respondents is yet to come. In this view of the matter, we dispose of this Original Application with a direction to the Respondents to take a final decision/clarification as indicated in paragraph 1 of Annexure A/4 as early as possible and till such time the impugned orders dated 5.5.2004 (Annexure A/1) and 28.5.2004 (Annexure A/2) be kept in abeyance. No costs.

  
(J.K. KAUSHIK)  
JUDICIAL MEMBER

  
(B.N. SOM)  
VICE-CHAIRMAN