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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 1313/2004 & 49/2005

Cuttack, this the 24th day of July, 2008

Rabindranath Padhiary & Anr. ... Applicants

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?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.Nos.1313/2004 & 49/2005
Cuttack, this the 24th day of July, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

1. Rabindranath Padhiary, 49 years, S/o. Jhari Padhiary, at present serving as Dy. Chief Divisional Transportation Inspector, East Coast Railway, Sambalpur.
2. Achyanath Das Mahapatra, aged about 49 years, son of Nagendranath Das Mahapatra at present Dy. Chief Divisional Transportation Inspector, East Coast Railway, Sambalpur.

..... Applicants

• By legal practitioner :Ms/ A.K.Mishra, J.Sengupta, D.K.Panda,
G.Sinha, A.Mishra, Counsel.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.

2. Divisional Railway Manager, East Coast Railway, Sambalpur.

3. Divisional Railway Manager (P), East Coast Railway, Sambalpur.

..... Respondents

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

ORDERMR. C.R.MOHAPATRA, MEMBER(ADMN.)

Both the Applicants are presently working as Deputy Chief Divisional Transportation Inspector of East Coast Railway, Sambalpur. Being aggrieved by the order under Annexure-A/5 dated 08.10.2004, cancelling their selection for promotion to the post of Ch.DTI carrying the scale of Rs.7450-11500 (RPS) and rejection of their representation under Annexure-A/7 dated 05.11.2004 they have approached this Tribunal in the present Original Applications seeking quashing of impugned orders under Annexure-A/5 & A/7 with direction to the Respondents to promote them to the post of Ch.DTI in SM Cadre.

2. Respondents by refuting the contentions raised by the Applicant in support of their prayer have contested the matter by stating that these Original Applications being devoid of any merit are liable to be dismissed.

3. We have heard Mr. A.K.Mishra, Senior Counsel for the Applicant and Mr. R.C.Rath, Learned Counsel

for the Respondents/Railway and perused the materials placed on record.

4. The substance of the arguments advanced by Learned Senior Counsel for the Applicants is that the panel prepared in between 01.11.2003 and 06.01.2004 is valid as per the Railway Board's instruction under Annexure-A/4 and promotions are to be given from the said list. Since empanelment of the Applicants was on the basis of positive act of selection, a right has accrued to them for consideration for promotion and if the panel is cancelled/made invalid, the petitioners would lose their chances of promotion to higher cadre which is against the law/principles of legitimate expectation of the Applicants; especially when no executive instructions can have retrospective implication. Further argument of the Senior Counsel for the Applicant is that since the vacancies are of the year 1997, the same need to be filled up as per the prevalent Rules, in other words Rules available as on the date of vacancies. As per the exiting rules the panel was prepared and the Applicants were selected and empanelled for promotion to next higher

post. As such, the orders of cancellation of their selection and rejection of their representation under Annexure-A/5 & A/7 being contrary to Laws and principles of natural justice, the same are liable to be quashed. He argued that by virtue of restructuring of the cadre, total 11 posts available in the Transportation Inspectors cadre has been merged with SM Cadre making all total 265 posts in SM and ASM. By virtue of earlier instructions and circular issued by the Railway Board, the petitioners were considered in the Transportation Inspector cadre and now by virtue of restructuring the cadre, the chances of promotion of petitioners have been blocked and the Applicants have to wait for a long period for getting promotion to Ch. DTI thereby putting them to disadvantageous position and that too without giving them any notice. He has therefore, prayed for granting the prayers made in these OAs.

Learned Counsel for the Respondents vehemently opposed the arguments advanced by the Learned Sr. Counsel for the Applicant by stating that none has any right to claim appointment/promotion

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merely because of their selection. For the sake of convenience, he has brought to our notice of the background necessitating cancellation of the selection and empanelment of the Applicants for promotion to Ch.DTI. It was stated by him that in order to fill-up four posts of Chief Divisional Traffic Inspector in the scale of Rs.7450-11,500/- (RPS) a suitability test was conducted by the competent authority on 10.11.2003 and result of the said test was published on 24.11.2003. But the Applicants could not be promoted to the post of Ch.DTI due to lack of residency period of two years service in the present grade of Dy. Chief Divisional Traffic Inspector as provided in Railway Estt. Sl. No. 183/87 (Annexure-R/1). They completed the residency period of two years in the grade of Dy.Chief Divisional Traffic Inspector carrying the scale of pay of Rs.6500-10,500/- (RPS) only on 01.11.2004 but in the meanwhile it was decided by the competent authority (vide Estt.Srl.No. 177/2003 & Estt.Srl.No. 152/ 2003) to restructure the Gr. C and D posts with further stipulation that the

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restricturing of cadre shall be with reference to sanctioned strength as on 01.11.2003 and in Estt.

Sl.No. 05/2004 it was directed by the Railway Board that all the selections which had not been finalized as on that date should be cancelled/abandoned.

Accordingly, while restructuring the cadre of operating department, the cadre of SM/ASM/YM/TI is merged into unified cadre of SM/ASM and there was no separate cadre of YM & TI w.e.f. 01.11.2003. Since Traffic Inspectors cadre ceased to exist w.e.f. 01.11.2003 the select list published on 24.11.2003 was cancelled and intimated to all concerned. The representations of the Applicants were duly considered and in view of the impediment, the same was rejected and intimated to the Applicants. In the light of the above, it has been argued by Learned Counsel for the Respondents that as it is a policy matter of the Government and that the Applicants have no legal right merely because of selection; these Original Applications are liable to be dismissed.

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5. After giving in-depth consideration to various arguments put forward by respective Counsel, we have perused the materials placed on record. It is revealed from the records that the Sambalpur Division of E.Co.Rly. Conducted the suitability test on 10.11.2003 for filling up of four posts of Ch. DTI result of which was published on 24.11.2003 declaring the Applicants successful for being promoted to Ch.DTI. It is not in dispute that they could not be promoted to the said post as they had not completed the residency period of two years of service in the feeder grade i.e. in the grade of Dy.Ch.DTI. The Applicants though completed the minimum residency period of two years by 01.11.2004, they could not be promoted because by that time merger of cadre due to restructuring of the cadre had taken place with further stipulation that selection which had not been finalized by 01.11.2003 should be cancelled/abandoned vide Railway Estt. Srl.No. 05/2004. It is trite law that judicial review is directed not against the decision but is confined to the examination of the decision making process (vide **-Apparel Export**)

Promotion Council v A.K.Chora, 1999 (1) SCSLJ 251:

1999 (2) ATJ 227). Equally, it is well propounded law that decision to fill up or not to fill up a post is a policy decision and unless the said decision is infected with the vice of arbitrariness, there is no scope for interference in judicial review (vide-2005 SCC (L&S) 433; **Food Corp. of India vs. Bhanu Lodh**).

Further more law is well settled that Existence of vacancies does not give legal right to a candidate in select list to be appointed to the post (vide- AIR 1973 SC 2216; **State of Haryana vs. Subash Chander**

Marwaha and Ors) and Government is not bound to fill up vacancies even if selection had been made (Vide- 1999 SCC (L&S) 982; **UPSC vs Gaurav Dwivedi and Ors**).

Similarly, the arguments that no opportunity was given to the applicants before canceling the select list is of no help as it has been held by the Hon'ble Apex Court in the case of **Ashok Kumar Sonkar v Union of India and others**, (2007) 2 SCC (L&S) 19 that

application of the said principle is not necessary where it would be a futile exercise. In the light of the facts and law discussed above, we find no

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justifiable reason to interfere in the decision of the authorities while passing the orders impugned in these OA~~s~~. As a result, these OAs stand dismissed by leaving the parties to bear their own costs.



(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)



(C.R. MOHAPATRA)
MEMBER (ADMN.)

KNM/PS.