

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


ORIGINAL APPLICATION NO.950 OF 2005
Cuttack this the 9th day of January, 2009

B.K.Panda... Applicant(s)
-VERSUS-
Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be sent to the Principal Bench of C.A.T. for circulation or not ?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.950 OF 2005

Cuttack this the 9th day of January, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Sri B.K.Panda, aged about 45 years, S/o. Trailokya Nath Panda, presently working as Personal Inspector, Office of the Sr.Divisional Officer, East Coast Railway, Khurda Road, Dist-Khurda

... Applicant

By the Advocates: M/s.P.K.Chand

B.P.Tripathy

D.Satpathy

J.Mohanty

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railway, Khurda Road, Dist-Khurda
3. Sr.Divisional Personal Officer, East Coast Railway, Khurda Road, Dist-Khurda

... Respondents


By the Advocates: Mr.P.C.Panda

O R D E R

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

1. The applicant is presently working as Personnel Inspector (in short P.I.) Gr.II. He has filed this Original Application seeking the following relief:

- a) To pay the salary in the post of personal Inspector Grade-II from the date he is working in the said post.
- b) To issue direction/directions to the respondents to regularize the applicant in the post of P.I. Gr.II in the scale of Rs.5500-9000/- from the date i.e., 23.4.2003 the applicant took extra work burden and responsibility of the post of P.I. Gr.II.



- c) Direction/directions be issued to the Departmental Authorities/Respondents to fill up the post of Personal Inspector Grade-II on regular basis.
- d) Pass any other direction/directions as deemed fit and proper.

2. It is the case of the applicant that two posts of P.I.Gr.II having fallen vacant, he was allowed to look after the said post with effect from 23.4.2003 and was thereby shouldering the higher responsibility. However, it has been submitted that he had appeared at the suitability test as per Rule 214 of the Indian Railway Establishment Manual (in short I.R.E.M.) Vol. I during 2005 and was promoted to the post of P.I., Gr.II on regular basis. The applicant now claims that since he was working in the higher post of P.I., Gr.II from 2003 onwards, his promotion to the post of P.I., Gr.II should be ante-dated from 2003 onwards. The applicant has further submitted that as per Rule 214 of the I.R.E.M. the Railways have to conduct a suitability test every six month of the year and accord promotion on the candidates qualified in the said test. It is also contended by the applicant that even though two vacancies of P.I., Gr.II fell vacant in 2003, the Railways did not conduct any suitability test until 2005. It is the further case of the applicant that as per Rule 214 of I.R.E.M., he is entitled to be



promoted or to be considered to have been regularly promoted to the post of P.L., Gr.II from 2003 onwards at which point he was already holding the higher post. Hence, the applicant, according to by the learned counsel, is entitled for regularization in the post of P.L.Gr.II from 2003 onwards.

3. Resisting the above submissions, the Respondent-Railways have filed their counter. It has been stated therein that even though Rule 214 of I.R.E.M. provides that the Railways have to conduct the suitability test every six months in a year and accord promotion on the qualified candidates, it is not compulsory or obligatory on the part of the Respondents to give promotion in disregard of the suitability test. In this context, it is stated that unless and until a candidate is test qualified, he cannot be regularly promoted to the higher post notwithstanding the fact that he has been shouldering the higher responsibility or even appointed on ad hoc basis to that grade, as the case may be, due to administrative reasons or dearth of hands. To substantiate this point, the learned counsel, Shri Panda, appearing for the Respondents, placed reliance on the judgment of the Apex Court in AIR 2001 SC 2353 (Swapan Kumar Pal vs. Samitabhar Chakravorty) wherein the Apex Court has held that subsequent regularization of ad hoc

13

promotees on their passing the suitability test by itself does not authorize them to claim counting of ad hoc service when service rules do not provide for regularization of promotion from anterior date. With these submissions, the Respondent-Railways have prayed for dismissal of the O.A. being devoid of merit.

4. Having regard to the contentions raised in the O.A. as well as in the counter, the question to be decided is whether the applicant is entitled to count his service with effect from the date he was directed to look after the duties of P.L., Gr.II and/or appointed on ad hoc basis, as the case may be, having been appointed on regular basis to the post in question subsequently in pursuance of qualifying the eligibility test.

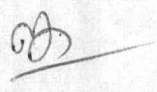
5. Admittedly, the applicant came out successful in the eligibility test during 2005 and having regard to his passing the said test, he was given promotion also the post of P.L., Gr.II. in the year 2006. Even though Rule 214 of I.R.E.M. lays down "a suitability test should be held at the interval which should not be less than six months", it will not be proper to interpret that even if any test has been conducted at a belated time by the Railways, that by itself is a reason to confer any promotional right on a candidate with effect from the date when such test

00

was scheduled to be conducted but could not be conducted. Apart from the above, the Apex Court in Swapan Kumar Pal vs. Samitabhar Chakravorty (supra) has clearly held that taking over responsibility of the higher post on ad hoc basis by itself will not give any benefit of regular promotion. In the above circumstances, we are of the view that as the applicant has failed to establish his claim that even though delay occurred in conducting the suitability test, he has an indefeasible right to ante-date his promotion on passing the suitability test on a subsequent date, the O.A. is devoid of merit and liable to be dismissed.

6. The learned counsel for the applicant submitted that the applicant is entitled to salary for having discharged the higher responsibility in the post of P.I., Gr.II till the date when he was promoted to the said post on regular basis. In this connection, learned counsel for the applicant drew our attention to the representations preferred by the applicant at Annexures-A/4

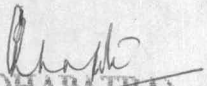
addressed to the Sr.Divisional Personnel Officer. For the reasons aforesaid, while [✓] rejecting his claim on dated ⁵ ~~dismissing the O.A.~~ _{20.11.2015}, we direct the Sr.Divisional Personnel Officer (Respondent No.3) to consider and dispose of the representations at Annexure-A/4 series, by

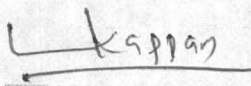


-6-15

passing a reasoned and speaker order within a period of three months from the date of receipt of this order.

2 disposed of. 2
With the above direction, the O.A. is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

BKS