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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.617 of 2006
Cuttack, this the ~~20th~~ day of March, 2009

Kuna Charan Pradhan Applicant
Versus
Union of India & Ors. 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.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.617 of 2006

Cuttack, this the ~~20th~~ day of March, 2009

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)

Sri Kuna Charan Pradhan, aged about 45 years, son of Late Sadhu Pradhan of Village Balipatna, PO. Mouda, PS/District-Bhadrak at present working as Jeep Driver, Grade II (Adhoc) under Senior Section Engineer (MW & MT), Carriage Repair Workshop, East Coast Railway, At/Po-Mancheswar, Bhubaneswar, Dist. Khurda.

.....Applicant

By Advocate : M/s.B.S.Tripathy, M.K.Rath, J.Pati.

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, At/Po.Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. The Chief Workshop Manager (P), East Coast Railway, Carriage Repair Workshop, Mancheswar, At/Po.Mancheswar, Bhubaneswar, Dist. Khurda.
4. The Deputy Chief Personnel Officer (Con.), East Coast Railway, Bhubaneswar, Dist. Khurda.
4. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, At/Po-Jatni, Dist. Khurda.

....Respondents

By Advocate :Mr.R.S.Behera,ASC

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Applicant is working as a Jeep Driver, Grade II on ad-hoc basis under the Senior Section Engineer (MW&MT), Carriage REPAIR workshop, East Coast Railway, Mancheswar,

Bhubaneswar. By filing this Original Application on 7th August, 2006, u/s.19 of the Administrative Tribunals Act, 1985 he seeks the following reliefs: -

- “(a) To pass appropriate orders directing the Respondents-Authorities to fix the seniority of the Applicant in the post of Motor Mechanic, Grade-III w.e.f. 16.02.1982 and consequently extend all other service and consequential benefits in favour of the Applicant to which he is entitled to;
- (b) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow the OA with cots.

By way of interim relief, he has sought the following order -

“Pending final decision of the Original Application, this Hon’ble Tribunal may be graciously pleased to direct the Respondents-Railways that pendency of this OA shall not stand as a bar before them to consider and dispose of the representations under Annexures-A/2 and A/3 which are still pending consideration.”

2. The cause of action for filing this Original Application, according to the Applicant, is that he was initially appointed as Khalasi Helper on 25.09.1978 under the Divisional Engineer (Construction), Cuttack. He was transferred to Open Line of Carriage Repair Workshop, Mancheswar where he joined as Jeep Helper-Khalasi on 21.1.1982. Thereafter, he was promoted to Motor Mechanic Grade III on 16.2.1982, Jeep Driver on 8.8.1982 (on ad-hoc basis), Jeep Driver, Grade II (on ad-hoc basis) w.e.f.

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01.12.1984 and Jeep Driver Grade I (on ad-hoc basis) w.e.f. 01.02.1988. After working for three months in the post of Jeep Driver Grade I he was reverted to the post of Driver Grade II. A gradation list of Motor Mechanic Grade III was published by the Respondents under Annexure-A/1 dated 12.12.2001 showing the name of the Applicant below some of his juniors. Due to wrong placement of the name of the Applicant in the gradation list, juniors of the Applicant got the opportunity of promotion to the post of Motor Mechanic Grade I whereas the Applicant has been still continuing as Jeep Driver Grade II on ad-hoc basis. According to him, being aggrieved by wrong placement of his name in the gradation list he preferred representations under Annexures-A/2 & A/3 dated 22.11.2004 and 24.06.2006 but to no avail.

3. This OA was listed on 29.08.2006. After hearing Mr.B.S.Tripathy, Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel for the Respondents-Railways, this Tribunal passed the following orders-

“Heard Mr. B.S.Tripathy, Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel for the Respondents.

Issue notice to the Respondents returnable within six weeks. In the meanwhile representations under Annexures-A/2 & A/3 may be disposed of by the Respondents on merit.

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Question of limitation is kept open to be examined at the final hearing.”

4. Besides raising preliminary objection of maintainability of this OA on the ground of delay and laches, the Respondents have strongly opposed the contention of the Applicant raised in this Original Application and have prayed for its dismissal. It has been averred that the contention of the applicant that he is presently working as Jeep Driver Grade II is not at all correct. According to Respondents, the Applicant is working as Motor Mechanic Cum Driver Grade II on adhoc basis under the Senior Section Engineer, Carriage Repair Workshop of East Coast Railway, Mancheswar, Bhubaneswar. Further it has been averred by the Respondents that the applicant was initially appointed as Casual Khalasi on 25.09.1978 under the Divisional Engineer (Construction), Cuttack and thereafter came on transfer to CRW/MCS as a casual Jeep Khalasi on 21.1.1982 and promoted to the post of substitute jeep Driver Grade III w.e.f. 8.8.1982 on adhoc basis. While the Applicant was working as such, he was absorbed as Sub Khalasi w.e.f. 16.6.1982. While working as Jeep Driver Grade III purely on adhoc and temporary basis he was promoted to officiate as Driver cum Mechanic Grade II w.e.f. 01.12.1984. The post to which he was promoted on 1.2.1982 was an estimated post created on temporary basis for which the

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applicant reverted to his former post of Technician (Grade II) w.e.f. 1.3.1989. The CRW, MCS was declared to be an independent unit w.e.f. 1.1.1988. Applicant was regularized as Motor Mechanic Grade III w.e.f. 11.1.1991. As per the extant rules, service rendered by an employee on adhoc basis prior to declaration of the CRW, MCS as an independent unit was not counted for determining the seniority. As such, taking into consideration the date of regularization of the Applicant in the grade of Motor Mechanic Gr.III he was rightly assigned his place and position in the seniority list at Sl.No.12. In the light of the above, the Respondents while denying the assertion of the Applicant that junior have been placed above him in the seniority list it has been stated that if it is so then in absence of any such juniors made as a party in this OA, this OA is liable to be dismissed. Accordingly, the Respondents have prayed for dismissal of this OA.

5. Heard the arguments advanced by the parties based on their respective pleadings and perused the materials placed on record. In the light of the factual backdrop narrated above, it is to be seen what the rule provides in regard to counting the adhoc/temporary service put in by an employee prior to the declaration of MCS/CWC as an independent unit. In this

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connection we perused the provisions made by the Railway to meet the above contingency. On perusal of the provisions made in the IREM, 1989 and produced by the Respondents as Annexure-R/2 it becomes abundantly clear that only non-fortuitous service rendered after the date of regular promotion after due process of rules should be taken into account for counting the seniority in the new establishment. Annexure-R/2, the exhaustive guidelines issued by the Headquarters also re-iterate the provision what has been stipulated under IREM, 1989 under Annexure-R/1. Applicant did not produce any unimpeachable document showing that his appointment/promotion was a substantive one and not casual/adhoc or temporary. Law is clear that seniority is an incident of service and where the service rules prescribe the method of its determination, it is squarely governed by such rules. In view of the above, we find no merit in the contention of the Applicant that his placement in the gradation list was in any manner wrong. Besides the above, it is noted that in case the relief claimed by the Applicant in this OA is allowed then the applicant is bound to go above the names which ^{find} place at Sl.Nos. 1 to 11 in the gradation list. But none of those persons have been

made as a party to this OA although they are necessary and proper parties in this OA.

4. Even leaving aside the points raised above, on the ground of delay and laches this Original Application is bound to fall to ground. The consistent view of the Hon'ble Apex Court is that no one in a service can sleep over the question of seniority for more than twelve years and then come to court seeking a relief which will upset the seniority of a number of persons who had been shown as seniors in the respective seniority lists. Therefore on the face of it, a declaratory relief that will have the effect of unsettling a settled thing could not have been granted by the courts (paragraph 22)-**State of Punjab and another v Balkaran Singh**-(2007) 2 SCC (L&S) 645. Further in the case of **Chairman UP Jal Nigam v Jaswant Singh**, (2007) 1 SCC (L&S) 500 it has been held by the Hon'ble Apex Court that those who sit on the fence and wait for a favourable order and thereafter wake up to take up the matter are not entitled to any relief. Virtually Applicant seeks alteration of his place in the gradation list published on 12.12.2001. No explanation for such delayed approach has been offered either in the OA or by filing separate application seeking condonation of delay.

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5. In the light of the discussions made above, we find no merit in this OA. This OA stands dismissed. No costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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