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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 651 to 660 of 2002

Cuttack, this the 4th day of May, 2005

Ajeet Kumar Jha & 9 Others Applicants

Vs

Union of India & Others Respondents

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

04-05-05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application Nos. 651 to 660 of 2002
Cuttack, this the 4th day of May, 2005

CORAM :

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

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(J)

.....

1. Shri Ajeet Kumar Jha aged about 33 years son of Shri V.N.Jha working for gain as Supervisor(P.Way) under SE(P.Way) JJKR, S.E.Rly., at present residing at Railway Qr.No. T20/B, Railway Colony, Jajpur Keonjhar Road, Dist.Jajpur.
2. Shri Surya Narayana Panda aged about 36 years son of Late Ratnakara Panda working for gain as Supervisor(P.Way) CTC under SE(P.Way)/CTC, at present staying at Qr.No.E/51/B, Railway Colony, Malgodown Road, Cuttack.
3. Shri Debabrata Mohapatra aged about 32 years son of Late G.C.Mohapatra working for gain as Supervisor(P.Way) SPT under SE(P.Way) Sompeta, resident of Plot No.F/29, N/4 I.R.C. village, Bhubaneswar-15.
4. Shri Suresh Chandra Mohapatra aged about 31 years son of Shri L.C.Mohapatra working for gain as Supervisor(P.Way) under S.E.(P.Way)/Rambha at present staying at Qr.No.E/12/2 Railway Colony, Rambha, Dist.Khurda.
5. Shri Dilip Kumar Mohapatra aged about 34 years son of Late Raj Kishore Mohapatra working for gain as Supervisor(P.Way) USDF/KUR under AEN(TM)/Kur at present staying at Qr.No. 38/B, Retang Colony, P.O.Jatni, Dist.Khurda.
6. Satyabrata Dhupal aged about 35 years son of Shri Hare Krushna Dhupal working for gain as Supervisor(P.Way)/USED/BBS under AEN(TM)/KUR at present staying at Qr.No.S/60, Municipality Colony, Unit-III, Bhubaneswar.
7. Shri Narayan Sahu aged about 32 years son of Shri Krushna Chandra Sahu working for gain as Supervisor(P.Way)/BRAG under SE(P.Way)/Barang at present staying at P.O. Balkati, Atharagharisahi, Dist.Khurda.
8. Shri Subhendra Kumar Satpathy aged about 34 years son of Shri Ganeswar Satpathy working for gain as Supervisor (P.Way) DNKLrat.Talebry under SE(P.Way)/TLHR at present staying at Golden Street, P.O./Dist. Dhenkanal, PIN-759001.

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9. Shri Prasant Kumar Malia aged about 31 years son of Shri Prafull Chandra Malia working for gain as Supervisor(P.Way) under SE(P.Way)/Sompeta resident of Plot No. A/31, Saheednagar, Bhubaneswar.
10. Shri Somanath Nayak aged about 35 years son of Shri Bhajaman Nayak working for gain as Supervisor(P.Way) under SE(P.Way) Khurda Road at present staying at Balichak Sahi, P.O. Jatni, Dist. Khurda.

..... Applicants

By the Advocate

- Mr. Achintya Das.

VERSUS

1. Union of India service through General Manager, S.E.Rly., Garden Reach, Kolkata-43.
2. Member Staff, Railway Board, Rail Bhawan, New Delhi, PIN-110001.
3. Chief Engineer, S.E.Railway, Garden Reach, Kolkata-43, PIN-700043.
4. Chief Personnel Officer, S.E.Railway, Garden Reach, Kolkata-700043.
5. Divisional Railway Manager, S.E.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN-752050.

..... Respondents

By the Advocate

- Mr. R.C.Rath.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN:

This O.A. has been filed by Shri Ajeet Kumar Jha and nine others working as Supervisor(Permanent Way) assailing the requisition dated 13.12.2000 sent by Divisional Railway Manager, Engineering Branch(Annexure-A/4) for seven numbers of JE-II(PW) (Rs. 6500-10500/-) instead of filling up the post of

JE-II(PW) by promotion quota. They have in this O.A. sought for the following reliefs:

- (i) the Respondents be directed not to recruit any JE-II(PW) against Direct Recruitment Quota(DRQ, in short) till such time the shortfall in Departmental Promotion Quota(DPQ, in short) is filled up by promoting 22 Supervisor(PW) to the post of JR-II(PW).
- (ii) to direct the Respondents to act according to the Recruitment Rules under which 33-1/3 of the post of JE-II(PW) are to be filled up by promotion.
- (iii) Respondents be directed to give notional promotion to the departmental promotees retrospectively from the dates the DP Quota vacancies were available.
- (iv) to fix the seniority of departmental promotees on the principle of rota-quota.
- (v) the Respondents be directed to maintain the ratio of vacancies between the DR and DP as per para-144(1) of IREM(Annexure-A/1) and Railway Board's order dated 25.6.35(Annexure A/2).

2. The case of the applicants in short is that they have been recruited as Permanent Way Mistries in the scale of Rs. 1400-2300/- and are eligible for promotion by way of career progression to the cadre of Permanent Way Inspector(PWI, in short) Grade-III in the scale of Rs. 1400-2300/- by selection for which 33-1/3% of the posts for PWI, Grade-III are earmarked. Once, the Permanent Way Mistry(PWM, in short) from the scale of Rs. 1400-2300/-, revised to Rs. 4500-7000/-, are promoted to the grade of PWI, Grade-III in the scale of Rs. 4500-7000/- (revised), further higher grade posts are available to them in the normal channel of promotion, by selection or non-selection, as the case may be, to first, PWI, Grade-II(Rs. 5500-8000/-), next to PWI, Grade-I(Rs. 6500-10500/-) and then to Chief PWI(Rs. 7540-11500/-). It is their case that although

the sanctioned cadre of JE-II(PW) under Khurda Road division as on 1.4.01 consisted of 16 posts on open line and 31 posts against work charge establishment, since 1985, not a single Supervisor(PW) (now Permanent Way Mistry) has been promoted as JE-II(PW) against the departmental quota of 33-1/3% of the total cadre strength excepting two cases of Supervisor(PW), being promoted on adhoc basis on January, 1995 and April, 1995 without conducting any regular selection, although the post of JE-II(PW) is a 'selection post'. They have further submitted that against this sanctioned post of 47, there were 66 officials on roll as JE-II(PW) and that all these posts have been filled up by the direct recruits. According to them, 22 officials from the feeder grade of Supervisor(PW)/JE-II(PW) should have been given promotion under DP quota in terms of para-144(1) of IREM, Vol. I. They have, therefore, alleged that the Respondents have without any reason broken the quota principle enshrined in the Recruitment Rules, and have, therefore, acted against the interest of the Supervisor(PW)/JE-II(PW), blocking their career progression. They have further alleged that this problem is being compounded further by sending requisition to the Railway Recruitment Board on 18.12.2000 (Annexure-A/4) for recruitment of seven more JE-II(PW) from the open market.

3. The Respondents have contested the O.A. by filing a detailed counter. They have submitted that prior to 1.1.89 the cadre management for the post in respect of the Permanent Way Inspector Grade-III and others were under administrative control of Respondent No.4. This function was decentralized to

the division level and offered to the Khurda Road division during 1994. They have admitted that the promotion method was not adopted for filling up of the posts in the cadre of PWI, Grade-III up to 1994 and even thereafter due to nonavailability of physical vacancies and PWI, Grade-III post holders in Construction organization in excess of DR quota/lien holders in Khurda Road division. They have also admitted that the applicants did represent to the authorities for operation of promotion quota by freezing selection of direct recruitments and that their representations were under active consideration. They have also submitted that as per the interim direction of this Tribunal dated 24.7.02, the physical vacancies in the grade of JE-II(PW) had been assessed and three vacancies were available for recruitment under departmental quota and that written test had already been conducted for preparing select list for filling up those posts. They have also taken action for filling up another 11 vacancies by way of departmental promotion postponing further recruitment under DR quota till the shortfall of departmental promotion quota was made good in the division. With regard to the cadre strength of JE-II(PW) as on 1.4.01, they have submitted in the counter that the cadre strength was 16 only under the regular establishment and 31 posts on work charge basis. The number of work charge posts was later on reduced to 13 as on 1.4.02. They have also submitted that as the applicants were recruited in the year 1998, they can not raise question about operation of DP/DR quota since 1985. They have further submitted that there were 23 vacancies in the

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in the grade of PWI, Grade-III from 1989 till date and thus by applying the quota principle only 8 posts are to be filled up by promotion. To facilitate selection against DP quota, they have decided to stop operations of DR quota.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. The grievance of the applicants is that they have been denied the benefit of career progression in terms of the provisions of the Recruitment Rules as enshrined in para 144(1) of IREM, Vol. I (Annexure-A/4). This allegation is not disputed by the Respondents. Rather, in their counter they have made a clean breast of the matter stating that the promotion quota was not operated by them for long. However, they have stated that the applicants having been recruited in the year 1998, their claim of promotion can not be pre dated to 1985. Another point of conflict is that the applicants have in their application claimed the benefit of 33-1/3% of the vacancies stating that the strength of JE-II(PW) for this purpose should be taken as 66. On the other hand, the Respondents have repudiated that there were ever so many posts sanctioned in the grade of PWI, Grade-II/JE-II(PW). They have stated, as on 1.4.01, there were only 16 posts under regular establishment and 31 posts on work charged basis which was reduced to 13 on 1.4.02. They have further submitted in para-9 of their counter that there were 23 vacancies arising during 1989 till 2003, and, therefore, 33-1/3% of DP quota vacancy came to 8 only to be filled of. In other words, they have stated that up to

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2003 not more than 8 Supervisor (PW) could be promoted under DP quota and averred that they have taken action to fill up as many posts by promotion.

6. The dispute raised in this O.A. is not complicated and is capable of early resolution. We, therefore, direct the Respondents that as the Recruitment Rules have provided for two modes of recruitment to the cadre of JE-II(PW) (erstwhile PWI, Grade-III) both by direct recruitment (66-2/3%) and by promotion (33-1/3%), it is incumbent upon them to fill up the vacancies arising every year strictly according to that ratio. It is well settled point of law that Recruitment Rules, being statutory in nature, the provisions made there can not be varied except by invoking the relaxation clause in public interest for which reasons to be recorded in writing. From the averments made by the Respondents, both in the counter as well as during oral arguments and the records placed before us, it is clear that they had resorted to direct recruitment without keeping in view the number of posts available for recruitment under DR quota. Further, we find that number of JE-II(PW) posts in Construction organization have been filled up by DR candidates who are to be adjusted against the sanctioned post under regular establishment. Such an averment is patently wrong being violative of all establishment rules and procedures. Construction organization being a separate entity than the open line regular establishment and the sanctioned post under regular establishment being governed by the Recruitment Rules as framed and enshrined in IREM, Vol. I, the Respondents can

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not adjust direct recruits or allow their lien against regular posts. Lien is a tool for protecting the service interest of an appointee after he is appointed against a regular post, and, thereafter, is allowed to move to another post in another cadre/organization. That being not the case in this matter, we have no hesitation to hold that the Respondents have created complications in the matter of management of the cadre of PWI, Grade-II, jeopardizing the career interest of the promotees, the applicants in this case, and also bringing sorrows to the administration by mindless and irregular direct recruitment of candidates against work charge posts. The order of lien in all these cases are also irregular ab initio as no one holds any appointment against any regular post. The Respondents, therefore, are directed to find out a solution to the problem created by them by irregularly allowing lien to the officials who were recruited directly from the market against work charge establishment. In this case as the parent cadre of this category of recruits is work charge establishment, which itself is a temporary phenomenon, the question of lien is not only unrealistic, it is illegal also, as it hurts the interest of the legitimate post holders of the regular cadre. The Respondents are hereby directed to isolate all the post holders in the work charge establishment who are alleged to have lien in the regular cadre. We, further, direct the Respondents that as the Recruitment Rules itself provides for filling up the posts by DR and DP quota, they are duty bound to hold DPC for preparing yearwise panel for the years they

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have not held DPC for departmental candidates for promotion from the cadre of Supervisor (PW), after calculating yearwise vacancy under DR and DP quota from 1989. Once this is done, the Respondents should also consider the cases of the applicants according to their turn, provided they fulfill the other eligibility conditions as enshrined in the Recruitment Rules under Para 144(1) of IREM, Vol.I.

7. The Original Applications accordingly succeed. 4

No costs.

(M.R. MOHANTY) 04.07.05
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

Kumar