

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 64 & 65 OF 2002
Cuttack this the 09th day of Sept' 2004

CORAM:

THE HON'BLE SHRI B.N. SQM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...

IN O.A.NO.64/2002

D.Joga Rao, 49 years, S/o. D.Laxman Rao,
at present Primary School Teacher, M.P.School,
Khurda Road, Jatani, Khurda

...

Applicant

IN O.A.NO.65/2002

K.Rama Rao, 56 years, son of late K.V.Suba Rao
Primary School Teacher, MP School, Bandanunda,
Sundargarh

...

Applicant

By the Advocates (IN BOTH THE OAS)

M/s.A.K.Mishra
J.Sengupta
D.K.Panda
P.R.J.Dash
G.Sinha

- VERSUS -

1. Union of India through General Manager,
SE Rly, Garden Reach, Calcutta-43
2. Chief Personnel Officer, SE Rly,
Garden Reach, Calcutta-43
3. Divisional Railway Manager, SE Rly,
Khurda Road, Khurda District

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Respondents

By the Advocates (IN BOTH THE OAS)

M/s.R.Sikdar
A.Sikdar
S.Dutta

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O R D E R

MR.B.N.SQM, VICE-CHAIRMAN : Since common question of
facts and law involved in both the above mentioned OAs,
we direct that this common order will govern the service
benefits in respect of both the applicants. For the sake
of convenience, the facts of O.A.No.64/2002 are being
referred to.

2. Applicant (D.Jaga Rao) of O.A.No.64/2002 has prayed before this Tribunal with a prayer to direct the Respondents-Railways to regularise his service from 17.1.1979, i.e., the date of his initial appointment as substitute Teacher and to pay him arrears/service benefits as Grade-IV Teacher in Telgu Medium.

3. The facts in brief are that the applicant was appointed as Grade-IV Teacher (Telgu Medium) by a duly constituted Selection Committee on substitute basis in S.E.Railway, M.P.School, Bandamunda with effect from 16.7.1979. In 1981, he filed a Writ Petition before the High Court of Kolkata apprehending his termination from service and obtained an interim order of stay. Soon thereafter on 12.10.1981, the Railway Board issued a circular wherein it was decided to consider all substitute Teachers, who had completed three years' service as on 26.9.1981 for regularisation. The applicant, on the ground that he had not completed three years service as on the cut off date, was not considered for regularisation. However, on 11.12.1981, one Smt. M.B.Ramayamma was regularised with effect from 7.11.1981, in pursuance of the order of this Tribunal of Calcutta Bench (passed in T.A. NO.665/86) and the said order was passed on 11.10.1989. On 22.6.1992, the Railway Board decided to regularise some more substitute Teachers, who had not completed three years' service as on 26.9.1981, but had already completed more than 10 years service for regularisation and accordingly, eight Teachers, including the applicant were regularised, in the scale of Rs.1200-2040/-(Pre-revised)

with effect from 27.7.1993 and the seniority list was prepared and seniority fixed as per rules. The applicant being aggrieved by such order of regularisation filed a representation dated 3.12.1993 before the Chief Personnel Officer, S.E.Railway, but without any effect. In the mean time, another substitute Teacher, viz., B.B.R.Rao, who was regularised along with the applicant was regularised as Asst.Teacher with effect from 1.2.1979, in pursuance of the order of the C.A.T., Patna Bench. The aforesaid regularisation was made on 1.3.1995 pursuant to the order of the C.A.T. on 20.2.1994. Thereupon the applicant filed a representation dated 20.5.1996 to the Respondents praying therein to refix his date of regularisation, following the ratio of the judgment in the case of B.B.R. Rao, but without any effect. As the Respondents have refused to comply with the decision of C.A.T., Calcutta and Patna Bench on similarly placed Teachers like the applicant, this O.A. has been filed with the prayers referred to above, inter alia praying for quashing the order under Annexure-16.

3. The Respondents have opposed the application on the grounds that regularisation of service of the applicant with effect from 17.1.1979 would run contrary to the policy decision of the Railway Board and also would affect the principles of natural justice. They have further submitted that the applicant cannot be given the benefit of the decisions of Calcutta Bench of C.A.T. in T.A. 665/86 and that of Patna Bench in O.A.249/92, because, those cases had remained unattended to, as a

result of which, the Respondents could not go in appeal and this is how they had no alternative but to carry out the said order. They have further argued that as the applicant was regularised only with effect from 27.7.1993, in the event he is given ante-dated seniority, he will march over his seniors and that would be against the principles of natural justice. The Respondents have also explained that after taking action for regularisation of substitute Teachers in 1981, for many years they could not take action to regularise the services of left-over substitute Teachers on account of plethora of Court cases, which were filed by the substitute Teachers before the various Courts in the country. With these averments, the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard the learned counsel appearing for the parties and perused the materials placed on record.

5. The only issue to be decided in this O.A. is whether the case of the applicant is governed by the ratio of the decision rendered by the Calcutta Bench and Patna Bench in T.A.No.665/86 and O.A.No.249/92 respectively. In this connection, we would refer to our order passed in O.A.Nos. 488 and 489 of 1998, filed by the present applicants in O.A.Nos. 65 and 65 of 2002. Our direction in those OAs was as follows:

"... In view of this, we cannot but take the view that the Respondents have deliberately withheld from the Tribunal the facts of the case of Smt.M.B.Ramayamma. We would, therefore, direct that the cases of the applicants should be considered in the light of the decision of

Calcutta Bench of the Tribunal and the decision of the Headquarters of S.E. Railway, communicated in D.O. letter dated 21.11.1981 and a view should be taken within 90 days from the date of receipt of copy of this order and necessary orders should be communicated to the applicant within a period of 30 days thereafter".

5. With regard to the applicability of the order passed in the case of B.V.R.Rao by the Patna Bench of C.A.T. In O.A.No.249/92, it was held; "the Respondents have mentioned that the decision of the Tribunal in B.V.R.Rao's case is a judgment in personam and not a judgment in rem. The applicant in their rejoinder have pleaded otherwise. In the absence of copy of the order of the Patna Bench of the Tribunal, it is not possible for us to take view in the matter. It is for the applicants to prove their case and therefore, this contention of the applicants is held to be without any merit and is rejected".

6. The Respondents-Railways, in pursuance of our order passed in O.A.Nos.488 & 489/1998, have passed orders at Annexure-16. We have carefully perused the order and we are constrained to say that our order dated 8.1.2001 has not been implemented by the Respondents in letter and spirit. We had, in our order at Para-13 (as quoted above) held that the cases of the applicants should be considered in the light of the decision of the Calcutta Bench of the Tribunal. The decision of the Calcutta Bench has been placed before us during the oral argument, wherein it was held that "the application succeeds". ... They are directed to regularise

the services of the applicant and to appoint her against the permanent post, giving her all the benefits available to a regular Govt. servant" and the Railways in that case had given her the benefit from the date of her initial appointment. But the Chief Personnel Officer (IR) in his order (Annexure-16) has held that regularising the service of the applicant with effect from 27.7.1993 was in compliance of the order of the Tribunal, which was not factually correct. Further, no effort was made by the Respondents to obtain a copy of the order passed by the Patna Bench of C.A.T. in the case of B.V.R. Rao. The applicants have now produced a copy of the order dated 2.2.1994 passed by the Patna Bench of C.A.T. in O.A.No.249/92, wherein it has been held that "the applicant has continued for fairly long spell and his service record ^{not} has been shown to be unsatisfactory. Thus we allow the petition and direct the Respondents to regularise the applicant's service from the date of his initial appointment and to give him all the benefits in the matter of his conditions of service which would accrue due to such regularisation". The Tribunal had so held based on the decision in the case of State of Haryana vs. State of Piar Singh (reported in AIR 1992 SC 2310) (Paragraph-25). To make it more illustrative what their Lordships of the Hon'ble Supreme Court held in Para-25 (supra) is as under:

"... If for any reason, adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation, provided he is eligible and qualified according to rules and his service is satisfactory and his appointment does not run counter to the reservation policy of the State".

We also observe with great concern that the Respondents have refused to apply the ratio of the judgment in the case of Ramayyaman(supra) and B.V.R.Rao in the matter of regularising the services of the applicants herein from the date of their initial appointments on the plea that those two cases were decided in personam and not in rem. It is unthought of and unheard of that the Respondents-Railways in their counter have taken a stand that as in both those cases they could not go on appeal, they had decided on their own not to apply the ratio of those judgments in so far other similarly situated persons are concerned. It is, therefore, necessary to call upon the Respondents to focus their attention to the decision of the Apex Court in the case of K.Ajit Babu & Ors. vs. Union of India & Ors. (reported in 1997 SCC(L&S) 1520 to the effect that Doctrine of Precedent is applicable to the cases decided by the Tribunal also. It was held that consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of Doctrine of Precedent(D.P.) The precedent sets a pattern upon which a few decade may be passed. One of the basic principles of administration of justice is that the cases should be decided alike. Whenever an application under Section 19 of the A.T. Act, is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal, necessarily has to take into account the judgment rendered in the earlier cases, as a precedent and decide the application accordingly.

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Having regard to the Doctrine of Precedents, we are also bound by the decision taken by the coordinating Benches of the Tribunal in the matter of regularisation of service of substitute Teachers under the Respondents-Railways (in T.A.No.665/86 and O.A.No.249/92. During oral argument, the learned counsel for the Respondents informed us that the applicants in the present OAs have already been given the benefit of counting past service for the purpose of pension. In the circumstances, very few benefit is left to be granted to the applicants by the Respondents, for which such a big battle was unnecessarily to be fought. We, therefore, allow these two O.A.s (O.A.Nos.64 and 65 of 2002) and direct the Respondents-Railways to grant the applicants the benefit of regularisation of service from the date of their initial appointment by following the ratio of the judgments in T.A.No.665/86 and O.A.No.249/92 (supra). No costs.

Sd/- M.R. Mohanty.
Member (Judl)

Sd/- B. N. SOM.
Vice-Chairman

bjv