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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.67 OF 2002
CUTTACK THIS THE 18 DAY OF 2005

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M.C.Sukumaran

...

Applicant(s)

-VERSUS-

Union of India & Ors.

...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?

Y

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Y

for leave
(M.R.MOHANTY) 18/08/05
MEMBER(JUDICIAL)

for leave
(B.N.SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO.67 OF 2002
CUTTACK THIS THE DAY OF 2005

18th Aug.

CORAM:

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

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Sri M.C.Sukumaran, aged about 53 years, S/o late K.C.Kumaran, presently working as Head Typist, Office of the Dy.Chief Engineer(Con.), S.E.Railway, Rayagada

...

Applicant

By the Advocates

M/s.J.Patnaik
A.Kanungo
S.R.Mishra
B.Ray
M.K.Biswal
S.K.Mishra

-VERSUS-

1. Union of India represented through General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Chief Administrative Officer(Con.), S.E.Railway, Chandrasekharpur, Bhubaneswar
3. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43
4. Chief Engineer (Con.), S.E.Railway, Bhubaneswar

5. Dy.Chief Engineer (Con.), S.E.Railway, Rayagada
6. Divisional Railway Manager, S.E.Railway, Waltair

Respondents

By the Advocates

Mr.D.N.Mishra

ORDER

MR.B.N.SOM, VICE-CHAIRMAN: Applicant (Shri M.C.Sukumaran) has filed this Original Application assailing the orders dated 4.12.2001 and 11.12.2001 under Annexures-10 and 11 passed by Respondent Nos. 4 and 5 respectively reverting him from the post of Head Typist (Ad hoc) in the scale of Rs.5000-8000/- in the Construction Organization under the Deputy C.E.C/RGDA to Open Line under Waltair Division and ordered to be repatriated with effect from 11.12.2001. He has challenged the said orders as illegal and arbitrary being prejudicial and detrimental to his interest. He has further alleged that the said orders are contrary to the settled principles of law and therefore, the same are liable to be quashed.

2. The undisputed facts of the case are that the petitioner was recruited on 28.8.1971 on regular basis in the Open Line as Multipurpose Gangman under Permanent Way Inspector, Padua. Thereafter, he was deputed to W.K.R.E. Project (Waltair-Kirandul Rly.Electrification) as

Steno-typist vide Office Order No.29 dated 14.11.1973. While working in that organization, he was promoted over the period of time on account of his merit as Head Typist in the scale of pay, as referred to above and has been working there since then for more than 28 years. He is working as Head Typist right from January, 1985. His grievance is that if on the verge of his retirement he is to be reverted to the open line in his parent cadre, he will be moving from the pay scale of Rs.5000-8000/- to Rs.2650-4000/-. He has also alleged that during the time he spent in the Construction Organization, many of his juniors had been promoted to higher grades, but his case was not considered. He has also, by way of example, cited the cases of S/Shri U.B.L.Swamy, K.Appa Rao, K.Lakshman Rao, who were working as Sr.Typist grade under the Assured Career Progression (in short A.C.P.) Scheme. He had challenged the decision of the Respondents to revert him to the parent cadre in O.J.C. No.11918/2001 before the Hon'ble High Court of Orissa. The said O.J.C. was admitted and when the things stood thus, the order dated 4.12.2001 was issued reverting him to open line as casual Khalasi at par with his alleged immediate junior Smt.S.Sabitri, presently working in the open line. The applicant had also filed a Misc.Case No.12138/2001, which was disposed by the Hon'ble High Court by order dated 13.9.2001, wherein the Respondents were directed to give him a

posting above the position of his juniors in the open line. It is in this background, the applicant has filed this O.A. seeking the following directions:

“The illegal and arbitrary order of reversion or repatriation under Annexure-10 and 11 from the post of Head Typist (Rs.5000-8000/-) (Construction Organization) to the post of Khalasi Helper (Rs.2650-4000/-) in the Open Line be quashed.

Direction and/or directions be issued to fit and post the applicant in the same Grade or post and/or cadre in the scale of pay of Rs.5000-8000/- in the Open Line, above his Juniors working in the Open Line”.

3. Per contra, the Respondents have opposed the O.A. They have submitted that the applicant, while working in the Construction Organization became surplus to the requirement of that organization due to the conclusion of the project work which compelled them to repatriate him to his substantive cadre where he was holding a lien. They have further submitted that earlier, the applicant had filed an Original Application No.382/00 praying for direction to regularize him in the Construction Organization. But the said O.A. was dismissed being without merit. Being aggrieved, he had approached the Hon'ble High Court in Writ Petition as discussed above. They have further submitted that as per the orders of the Hon'ble High Court, the applicant is to be placed in a post over and above his immediate junior in the Open Line. It is in obedience to the said order of the Hon'ble

High Court, they will take necessary action to safeguard the interest of the Applicant.

4. We have heard the learned counsel for the parties and perused the records placed before us.

5. We found that because of the earlier litigation in O.A.No.382/2000 and order of the Hon'ble High Court dated 18.12.2001 in aforementioned O.J.C., the issues raised in this are no longer res integra nor the prayers made in this O.A. are well conceived. The learned counsel for the Respondents had repeatedly submitted before us that the applicant being senior to Smt.S.Sabitri, his career interest will be determined with reference to the official status of Smt.Savitri. The learned counsel for the applicant stoutly denied that the applicant was senior only to Smt.Sabitri, but that there were many other persons senior to her. In consideration of this, we had directed the Respondents to file the seniority list of Group -D employees in the open line belonging to the parent Engineering Department of the applicant. By filing an affidavit the Respondents have submitted as follows :

"i)... after making a search for the old seniority list I came to know from the records that maximum records were burnt by miscreants on 16.04.1999 hence old seniority list of Sri M.C.Sukumaran is not available.

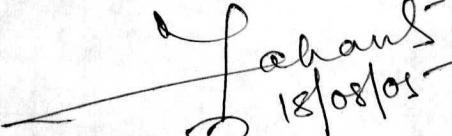
ii)...the seniority list published 07.03.2005 of Khalasi Helper in the scale of Rs.2650-4000/- shows Sri Sukumaran's position as No.1.

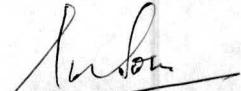
iii)... none of the juniors to Sri M.C.Sukumaran have been provided with promotions ignoring his case in the normal channel.

iv)... Smt.S.Savitri who is junior to Sri M.C.Sukumaran has already retired on superannuation from the post of Khalasi Helper w.e.f. 29.09.2004".

6. As neither the applicant nor the Respondents could produce the seniority list of the earlier years, we have no other option but to accept the statement made by the Respondents in this Affidavit and accordingly, we hold that no Khalasi Helper junior to the applicant had got promotion to the higher grade. So the applicant cannot be granted any higher scale than that of Khalasi Helper. However, having regard to the fact of the case that the applicant is in service for over 30 years during which period he has received no regular promotion in the parent cadre, he is entitled to the benefit of Assured Career Progression (A.C.P) Scheme under which he could be given two financial up gradations subject to his fulfilling other conditions under the Scheme. We hope and trust that as soon as the applicant joins his parent post, the Respondents will take no time to consider his case for grant of the benefit of ACP Scheme and fix his pay and other allowances accordingly.

7. With the above observations and direction, we dispose of this O.A. No costs. With the disposal of this O.A., order of this Tribunal dated 8.2.2002, granting stay of operation of the order at Annexures- 10 & 11 is also vacated.


18/08/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN