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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 17/04/2008

O.A. No. 220 of 2007

Purna Chandra Guru Applicant
Vs.

Union of India & Ors. Respondents


O.A. No. 245 of 2007

Raghab Maharana Applicant
Vs.

Union of India & Ors. Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not ? X
2. Whether it be circulated to all the Benches of the CAT or X
not? X


(C.R. MOHAPATRA)
MEMBER(A)


(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Date of order: 17/04/2008

PRESENT:

THE HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

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O.A. No. 220 of 2007

Purna Chandra Guru Applicant
Vs.
Union of India & Ors. Respondents

O.A.No. 245 of 2007

Raghab Maharana Applicant
Vs
Union of India & Ors. Respondents

(Particulars of parties are attached in separate sheet)


For the Applicants :M/s.N.R.Routray,S.Mishra, Counsel

For the Respondents. :Mr.B.B.Patnaik, Counsel

ORDER

Per MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN:

These two Original Applications are identical and similar and, therefore, with the consent of the Counsel appearing for the parties, these two OAs are disposed of through this common order.



O.A.No. 220/2007

Applicant was a casual employee of the Railway and on 01.01.1981 he was conferred with temporary status and subsequently on 01.04.1984 he was brought over to the regular establishment of the Railway. Thereafter, on 01.04.1996 he was promoted to the post of Head Trolleyman. While continuing as such, in order dated 13.11.2001, Respondent No.2 terminated the promotion of the Applicant as a result of which vide order dated 30.11.2001 of the Deputy Chief Engineer (Construction), S.E. Railway, Keonjhhar, Applicant was reverted from the post of Head Trolleyman to Trolleyman with effect from 01.12.2001 against which the Applicant submitted representation on 16.04.2002 followed by further representation dated 04.12.2006.

O.A.No. 245 of 2007

According to the Applicant, on 24.04.1980 he was promoted to the post of Technician Gr. I and the Respondents has issued the order of termination of the said promotion vide order under Annexure-A/1 and on 30.11.2001 an order of reversion was passed and the applicant was reverted from the post of Technician Gr.I to Technician Gr. II with effect from 01.12.2001 as against which, on 16.04.2002 he submitted representation followed by another representation dated 12.09.2006.

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2. It is the grievance of Applicants (in both the cases) that in spite of the orders of this Tribunal confirmed by the Hon'ble High Court quashing the orders of reversion in respect of other similarly situated PCR staffs no heed was paid to their grievances as raised in the representation against the orders of reversion for which they have approached this Tribunal in the present Original Applications filed U/s.19 of the Administrative Tribunals Act, 1985 seeking identical prayers which are quoted here in below:

O.A.No.220/2007

- “(a) To quash the impugned order of reversion dated 13.11.2001 and 30.11.2001 under Annexure-A/1 and Annexure-A/2 respectively;
- (b) To direct the Respondents to restore the applicant I the post of Head Trolleyman w.e.f. 01.12.2001.
- (c) To direct the Respondents to pay the differential arrear salary by re-fixing the pay meant for the post of Head Trolleyman.”

O.A.No. 245/2007

- “(a) To quash the impugned order of reversion dated 13.11.2001 and 30.11.2001 under Annexure-A/1 and Annexure-A/2 respectively;
- (b) To direct the Respondents to restore the Applicant in the post of Carpenter Gr.II w.e.f. 01.12.2001;
- (c) To direct the Respondents to Pay the differential arrear salary by re-fixing the payment for the post of Carpenter Gr.II.”

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3. Respondents have filed a detailed reply contending that the Applicants were initially engaged in the Railway as casual labour on daily wage basis, thereafter, they were conferred with temporary status and on being regularized in Gr. D posts on the dates mentioned above, Applicant in OA No. 220 of 2007 was promoted to the post of Head Trolleyman on ad-hoc basis with effect from 01.04.1996. Similarly, Applicant in OA No. 245 of 2007 was promoted on Ad-hoc basis to Painter Gr.III on 01.08.1989, Carpenter Gr.II & I on 03.03.1992 & 01.10.1996. While so, in the year 2001 an administrative decision was taken by the competent authority to revert all those employees enjoying more than one Ad-hoc promotions in the construction organization over their substantive status, irrespective of PCR or lien holder staff are concerned. Accordingly with effect from 01.12.2001, Applicant in OA No. 220/2007 was reverted to the post of Trolleyman and Applicant in OA No. 245 of 2007 was reverted to the post of Technician Gr.II. According to the Respondents, no notice was put to the Applicants prior to issuance of the orders of reversion, as no prior notice is required to be given before reverting an employee who was enjoying ad-hoc promotion, in view of the decision of the Hon'ble Apex Court, in the case of *Inderpal Yadav and Others v Union of India and others*, 2005 (II) SC 301 wherein it has been held that provisional local promotions in the project cannot be taken as having vested in them a right either to continue in the project or to

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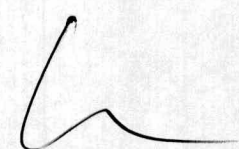
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resist reversion back to the cadre. It has been stated in the counter that the orders passed by this Tribunal in earlier cases are quite different from these cases. According to the Respondents, the Applicants are not entitled to claim regularization or absorption merely on the basis of their ad-hoc promotion to a higher post in the project or construction organization and, therefore, the Respondents have prayed for dismissal of these OA.

4. Applicants have filed rejoinder more or less reiterating the contentions raised in the Original Applications and further stating that the in identical matters Respondents have implemented the orders of the Hon'ble High Court of Orissa dated 07.03.2006 passed in OJC Nos.5477 and 5459 of 2002 and, therefore, the stand taken in the counter are without any basis.

5. Heard Mr. N.R.Routray, Learned Counsel for the Applicants and Mr. B.B. Patnaik, Learned Counsel for the Respondents and perused the materials placed on record.

6. Learned Counsel for the Applicants could argue that the administrative orders reverting the Applicants are not legal and opposed to the orders/ directions of the Hon'ble High Court of Orissa the same are liable to be set aside. On the other hand, Learned Counsel for the



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Respondents persuasively argued that it is well settled legal position that an ad-hoc promotee cannot have any legal right to claim regularization/absorption and, therefore, these two Original Applications are liable to be dismissed.

7. It is an admitted fact that the Applicants have been given 2nd/3rd promotions on ad-hoc basis. Therefore, the short question for consideration is as to whether a person, while continuing in the promotional post on ad-hoc basis can be promoted to the next higher post on such ad-hoc basis, in other words a person who is holding promotional post on ad-hoc basis is entitled to get further promotion on such ad-hoc basis. The issue involved in these cases is apparently legal and, therefore, we would like to address the same with reference to the decision of the Hon'ble Apex Court. Admittedly, Applicants are working in a project. The Hon'ble Apex Court in the case of **Inderpal Yadav and Others v Union of India and Others**, 2005 (11) SCC 301 have held that provisional local promotions in a project cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre or to enjoy higher promotion merely on the basis of locally provisional promotion granted to them. Further reliance has been placed on the decision of the Apex Court in the case of **Badriprasad v Union of India and others**, 2005 (11) SCC 304

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wherein the Hon'ble Apex Court have held that employees are not entitled to regularization and absorption merely on the basis of their ad-hoc promotion on a higher post in the project or construction side and, therefore, it has been pleaded by the Respondents that question of giving prior notice while reverting the Applicants on their ad-hoc promotional posts was not at all necessitated.

8. Learned Counsel for the Applicants, on the other hand, has brought to our notice the decision of this Tribunal in OA Nos. 320/2000 and others disposed of on 21.03.2002 (Chintamani Mohanty and others v Union of India & Others) and asked that since identically placed persons have already been given the benefits of continuation on their promoted cadre, the same benefits should be extended to the Applicants. For better elucidation operative portion of the aforesaid cases is quoted herein below:

“ 4. In Original Application Nos. 509 and 603 of 2001 it has been disclosed that the Applicants, while continuing as Junior Clerks/Jr. Typists, on Ad-hoc basis from 1985, they were asked to face a centralized selection against a limited departmental promotional quota posts in the year 1989 and upon being qualified in the said test, they were empanelled in the year 1990, as per the Advocate for those applicants, to be treated as regular Jr. Clerks/Jr. Typists as against the PCR posts of the Construction Organization and it is alleged that from 1990 onwards, they were treated as PCR staff. It is the case of the Applicants that

once they cleared in the test in question and allowed to continue in the PCR posts, they no longer remained Ad-hoc Jr. Typist/Clerk and, as a consequence, they lost their lien in Open Line Establishment, and, therefore, for all purposes they should have been taken to be the 'PCR' staff of Construction Organization. From the facts and circumstances, as given out in the cases in hand, everything points at one conclusion that from 1990, the applicants became members of the staff of Construction Organization and automatically lost their lien I Open Line; especially when they were not even considered for being called to face departmental tests/not considered for promotion in Open Line Organization. But the Advocates for the Respondents in state that in absence of the regular appointment orders (appointing the Applicants in Jr. Clerks/Jr. Typists posts in the year 1990) being produced, the claims of applicants that they were absorbed as PCR staff ought not to be accepted. To this, the Advocate for the Applicants in OA No. 509 and 603 of 2001 drew out attention to Annexure-3 by which two of the Applicants were given regular appointments and posting without any mention that such appointment/posting to be 'Ad-hoc'. It has been explained to us that other applicants of those two cases, were continuing on adhoc basis under Annexure-1, dated 05.02.1985 in Construction Organization and their regularization as Jr. Clerk/Jr. Typist were ordered to be noted in their service books, as has been from Annexure-3 dated 7.6.1990. In the last line of the said Annexure-3 (2nd page) it is clearly ordered as "OS (E)/CTC to see that necessary entry is made in 2/file of the staff concerned". Therefore, non-production of any individual appointment order of the Applicant cannot be taken to their prejudice. In the said premises, there are no reason not to accept the applicants of these two cases, (and similarly placed other Applicants) not to have lost their lien

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in open line. Once we take the Applicants in OA Nos. 509 and 603 of 2001 (and similarly placed other applicants) to be in PCR posts of construction organization, there were no reason to treat their promotion to be "Ad-hoc", (as it appears, by treating the applicants to be continuing with their lien in open Line, the respondents branded the promotions granted to those applicants to be "Ad-hoc"). Thus, we are inclined to hold those applicants had regularly been absorbed/appointed in Gr. 'C' posts in construction Organization and, if the Respondents have not taken them to be in the regular/PCR posts of Construction Organization as yet, then they should treat them as such. Therefore, before reverting the applicants from promotional posts, the Respondents ought to have given the notices to the Applicants to have their say in the posts. Such opportunity having not been given to them before reverting the Applicants from service, there were violation of principles of natural justice/Article 14 of the Constitution of India as we have already held that the promotion is granted to the Applicants in these two cases (and other similarly placed applicants) were in real sense not on Ad-hoc basis. In the peculiar facts and circumstances of the case, the objections raised by the Advocates for the Respondents that "no notice was required at the time of reversion of the Applicants" is overruled; as the applicants were in real sense not on ad-hoc promotions. As a consequence, the reversion orders passed against the applicants in OA Nos. 509/2001 and 603/2001 (and against the other similarly placed applicants) are hereby set aside and they are to be treated as regular 'PCR' staffs of Construction Organization for all purposes and consequential relief need be given to them within a period of three months hence.

5. In OA No. 597/2001 –B.V.Sanyasi v Union of India and others it is the case of the Applicant

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that while implementing the policy/revised policy and reverting the so called Adhoc promotees, as has been reverted wrongly to a lower post than what has been desired in the policy/revised policy. We are sure, the authorities would reconsider the case of the said applicant within a period of three months from the date the said applicant submits a representation to that effect. This Applicant have to submit a representation for redressal of his grievance within ten days hence.

6. The Advocates for the Applicants in all the case state that while reverting the Applicants several others (who received promotions like them) have not been reverted and that has been done (simply because the Applicants were taken to be personnel of Open Line establishment for same time) discriminatorily. This aspect of the matter ought to be examined by the Respondents before taking any further step as against the Applicants, for which we hereby record.

7. In the result, therefore, the prayer for a direction to the Respondents to regularize the Applicant in Construction Organization (or in the Promotional posts thereof) is dismissed. However, subject to other observations and directions, all the Original Applications are disposed of. No costs.

A copy of the order be kept in the other connected O.As."

9. Though the prayer of Applicants therein for regularization in the adhoc promotional posts held by them was not granted, direction was issued to reconsider the reversion of the Applicants which according to this Tribunal was wrongly done than what has been desired in the policy decision of the Railways. However, the aforesaid order of this



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Tribunal was challenged by the Respondents before the Hon'ble Orissa High Court in OJC Nos. 5477 and 5459 of 2002 and ultimately, in order dated 07.03.2006, the Hon'ble Orissa High Court dismissed the Writ Petitions upholding the above decision of this Tribunal. For better elucidation, relevant portion of the orders of the Hon'ble Orissa High Court are reproduced below:

"6. We have perused the reply of the Petitioners submitted before the Tribunal. In paragraph 4(7)(b) thereof it was mentioned that the Railway Board issued a direction vide letter dated 13.12.1999 issued in Chief Personnel Officer, S.E. Railway, Garden Reach's Establishment Serial No. 11 of 2000 to the effect that whenever ad-hoc promotions are found inescapable in the exigency of service, the same are to be ordered only for short duration up to four months from amongst the senior most eligible staff strictly in accordance with the existing guidelines under Para-216 (A)(1) of the Indian Railway Establishment Manual Volume II (1989 Edition). In the said letter, the Board have also instructed that in no case, second ad-hoc promotion is to be allowed.

7. A perusal of the Railway Board's circular dated 13.11.2001 shows that it was directed therein that all second or more ad-hoc promotions granted to the staff in violation of its instructions should be terminated w.e.f 1.12.2001. As it appears from the record, for the first time the Board issued instructions not to make second ad-hoc promotion in the year 1999. But, Opposite Parties No.2 to 9 were already given promotion in the year 1997 prior to issuance of the said direction of the Railway Board. The Board has not

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directed that the second ad-hoc promotion given prior to the instructions issued by it for the first time should also be terminated. The instructions were only to the extent that those second or more ad-hoc promotions which were given contrary to the instructions of the Railway Board meaning thereby that after issuance of such direction if any second or more ad-hoc promotion has been made, the same shall be terminated. The direction was issued in the year 1999 without any retrospective effect. Therefore, in view of this Opposite Parties No.2 to 9 do not come within the ambit of the said direction of the Railway Board. That apart, O.Ps No.2 to 9 had already completed more than two years of service as Head Clerks on ad-hoc basis whether said direction of the Railway Board was issued. It is also noticeable that there was no occasion for the petitioners to promote the O.Ps No. 2 to 9 on ad-hoc basis when they had qualified the competitive test and their names found place in the merit list. It is also noteworthy that their qualifying test was taken with other candidates at every stage before recommendation for their promotion. But still they have been given consecutive ad-hoc promotions, as mentioned above. The posts were lying vacant and the intention of the petitioners to fill up the posts was not other than the services on the posts in question were required. In such a situation, if all the posts are filled up on ad-hoc basis by giving 2 or 3 ad-hoc promotions to a candidate after qualifying competitive test, we have no hesitation to say that the services were being taken on the basis of adhocism instead of making regular appointment. However, such a situation is not encouragable. But there appeared to be no hurdle to make promotion on regular basis. It is also a matter of consideration that by making reversion of the Opp. Parties No.2 to 9, there would be a huge loss in their salaries, which they have been getting from 1992 to 1997.



8. In view of the aforementioned facts and circumstances, we see no ground to interfere with the impugned judgment and order passed by the Tribunal. Therefore, the writ applications have no merit and are accordingly dismissed.”


10. Though Learned Counsel for the Respondents argued that the Applicants in the above cases are not identically placed as that of the Applicants herein we find that the dictum laid down by the Hon'ble Orissa High Court is equally applicable to the present cases. Learned Counsel for the parties agreed that the Applicants were promoted as against available vacancies that too after being successful in the trade test conducted by the authorities. There can be no dispute that the Applicants have been continuing on ad-hoc basis in the promotional posts for a long time. Since the Applicants were promoted to the higher grade on ad-hoc basis against the vacancies, after qualifying the tests, we do not find any reason to apply the Board's Instructions so far as the present Applicants are concerned and the ratio of the decisions of the Hon'ble Orissa High Court, extracted above, are squarely applicable to the present case.

11. In the light of the discussions made above, the impugned orders dated 13.11.2001 and 30.11.2001 under Annexure-A/1 & A/2, so far as the present Applicants are concerned, are hereby quashed and, as a consequence, the Respondents are directed to extend all the benefits that has



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been given to the Applicants in earlier OAs, as per the orders of the Hon'ble Orissa High Court in the aforesaid Writ Petition, within a time framed of three months from the date of receipt of a copy of this order. But however, the Applicants shall not be entitled for any arrears of pay or other monetary benefits arising out of this order.


(C.R. MOHAPATRA)
MEMBER(A)


(K.V. SACHIDANANDAN)
VICE-CHAIRMAN

KNM/PS.