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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.225 OF 2007

Cuttack this the 27th day of October, 2009

CORAM:

THE HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

THE HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Nirmalendu Pattnaik, aged about 53 years, Son of Manoranjan Pattnaik, At-Balichacksahi, PO-Jatni, Dist-Khirda, at present working as Head Clerk East Coast Railway, Bhubaneswar, Dist-Khurda ...Applicant

By the Advocates: M/s. Bijay Kumar Pattanaik, A.C. Gahana

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Personnel Officer, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Chief Commercial Manager, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda ...Respondents

By the Advocates: Mr. S.K. Ojha, SC.

ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

In this Original Application, the applicant has sought for the following relief:

“Issue direction to the Respondents to give promotion to the applicant from the post of Head Clerk to the post of OS-II like that of Mr. T.V. Rao and Mr. Debaraj Sahoo by quashing the impugned order dated 15.9.2006 under Annexure-A/1”.

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2. Respondent-Railways, in response to notice issued by this Tribunal have filed their counter-reply opposing the prayer of the applicant to which the applicant has also filed a rejoinder.

3. We have heard the learned counsel for the parties and perused the records.

4. For the disposal of this Original Application, it is not necessary to deal with the detailed facts and circumstances as averred in the Original Application. It would, however, be quite enough to note that the applicant had earlier approached this Tribunal in Original Application No.126 of 2005 praying therein for direction to the Respondents to promote him by way of restructuring benefits as had been given to two others previously. The Respondent-Railways in their counter-reply had stated that they were unable to take a decision as to whether the post against which the applicant wanted promotion would go to Scheduled caste candidate or not. Be that as it may, the point in issue before this Tribunal in the said O.A. was whether the principles of reservation would apply in case of cadre restructuring as per Railway Board's letter dated 9.10.2003. This Tribunal, as per order dated 21.6.2006, while disposing of the said O.A., directed the Respondent-Railways to take a decision with regard to applicant's case for granting him promotion by way of up-gradation to the post of OS-II. This order having not been complied with, it gave rise to



C.P.12/07, which for the reasons recorded therein, has been dismissed as being misconceived one.

5. It is the case of the applicant that the impugned order issued by the Railway Administration in compliance with the order of this Tribunal in O.A.No.126/05 suffers from non-application of mind and that the legality of the said order having not been challenged, it attains finality and therefore, the same has to be implemented in letter and spirit.

6. We have gone through the order passed by this Tribunal in O.A.No.126/05 and found that the very fact that the Railway Board's letter dated 9.10.2003 which was the subject matter of consideration by this Tribunal was also then subjudice before the Hon'ble Supreme Court had not been brought to the notice of the Tribunal by either of the parties. In this connection, it would be advantageous to quote hereunder what the Hon'ble Supreme Court in Paragraphs-27 and 28 of the judgment in Union of India vs. Puspa Rani & Ors. (2005) 5 Supreme 5131 (in Civil Appeal Nos.6934-6946 of 2005) held, reads as under:

"27.A careful reading of the policy contained in letter dated 9.10.2003 shows that with a view to strengthen and rationalize the staffing pattern, the Ministry of Railways had undertaken review of certain cadres. The basis of the review was functional, operational and administrative requirement of the Railways. This exercise was intended to improve the efficiency of administration by providing incentives to the existing employees in the form of better promotional avenues and at the same time requiring the promotees to



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discharge more onerous duties. The policy envisaged that additional posts becoming available in the higher grades as a sequel to restructuring of some of the cadres should be filled by promotion by considering such of the employees who satisfy the conditions of eligibility including the minimum period of service and who are adjudged suitable by the process of selection.

This cannot be equated with upgradation of posts which are required to be filled by placing the existing incumbents in the higher grade without subjecting them to the rigor of selection.

28. In view of the above discussion, we hold that the Railway Board did not commit any illegality by directing that the existing instructions with regard to the policy of reservation of posts for Scheduled Castes and Scheduled Tribes will apply at the stage of effecting promotion against the additional posts and the Tribunal committed serious illegality by striking down Para 14 of letter dated 9.10.2003".

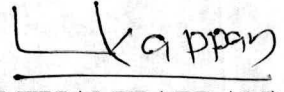
7. The applicant, in his rejoinder, has not disputed anything about the decision of the Hon'ble Supreme Court as above. This being the situation, whatever decision this Tribunal had taken in O.A.No.126/05 was subject to judicial scrutiny by the Hon'ble Supreme Court and the Hon'ble Supreme Court having upheld the action initiated by the Railway Board in letter dated 9.10.2003, the order of this Tribunal in O.A.No.126/05, in effect gets nullified and accordingly, the applicant cannot lay any claim based on the said decision. It is also not the case of the applicant herein that by the application of reservation policy he being the next senior in the category to which he belongs, is entitled to be promoted to O.S. II, nor has he submitted in the O.A. that there has been infringement

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or violation of certain rules and instructions thereby depriving him of his right to promotion.

8. Having regard to what has been discussed above, we are not inclined to grant any relief to the applicant. In the result, the O.A. being devoid of merit is dismissed. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(K. THANKAPPAN)  
JUDICIAL MEMBER