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O.A.No.273 of 2007

Narasingh Rout Applicant
Versus
Union of India & Others Respondents

Order dated 26th November, 2009.

C O R A M

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 the applicant who is continuing as Sheet Metal Worker, Grade III (Skilled Artisan) in the Office of the Chief Workshop Manager, Carriage Repair Workshop, East Coast Railway, Mancheswar, Bhubaneswar challenges the action of the Respondents in not counting his period of service from the date of joining to the date of regularization i.e. from 29.03.1988 to 01.04.1997 which has been given to other similarly placed employees pursuant to the order of the Calcutta Bench of the Tribunal confirmed by the Hon'ble High Court of Calcutta. Accordingly, in this Original Application he has prayed for the following direction:

- “(a) Pass an order directing the respondents to count the service continuity and to determine the seniority position of the applicant in his service from the date of his initial appointment i.e. on 29.3.1988 as a Skilled Artisan (Sheet Metal Worker) Grade-III in the Carriage Repair Workshop, Mancheswar I the light of the judgment and order passed in OA No. 941 of 1988 and confirmed by the Hon'ble High Court of Calcutta in WPCT No. 1240 of 2001;
- (b) Pass an order directing the Respondents to grant periodical annual increment Productivity Linked Bonus for the period from 29.3.1988 to 1.4.1997;

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- (c) Pass an order directing the respondents to reckon the seniority from the date of his initial appointment i.e. 29.3.1988;
- (d) Pass an order directing the respondents to allow all service benefits at par with other regular employees from the date of his joining in the service as per appointment order vide Annexure-2;
- (e) Pass an order directing the Respondents to make payment of the arrear amount with 12% interest accrued upon the arrear annual increments and arrear Productivity Linked Bonus for the period from 29.3.1988 to 1.4.1997;
- (f) Pass an order directing the Respondents to pay the entire costs."

2. Respondents' contention in the counter which was duly emphasized during the hearing by the Learned Counsel appearing on their behalf is that in the year 1981 and 1985 advertisement_y were made inviting application from ITI passed candidates possessing National Trade certificate under different Trades for recruitment as Skilled Trainee Artisan in CRW/MCS. Proposal was sent to Railway Board for sanction of posts as per requirement in Phase I II and III. In order to avoid delay it was decided by Railway Administration to fill up 50% DRQ post by Skilled Artisan, pending sanction of posts so that the required manpower can be available in time. The Applicant, Respondent No.5 and 142 other candidates were appointed as Trainee Artisans in Trades SMW and Welder on 28.3.1988 and 09.4.1988 respectively. Their appointment was on stipend basis of Rs.950/- per month during the training period of six months and was on purely temporary basis and that they will be absorbed on regular basis subject to availability of vacancy. As there was no sanctioned post, the training period of the

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candidates was extended. They were also given option to exercise to be absorbed in Gr.D category in diesel shed of other units of the Indian Railway. But instead of exercising option, all of them approached this Tribunal in OA No. 427 of 1989 with prayer to regularize their services as Skilled Artisan by declaring the option letter dated 09.10.1989 void. In order dated 15.10.1990, this Tribunal disposed of the matter by directing the Respondents-Railway to absorb the applicant in the regular cadre of Skilled Artisan Gr.III within a period of 3 months by doing the needful in the matter. Meanwhile much water has flowed by way of CP and MA filed by the Applicant and others who could not be absorbed pursuant to the order of this Tribunal. However, against the order of this Tribunal Respondents filed SLP (C) No.6648 of 1995 which is pending adjudication by the Hon'ble Apex Court. Meanwhile all the candidates who were applicants in OA No. 427 of 1989 including the applicant got regularized in Gr.C post of Tech.Gr.III. Applicant was regularized in CRW/MCS as Tech. Gr.III/Skilled Artisan in scale Rs.950-1500/-/3050-4590/- on 01.04.1997 and Respondent No.5 was absorbed as Skilled Artisan in KGPW/S on 25.2.1992. It has been stated that Respondent No.5 was absorbed earlier than the Applicant because of his option to be absorbed in KGPW/S where vacancy was available but the applicant could not exercise his option. In terms of Estt.Srl.No.109/92 the applicant was paid the benefit on notional basis i.e. from the date of his joining till regularization and thereafter he was paid the actual financial

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benefit. His seniority was also fixed from the date of his regularization i.e. 1.4.1997. There being no rule existing for payment of PLB during the training, the Respondents have opposed the said prayer of the applicant. In substance it has been stated by the Respondents that Respondent No. 5 was absorbed in Kharagpur (W/S),/S.E.Railway on his option exercised by him pursuant to the order of this Tribunal dated 9.11.1992 in CP No. 10/91. After being absorbed there Respondent No. 5 filed petition before the Calcutta Bench of the Tribunal. By the order of the Calcutta Bench of the Tribunal confirmed by the Hon'ble High Court of Calcutta in WPCT No.1240/2001 he was granted all service benefits retrospectively. But Applicant in the present case was a trainee artisan till his regularization in the working post i.e. 1.4.1997. So as per IREM Vol.I of 1989 at para 302 and 303 (a) the applicant was not entitled to get seniority and other benefits from the date of his initial appointment and therefore, it has been stated by the Respondents that the facts and issues involved in the case filed by Respondent No.5 being different and distinct the applicant is not entitled to the said benefit. Accordingly, the Respondents have prayed for dismissal of this OA. In course of hearing while denying that any option had really been called for by the Respondents, the Learned Counsel for the Applicant has taken us through various points argued and answered by the Calcutta Bench of the Tribunal while allowing the grievance of grant of retrospective benefit to the applicant and has reiterated that since the present case is

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exactly the same as that of the Calcutta Bench of the Tribunal, which was confirmed by the Hon'ble High Court of Calcutta, the applicant is entitled to the relief claimed in this OA.

3. After giving in-depth consideration to the contentions raised by both sides, perused the materials placed on record including the decision of the Calcutta Bench which was confirmed by the Hon'ble High Court of Calcutta. We do not find any such plea of calling for option in the entire order of the Tribunal as has been taken by the Respondents in the counter filed in the present case. Rather we see that the factual aspects raised in this OA by the Respondents were raised before the Calcutta Bench of the Tribunal by the Respondents and the Calcutta Bench of the Tribunal after considering merit of the matter came to the conclusion affirmatively which was also confirmed by the Hon'ble Calcutta Bench of the Tribunal. In spite of sufficient opportunity, the Respondents have also not produced copies of the option which had allegedly been called for by them and submitted by the Respondent No.5 either through counter or in course of hearing. Relevant portion of the order of the Calcutta Bench of the Tribunal is quoted herein below:

"11. Keeping in view the detailed discussions as well as our observations in the preceding paragraphs we find substantial merit in the application and, therefore, allow the same with the following directions upon the Respondents:-

- (a) That the applicant should be regularized in service according to the terms and conditions laid down in Annexure-A/1 dated 14.3.1988 viz. after successful completion of i.e. training period of six months and availability of the regular post on which the applicant was

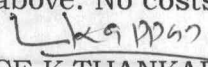
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- allowed to work till he was transferred to Kharagpur workshop;
- (b) The applicant should be granted annual increments for completion of each 12 months of service w.e.f. 28.3.1988 on immediately after completion of the training according to the rules and arrear thereof so accrued should be paid to the applicant within the specified period;
 - (c) The applicant should also be given seniority on the post w.e.f. 28.3.1988, the date of joining training of immediately after completion of training according to the rules;
 - (d) We are pained to notice that the terms and conditions given in Annexure-A/1 which is a clear cut appointment order have not been heeded to by the respondent authorities and the applicant has been forced to seek redressal of his grievance before the Tribunal. We find this a fit case for grant of cost. We, therefore, direct the respondent authorities also to pay a cost of Rs.5000/- to the applicant within the specified period.
 - (e) All the above exercise should be completed within specified period of 8 weeks from the date of communication of this order."

4. The Hon'ble High Court of Calcutta while affirming the order of the Tribunal in the writ petition filed by the Respondents only quashed the order for payment of Rs.5000/- as the cost of the litigation. We find no reason to differ from the view already taken by the Calcutta Bench of the Tribunal which was subsequently confirmed/modified by the Hon'ble High Court of Calcutta. Accordingly we direct the Respondents to extend the benefit as has been granted to Respondent No.5 pursuant to the order of the Calcutta Bench of the Tribunal dated 12.07.2001 in OA No.941 of 1998 affirmed by Hon'ble High Court of Calcutta in WPCT No.1240 of 2001 dated 15.03.2005 within a period of forty five days from the date of receipt of this order.

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5. In the result, this OA stands allowed to the extent
stated above. No costs.


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

