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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.299 of 2007
Cuttack, this the 20th day of March, 2009

Abdul Halim Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A.No.299 of 2007
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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)

Abdul Halim, aged about 59 years, S/o. Late Abdul Hakim, at present working as Technician Grade II under Dy.CE/Con/II/E.Co.Rly/SBP resident of Qr.No.7/2, Rail Nagar, At/Po-Khetrarajpur, Town/Dist.Sambalpur.

.....Applicant

By Advocate : M/s.N.R.Routray, S.Mishra.

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer/Con/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Deputy Chief Engineer/Con-II/East Coast Railway, JJKR, At/PO.Jajpur Keonjhar Road, Dist. Jajpur.
4. FA & CAO/Con/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Sr.Personnel Officer/Con/Co-ordination/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
6. Deputy Chief Engineer/Con.II, East Coast Railway, At/PO-Khetrajpur, Town/Dist.Sambalpur.

....Respondents

By Advocate Mr. P.C.Panda

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

Briefly stated the facts of the case are that as per the policy decision of the Railway dated 13.11.2001 envisaging that there should not be more than one adhoc promotion and if at all

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any body holding more than one ad-hoc promotion they may be reverted forthwith. In compliance of the above direction, the position in regard to ad-hoc promotions of the employees was reviewed. Alleging that the Applicant is recipient of the benefit of more than one ad-hoc promotion and continuing in the post of Technician Grade I, he was reverted to the post of Technician Gr.II vide order under Annexure-A/2. He preferred representation against his order of reversion on 16.4.2002. Similar order of reversion was also passed in regard to other employees like the Applicant. Being aggrieved by the order of reversion, some of the PCR staffs approached this Tribunal in batch of cases and this Tribunal vide order dated 21.03.2002 (Annexure-A/4) disposed of the matter with observations and directions contained therein. The order of this Tribunal was carried in Writ (OJC Nos.5477 and 5459 of 2002) by the Respondents to the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa vide order dated 07.03.2006 (Annexure-A/5) dismissed the Writ preferred by the Respondents. Filing representation dated 17.7.2006 applicant sought cancellation of his order of reversion pursuant to aforesaid order of this Tribunal confirmed by the Hon'ble High Court of Orissa. Since no final decision was taken on his representation he approached this Tribunal in OA No.211/2007.

The aforesaid OA was disposed of on 28.6.2007 directing the Respondents to dispose of the pending representation of the Applicant. In compliance of the aforesaid order of this Tribunal, the representation of the Applicant was considered and rejected vide order under Annexure-A/8 dated 20.08.2007 on the ground that the judgment passed by this Tribunal and confirmed by the Hon'ble High Court being judgment in personam the same is not applicable to the case of Applicant. By filing the present OA, the Applicant has prayed to quash the order of under Annexure-A/1, A/2 and A/8 and consequently direct the Respondents to grant the Applicant all benefits w.e.f. 1.12.2001 in the grade of Technician Gr.I.

2. Meanwhile, another employee namely Raghbab Moharana, working as Carpenter Grade II approached this Tribunal in OA No. 245/2007. This Tribunal vide order dated 17.4.2008 disposed of the OA No. 245 of 2007. Relevant portion of the order (paragraphs 10 & 11) are quoted herein below:

“10. Though learned counsel for the respondents argued that the applicants in the above case are not identically placed as that of the applicants therein 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 and 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 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 frame 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.

3. The Respondents challenged the aforesaid order of this Tribunal before the Hon'ble High Court of Orissa in WP (C) No. 15824 of 2008. The Hon'ble High Court of Orissa in order dated 03.02.2009 dismissed the aforesaid Writ Petition thereby upholding the order of this Tribunal.

4. Respondents by filing counter supported the stand taken in the order of rejection under Annexure-A/8. They have also opposed the maintainability of this OA on the ground of delay and laches.

5. Heard the rival contentions put-forth by the respective parties and perused the materials placed on record. It is not in controversy either in the order of rejection or in the counter that the applicant's promotion was only after he became successful in the trade test conducted by the Respondents that too against the available vacancy. It is the contention of the Respondents in the order of rejection under Annexure-A/8 as also in the counter that the cases decided by this Tribunal and confirmed by the Hon'ble High Court being judgment in personam the same is not applicable to the case of the applicant. They have taken the delay and laches as one of the grounds but we are not impressed by such plea of the Respondents because it is trite law that hypertechnicality principle of law limitation should not stand on the way of dispensation of justice. Fact of the matter is that the order of reversion has been held to be bad in law so far as other similarly situated employees are concerned. Therefore, if this OA is dismissed on the technical plea of limitation then the wrong committed by the department would be allowed to perpetuate which is not permissible in the eyes of law. Extension of benefits to similarly situated employees have been viewed affirmatively by the Hon'ble Apex Court in the case of **K.C.Sharma and others v Union of India and others, (1997) 6 SCC 721**. Besides the

above, we find that before issuing the order of reversion no opportunity was afforded to the applicant. Law is well settled that any order which affects the government servant must be only after compliance of the principle of natural justice.

6. In the light of the facts and law discussed above by no stretch of imagination it can be held that the impugned order under Annexures-A/2 & A/8 are sustainable on facts as also on law. Hence, the impugned orders under Annexures-A/2&A/8 are hereby quashed. However, in view of the quashing of the order of reversion, the Applicant shall not be entitled to any back wages but he would be entitled to notional fixation of pay in the Technician Grade I till date and, thereafter, he would be entitled to the actual pay in the post in question.

7. In the result, with the observations and directions made above, this OA stands allowed. No costs.

K.T.Thankappan

(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

C.R.Mohapatra

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