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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.321 of 2007
Cuttack, this the 21st day of April, 2009

Mandi Dhanpati Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

3. Whether it be referred to the reporters or not?
4. 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
CUTTACK BENCH: CUTTACK

O.A.No.321 of 2007

Cuttack, this the 21st day of April, 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)

Mandi Dhanpati, aged about 45 years, son of Late Mandi Raghunath at present working as Hammerman Gr.III under Deputy Chief Engineer/Con/East Coast Railway, JJKR, Dist. Jajpur.

.....Applicants

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

-Vs-

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/Coordination/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.G.Singh.

O R D E R

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

Brief facts of this case are that Railway Board issued instruction dated 13.11.2001 stating that there should not be more than one adhoc promotion and if at all any body holding more than one ad-hoc promotion they may be reverted forthwith. In compliance of the above instruction of the Railway Board, on review of the

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promotions allowed to the employees, the applicant who was working as Hammerman Gr.II in the Railway was found to be in receipt of the benefit contrary to the Railway Board's instruction dated 13.11.2001 i.e more than one ad-hoc promotion. However, he was reverted to the post of Hammer man Gr.III vide order under Annexure-A/2. He preferred representation against his order of reversion under Annexure-A/2. But no decision was taken on his representation. However, similar order of reversion passed in regard to other PCR staffs of the Railway had received due consideration of this Tribunal. The said order of this Tribunal was carried in Writ (OJC Nos.5477 and 54~~5~~9 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 dismissed the Writ preferred by the Respondents. Meanwhile, another employee namely Raghab 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

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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.

2. 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. It is in this background the applicant by filing the present OA seeks the following reliefs:

"(a) To quash the impugned order of reversion dated 13.11.2001 and 27.11.2001 under Annexure-A/1 and Anneure-A/2 respectively;

(b) To direct the Respondents to restore the applicant in the post of Hammer man Gr.II w.e.f. 1.12.2001;

(c) To direct the Respondents to pay the differential arrears salary by re-fixing the pay meant for the post of Hammerman Gr.II."

3. It is noticed that another similarly circumstanced employee of the railway (Abdul Halim) challenged his order of reversion as per the instruction of the Railway Board dated 13.11.2001 in OA No.299/2007. The Division Bench of this Tribunal by taking recourse of the aforesaid orders passed earlier by this Tribunal and confirmed by the Hon'ble High Court of order quashed

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the order of reversion of Abdul Halim. Relevant portion of the observation and direction made by this Tribunal in OA No.299/2007 dated 20th March, 2009 is quoted herein below:

"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/7 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.

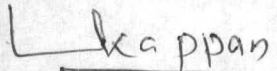
6. In the light of the facts and law discussed above by no stretch of imagination it can be held that the impugned order under Annexures-A/2 & A/7 are sustainable on facts as also on law. Hence, the impugned orders under Annexures-A/2&A/7 are hereby quashed. However, in view of the quashing of the order 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."

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4. It is noticed that the grounds of the applicant and line of reply submitted by the Respondents in this present OA are exactly the same as that of OA No.299 of 2007 dated 20th March, 2009. In view of the above, we find no justification to differ from the view already taken above. Therefore, by applying the ratio of the above decisions, the order of reversion of the Applicant under Annexure-A/2 is hereby quashed but, however, the applicant shall not be entitled to any back wages from the period of his reversion till restoration of applicant to his earlier post which shall be done within a period of 30 (thirty) days from the date of receipt of copy of this order. But the Applicant would be entitled to notional fixation of pay in the Hammerman Gr.II.

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


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


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