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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.336 of 2007
Cuttack, this the 5th day of February, 2010

Mrutyunjay Nanda 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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CUTTACK BENCH: CUTTACK

O.A.No.336 of 2007

Cuttack, this the 5th day of February, 2010

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)

Mrutyunjay Nanda, aged about 42 years, presently working as Purchase Assistant (Ex-Head Clerk), office of the Controller of Stores, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar-23, Dist. Khurda.

.....Applicant

Legal practitioner : In person

- Versus -

1. Union of India represented through General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar-23, Dist. Khurda (Orissa)
2. The Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar-23, Dist. Khurda (Orissa)
3. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43 (W).

....Respondents

Legal Practitioner : Mr. S.K.JOjha Standing Counsel

O R D E R

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

Shri Mrutyunjay Nanda stating to be working as Purchase Assistant in the office of the Controller of Stores, East Coast Railway, Railvihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- “(a) That the Original Application may be allowed;
 - (b) To direct Respondent Nos.1&2 to revise the Memorandum issued on 25.10.2004 by increasing the posts of Ministerial Office clerks as 29 instead of 27 on transferring the posts held by Respondent No.3 in the Stores Department for restructuring promotion purposes of the applicant to the post of OS-II in the scale Rs.5500-9000/- w.e.f. 01.11.2003 with all financial benefits and the corresponding reduction in the cadre of Head Clerk in the Stores Department of the Respondent No.3;
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- (c) To direct the Respondent Nos.1&2 to review the Restructuring Promotion order No.338 issued on 17.12.2004 w.e.f. 01.11.2003 for the post of OS-II in the scale 5500-9000/- as per the fixed percentage and the rounding of is to be taken in OS-II post as 5 in place of 4, instead of passing it on to the Jr. Clerk and necessary promotion orders to the post of OS-II is to be issued with all financial benefits sustained;
- (d) To quash the office order No.338 dated 17.12.2004 in which one post of OS-II in scale of pay 5500-9000/- reserved for Scheduled Caste category in contravention to the judgment of the Apex Court;
- (e) To direct the respondent Nos.1&2 to treat the applicant's willingness in unit purchase in the scale of 5500-9000/- with retrospective effect after the said promotion on re-structuring came into effect w.e.f. 01.11.2003;
- (f) To quash the gradation list under Annexure-11."

2. Respondents have filed their counter contesting the case of the Applicant. According to the Respondents applicant joined in the Railways as Junior Clerk on 20.7.89, promoted to the post of Sr. Clerk on 5.6.90. He was transferred to the office of the Controller of Stores from Garden Reach Kolkata on inter divisional transfer vide order dated 25.11.1993 and was released on 4.1.1994 and reported to his new place of posting on 5.1.1994. His lien was kept at his parent unit. He got promotion to Head Clerk substantively on 23.6.95 and promoted to the post of OS II on adhoc basis for a period of six months vide Chief Administrative Officer (Project)/BBSR's office order dated 22.1.1997. In the said order it was made clear that his promotion was purely on ad-hoc measure which will not confer on him any right to claim right title seniority over the post and his lien will continue to be maintained in the office of COS/S.E.Railway,/GRC. In the Railway Board's letter dated 6.12.1996 it was made specifically clear that option transfer would be accepted only in a grade in which an employee is working on regular basis after completion of due process of selection/suitability test. The substantive appointment of the applicant was to the post of Head Clerk. As such on acceptance of his option he was posted to E.Co.Railway in the post of Head

Clerk and on acceptance of such transfer applicant got relieved without demur. It has been stated that OS II post is a selection post. One is eligible to appear at the test for the post provided he/she is eligible. In view of the above, the Respondents while refuting all other allegations of the applicant made in this OA, have prayed for dismissal of this OA.

3. It is the contention of the Applicant that on 20.7.1989 after being nominated by the RRB he joined the post of Jr. Clerk in the office of the Controller of Stores, South Eastern Railway, Garden Reach, Kolkata. On 05.06.1990 he was promoted to the post of Sr. Clerk in the same office where he worked till 04.01.1994. Paragraph 1.1 of the Railway Board's circular dated 06.12.1996 states about transfer of the post from the existing zone to newly created Railway zonal head quarters office and paragraph 2(i) provides that the post of all grades/categories should be transferred by the parent railway proportionately keeping in view the requirement of new zones and paragraph 2(a) provides that existing zone to reduce the sanctioned strength as per the percentage for transfer of the additional strength of posts to newly created zones. His contention is that he was promoted to OS II on adhoc in COS (Con.) in S.E.Railway, Bhubaneswar on 22.01.1997 against work charge post for six month only with stipulation that the said promotion will be subject to review after expiry of the period of six months. But it continued for six years and no test was conducted meanwhile in construction organization. On the basis of the Railway Board's letter dated 8.8.2002, he having opted to come to the newly created E.Co.Railway, Bhubaneswar, on 04.01.1994 he was transferred to the office of the Chief Administrative Officer, S.E.Railway, Bhubaneswar with the condition that the lien of the applicant would be maintained in the Office of the Controller of Stores, South Eastern Railway, Garden Reach, Kolkata. On 05.01.1994 he was posted in the office of the

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Controller of Stores (Construction) under the Chief Administrative Officer, S.E.Railway, Bhubaneswar. On 23.06.1995, he was promoted to the post of Head Clerk by the Controller of Stores, South Eastern Railway, Garden Reach, Kolkata. But he was retained at S.E.Railway, Bhubaneswar. On 20.01.1996, he was promoted to the post of Office Superintendent-II (carrying the scale of pay of Rs.5500-9000/-) in the office of the Controller of Stores (Construction), S.E.Railway, Bhubanewar on adhoc basis. On 01.05.2003 he was transferred from the office of the Controller of Stores (Construction) to the Office of the Chief Personnel Officer, East Coast Railway, Bhubaneswar. His stand is that as per the Railway Board letter dated 8.8.2002 he was transferred from S.E.Railway to E.Co.Railway along with the post in which he was continuing i.e. OS II and, as such, he ought to have been designated as OS II instead of Head Clerk in the new Railway i.e. E.Co.Rly. On 21.5.2003 (Annexure-A/5) COS issued Office Order dealing with details of work in non-purchase section. Nowhere in the said order there was identification of work to be discharged by the DMS and Ministerial office Clerk. In letter dated 27/30.06.2003 COS issued letter regarding creation of post in which it was stated that creation of 50 DMS post (40 in purchase work under unit purchase cell and 10 in non purchase work) without assigning/analyzing the nature of wok as per the guidelines. But on 19.2.2004 the CPO fixed up the cadres in zonal head quarters office such as Ministerial office clerk; CMS and Chasing Inspector. The COS vide Office Order No.2 dated 17.9.2004 distributed the work in violation of the Store Code among the staff without specifying the work to be discharged by DMS and Ministerial Office Clerk. Thereafter, in modification and supercession of the letter dated 25.08.2004 creating 21 Ministerial Office Clerk, the CPO issued Memorandum dated 25.10.2004 for restructuring of promotion within the COS cadre. A seniority list dated 17.11.2004 was

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published by CPO, ECoRly showing the date of applicant in the pay scale of Rs.5000-8000 as 23.6.1995 and the name of his junior namely, Shri R.R.Samal as 6.1.1996. Promotion on restructuring order dated 17.12.2004 was issued for Ministerial office clerk created as on 31.10.2003 without transferring two posts of Head Clerk from COS, SERly to ECoRly and taking the total post of Ministerial office clerk as 27 instead of 29. Although staff was transferred to COS,ECoRly along with the posts as per the letter of the Railway Board, names of applicant and another Janab Mohd. Yunus were shown in the classified seniority list of COS,SERly published as on March,2004. Further contention of the Applicant after restructuring of the cadre, through representations dated 29.12.2004 and 24.2.2005 he sought promotion to OS II in which it was stated by him that only to harass him the authorities created lesser number of posts although as per the yardsticks more number of posts ought to have been created. In this connection, his contention is that while restructuring there was increase of percentage in the grade of Junior Clerk instead of in the grade of Sr. Clerk. According to him, the total rounding would have been shown in the above grade, the posts as shown taking the total up-gradation in the higher grade in OS II $(0.98+0.16+0.32)=0.56$ rounded as 1 above and would have been added in OS II grade as shown in Jr. Clerk as 5.40 as 6 posts. So OS II posts would have been 5 instead of 4 in the total posts of 27 Ministerial office Clerk Posts and had the two posts of Head Clerk from COS, S.E.Railway been transferred along with the transfer of applicant the number of posts would have been 29 in place of 27 and in that he would have got the promotion to OS II. Next contention of the applicant is that in stead of considering his representation in proper perspective, the Respondents asked him to appear at the selection held on 16.9.2009 for the post of Chasing Inspector. However, he had already been

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promoted to the post of Purchase Assistant in Unit Purchase Cell cadre on 27.10.2006. Accordingly, branding the action of the Respondents as illegal, arbitrary and mala fide, Applicant strongly prayed for allowing his prayer made in this OA. On the other hand, Mr. Ojha, Learned Standing Counsel appearing for the Respondents reiterated the stand taken in the counter and stated that the arguments advanced by the Applicant are of no consequence as the entire exercise undertaken by the Respondents by way of policy has the sanction of Rules and law. Accordingly he prayed for dismissal of this OA.

4. We have given our thoughtful consideration to the rival submissions of the parties made with reference to their respective pleadings and perused the materials placed on record. We may state that creation and abolition of posts is a policy decision of the Government. This Tribunal ordinarily lacks jurisdiction and authority to direct creation of post in any particular cadre to promote any individual. In effect, Applicant sought direction to the Respondents to increase the posts in Ministerial Office Clerks as 29 instead of 27 on transferring the posts from S.E.Railway in the Stores Department for promotion purposes of the applicant to the post of OS-II in the scale Rs.5500-9000/- w.e.f. 01.11.2003 i.e. the date of his induction to new Railway which he is estopped to seek firstly because he having accepted the transfer joined in the E.Co.Railway as Head Clerk without any objection and secondly; he was not holding the post of OS II in S.E.Railway in Store Department on a substantive basis. Hence the contention made in regard to this prayer falls to the ground and is rejected.

Applicant's second prayer is to direct the Respondent Nos.1&2 to review the Restructuring Promotion order No.338 issued on 17.12.2004 w.e.f. 01.11.2003 for the post of OS-II in the scale 5500-9000/- as per the fixed percentage and the rounding of is to be taken in OS-II post as 5 in place

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of 4, instead of passing it on to the Jr. Clerk. Here also we find no substance on this prayer of the Applicant as how many posts are required to be increased in which post is purely within the domain of the Respondents and based on the rounded off formula [0.56% should be treated as 1] shown by the applicant in support of increase of the OS II cadre on restructuring is not applicable so far as increasing of posts are concerned. The formula in regard to financial ^{matter} has been devised by the administration while implementing the restructuring. We are not competent to enter into this field. As such, the contentions advanced by the Applicant that OS II posts should have been more is only a personal perception of the Applicant. Hence the same is rejected.

Further, we find no error in the decision of the Respondents in keeping one post in the grade of OS II reserved for SC especially when no SC candidate was available to hold the post. However, it is not the case of the applicant that the said post being created on restructuring, reservation principle could not have been followed. Had it been so, then also the contention of the applicant would not have caused any weightage in view of the decision of the Hon'ble Apex Court in the case of Puspanrani, (2008) 5 Supreme 513. Hence, the prayer of the applicant regarding the S.C. vacancy is also rejected. Consequently, the prayer of the Applicant to direct the respondent Nos.1&2 to treat the applicant's willingness in Unit Purchase Cell in the scale of 5500-9000/- with retrospective effect after the said promotion on re-structuring came into effect w.e.f. 01.11.2003 fails.

Also it is seen that the applicant sought to quash the gradation list under Annexure-11 without making the affected persons as necessary parties to this OA. This OA is therefore liable to be dismissed on the ground of non-joinder/misjoinder of necessary party.

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This apart, applicant having volunteered to join UPC cadre of Hqs stores Department pursuant to the circular dated 30.01.2006, as per clause 5 of the said circular, the Applicant has abandoned his right to claim what has been claimed in this Original Application.

5. For the discussions made above, we find no merit in this OA. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.

Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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