

A.Mohan Rao Applicant
Versus
UOI & Ors. Respondents

1. Order dated 15 September, 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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The grievance of the Applicant in the present case arises consequent upon the implementation of the Railway Board's Circular dated 13.11.2001 directing that there should be no second or more adhoc promotions and any such promotion granted to the staff in violation of its instructions should be terminated w.e.f. 1.12.2001. By filing this OA, the Applicant has sought the following direction:

- "(i) The Original Application be admitted and connected records be called for;
- (ii) After hearing the parties the Respondents-Railway be directed to extend the similar benefits which was given to S.Gvinda Rao, B.K.Mohanta, M.Ganapati Rao and others who were also reverted on the basis of same decision of the Railway Board like applicant and the Railway Respondents be directed to take decision keeping in view the judgment of the Hon'ble Tribunal and Hon'ble High Court reported in 2006 (Suppl. I) OLR 449 and 453 within specific time limit with all service and financial benefits accrued from such decision."

2. Respondents by filing counter opposed the stand of the Respondents. But we feel there is no need to go into details of the counter; because while examining the challenge of this nature in O.A.No. 89 of 2008 filed by P.K.Acharya v Union of

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India and others by following the decision of the Hon'ble High Court of Orissa in OJC Nos.5477 and 5459 of 2002 (Union of India and others v CAT, Cuttack Bench and others) dated 07.03.2006 this Tribunal in order dated July, 2009 quashed the order of reversion of Shri P.K.Acharya. Relevant portion of the order Hon'ble High Court of Orissa is quoted herein below:

“7. A perusal of the Railway Board's Circular dated 13.11.2001 shows that it was directed therein that all second or more adhoc promotions granted to the staff in violation of its instructions should be terminated w.e.f. 1.12.2001. As it appears from the record for the first time the Board issued instructions not to make second adhoc promotion in the years 1999. But opposite parties No. 2 to 9 were already given promotion in the year 1997 prior to issuance of the said direction of the Railway Board. The Board has not directed that the second adhoc promotion given prior to the instructions issued by it for the first time should also be terminated. The instructions were only to the extent that those second or more adhoc promotions which were given contrary to the instructions of the Railway Board meaning thereby that after issuance of such direction if any second or more adhoc promotion has been made, the same shall be terminated. The direction was issued in the year 1999 without any retrospective effect. Therefore, in view of this, Opposite Parties No.2 to 9 do not come within the ambit of the said direction of the Railway Board. That apart Ops No.2 to 9 had already completed more than two years of service as Head Clerks on adhoc basis when the said direction of the Railway Board was issued. It is also noticeable that there was no occasion for the petitioners to promote the Ops No.2 to 9 on adhoc basis when they had qualified the competitive test and their names found place in the merit list. It is also noteworthy that their qualifying test was taken with other candidates at every stage before recommendation for their promotion. But still they have been given consecutive adhoc promotions, as mentioned above. The posts were lying vacant and the intention of the petitioners to fill up the posts was not other than the services on the posts in question were required. In such a situation, if all the posts are filled up on adhoc basis by giving 2 or 3 adhoc promotions to a candidate after qualifying

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competitive test, we have no hesitation to say that the services were being taken on the basis of adhocism instead of making regular appointment. However, such a situation is not encourageable. But there appeared to be no hurdle to make promotion on regular basis. It is also a matter of consideration that by making reversion of the Opposite Parties No. 2 to 9 there would be a huge loss in their salaries, which they have been getting from 1992 to 1997.

8. In view of the aforementioned facts and circumstances, we see no ground to interfere herewith the impugned judgment and order passed by the Tribunal. Therefore, the writ applications have no merit and are accordingly dismissed."

3. In the present OA, the Applicant has, however, not challenged any such order of his reversion but prayed for extension of the benefit of the orders of the Hon'ble High Court of Orissa. Being similarly placed, the Applicant is entitled to the benefits of the decision rendered by the Hon'ble High Court of Orissa in view of the decision of the Hon'ble Apex Court in the case of **Maharaj Krishan Bhatt & Anr v State of Jammu & Kashmir & Ors**, (2008) 2 SCC (L&S) 783). The Respondents are, therefore, directed to act accordingly and grant the benefit which has already been granted to similarly situated persons within a period of sixty days from the date of receipt of this order.

4. In the result, this OA stands allowed by leaving the parties to bear their own costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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