

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.111 OF 2008

Cuttack this the 5th day of January, 2010

I.S.Kandulna ... Applicant

-VERSUS-

Union of India and others Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not?

2) Whether it be sent to the P.B., CAT, or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.111 OF 2008

Cuttack this the 5th day of January, 2010

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

I.S.Kandulna, aged about 47 years, Son of late Isaac Kandulna, presently working as Chief Ticket Inspector, Grade-II (CTI-II), East Coast Railways, Sambalpur, presently residing At/PO-Modipada, Dist-Sambalpur

...Applicant

By the Advocates : M/s.G.Rath, B.K.Nayak-3, S.Rath

-VERSUS-

1. Union of India represented by General Manager, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railway, At/PO/Dist-Sambalpur
3. Divisional Personnel Officer, East Coast Railway, At/PO/Dist-Sambalpur
4. I.K.Gouda (CTI-II/TIG), Ticket Collector Office, Titlagard, East Coast Railway, At/PO0Titilagard, Balangir, Dist-Bolangir
5. S.B.Panda (CTI-II/SBP), Ticket Collector Office, Sambalpur, PO-Kharajpur, Dist-Sambalpur
6. N.K.Tandia (cit-ii) Ticket Collector Office, Titilagard, East Coast Railway, At/POTitilagard, Balangir, Dist-Bolangir

... Respondents

By the Advocates:

Shri S.K.Ojha, S.C.

O R D E R

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Applicant, I.S.Kandulna, at present working as Chief Ticket

Inspector, Grade-II(in short 'CTI-II'), East Coast Railways, Sambalpur,



has filed this Original Application seeking the following relief:

- “a) To direct the Railway authority to empanel the applicant in the provisional empanel list published on dt. 08.02.2008 as per Annexure-14 to the application.
- b) To direct the opp. parties to consider the application for promotion to the post of Chief Ticket Inspector, Grade-I in the scale of pay of Rs.6500-10500/- either in general category or in the ST category.
- c) To give all service benefits to the applicant.
- d) To give any other direction/directions, order/orders as the Hon'ble Tribunal deems fit and proper.”

2. The facts, as revealed from the Original Application are that the applicant was appointed to the post of CTI-II in the scale of Rs.5500-9000/- with effect from 24.12.2003. According to him, he could be considered for promotion to CTI-I only after completion of two years as CTI-II. As per seniority list, at Annexure-A/2, the name of one C.M.Murmu appears at Sl. No.3 whereas the name of the applicant at Sl. No.7, both belonging to Scheduled Tribe community. Shri Murmu, as per Annexure-A/3 dated 5.9.2003 was called for interview/written test for promotion to the post of CTI-I against a vacancy meant for unreserved category, against which he was empanelled (Annexure-A/4) and consequently, promoted to the post of CTI-I as per Annexure-A/5 dated 21.1.2004. It is needless to mention that the promotion to the post of CTI-I is a selection one. As per restructuring of Group C and D cadres in the Railways (Annexure-A/6), it has been stipulated that instead of promotion by selection, the post of CTI-I should be filled up according to seniority



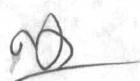
and in this backdrop, Shri C.M.Murmu was again promoted to the post of CTI-I with effect from 1.11.2003 as per Annexure-A/7 dated 29.9.2004. The representation preferred by the applicant has been rejected by the Divisional Railway Manager (P), Sambalpur, as per Annexure-A/8 dated 26.10.2004. According to applicant, though the reasons assigned for such rejection were not all legal, yet, he chose to remain silent as he was not borne on the cadre of CTI-II as on the date when the vacancy arose, i.e., 5.9.2003. While the matter stood thus, the Respondent-Railways conducted written test on 26.2006 for selection against five posts of CTI-I (4 UR and 1 SC). According to applicant, he preferred an appeal dated 30.10.2006 (Annexure-A/9) stating that 8th and 14th roster structure belonged to S.T. vacancies against which he had not been considered for promotion nor called for written test, even though 3rd and 4th posts have been filled up by Scheduled Caste candidates, which was nothing but irregular. This representation was followed by another representation dated 16.11.2006(Annexure-A/10). When the applicant was waiting for reply, Respondent No.3, as per Annexure-A/11 dated 28.2.2007, again issued letter for filling up 04 UR and 01 SC vacancies in the grade of CTI-I, when the applicant moved this Tribunal in O.A.No.85/2007, challenging the legality of the said examination, during the pendency of another O.A.No.909/06 filed by him earlier. It is the case of the applicant



that though the result of the test held on 28.2.2007 has been published wherein his name finds place at Sl. No.3(Annexure-A/13), yet, in the provisional panel for promotion to the post of CTI-I, published as per Annexure-A/14 dated 8.2.1008, his name has been arbitrarily omitted. It is in this background the applicant has approached this Tribunal in the present O.A. seeking relief as referred to above.

3. The grounds on which the applicant has based his claim are as under,

- i) Inclusion of the name of Shri C.M.Murmu in the promotion list at Annexure-A/8 dated 26.10.2004 is illegal, which in effect has deprived the applicant of his promotion to CTI-I.
- ii) Establishment Sl.No.5 of 2004 as quoted in Annexure-A/8 has no relevancy to the facts and circumstances of the case inasmuch as no cutoff date, i.e. 6.1.2004 in the Esttl.Sl.No.5/04 has been fixed.
- iii) The model roster prescribes 8th vacancy of CTI-I to be filled by ST quota and when more than seven persons of CTI-II have been



promoted to CTI-I, the next post has to be reserved for ST quota, failing which it amounts to violation of Fundamental Rights.

iv) As per Esttl.Sl.No.97/02, if any SC or ST candidate is promoted on own merit, he should be treated to have been promoted against UR vacancy and the reserved vacancy should be filled up by the next available SC or ST candidate, as the case may be. In other words, what the applicant wants to submit is that Shri C.R.Murmu having been selected on merit was promoted to CTI-I against UR vacancy and thereby the S.T. vacancy against which Shri Murmu could have been appointed, had he not been selected on his own merit, remained vacant and therefore, the further promotion of Shri Murmu against S.T. quota is bad and illegal.

v) The applicant having passed the written test on merit and placed at Sl.No.3, his name should not have been omitted from the provisional panel for promotion to CTI-I and he should



have been promoted and appointed to CTI-I, instead, one N.K.Tandia has been empanelled on relaxation along with other juniors.

4. The Respondent-Railways have filed their counter and additional affidavit opposing the prayer of the applicant. They have stated that prior to promotion of the applicant to CTI-II, a selection process was initiated for filling up one UR vacancy in the grade of CTI-I in the year 2003, wherein S/Shri C.M.Murmu (ST) and R.S.Panda(UR) had appeared at the written test held on 5.9.2003, scrutiny of service records and A.C.Rs was conducted on 6.1.2004, and panel was published on 19.1.2004, whereafter Shri Murmu was promoted to the grade of CTI-I as per Office Order No.4/2004 dated 21.1.2004. In the meanwhile, instructions were issued by the Railway Board under RBE No.177/03, circulated vide S.E.Railway, Estt.SI.No.152/03, whereby the restructuring of Group C and D cadres was to take effect from 1.11.2003. The above instructions of the Railway Board having been partially modified as per R.B.E.No.114/04, it was further intimated in Est.SI.No.5/04 indicating that the selection which had not been completed prior to 5.1.2004 should be cancelled/abandoned. In view of the above instructions, the selection to the post of CTI-I



which was finalized on 19.1.2004, i.e., after the cutoff date fixed by the Railway Board was cancelled and later on, having regard to cadre restructuring policy, as per RBE No.177/03 and Est.Sl.No.152/03, the process was initiated for filling up of 4 posts of CTI-I (03 UR and 01 SC), wherein S/Shri B.D.Murgi (SC), C.M.Murmu(ST), R.S.Panda (UR) and S.P.Nair (UR) were empanelled and promoted to CTI-I as per Office Order Nos.37/04 and 52/05 dated 29.9.2004 and 29.9.2005 respectively. Shri Murmu, it has been submitted, though was the second senior most candidate in the zone of consideration, was accommodated against ST shortfall vacancy and therefore, the applicant could not be empanelled due to non-availability of S.T. vacancy. The Respondents have further submitted that after completion of restructuring some new posts were created by the Headquarters for Sambalpur Division, wherein 5 (04 UR and 01 SC) vacancies in the grade of CTI-I were required to be filled up. The applicant appeared at the written test and supplementary test conducted on 21.1.2007 and 18.5.2007 respectively and was declared qualified on relaxed standard only. It is stated that the scrutiny of service records and ACRs of the candidates declared qualified in the written test was conducted by the Selection Committee, whereafter



the panel was published on 8.2.2008. Since the applicant failed to secure 60% marks in the professional ability, i.e., written test, his name could not be found place in the panel. Besides, there being no ST vacancy, the applicant could not be promoted. It has also been submitted by the Respondents that based on the revised cadre strength of CTI-I as on 1.11.2003 due to implementation of cadre restructuring against 4 vacancies (UR 3 and ST 1), the applicant had been considered along with Shri C.M.Murmu, against the S.T. vacancy for which the modified selection was conducted on 23.9.2004 and Shri Murmu being senior, the applicant could not be considered for appointment.

5. We have heard Shri Ganeswar Rath, learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel appearing on behalf of the Respondent-Railways. None of the private Respondents has appeared nor filed any counter. The applicant has also not filed rejoinder to the counter and additional affidavit filed by the Respondent-Railways. In consideration of submissions made by the rival parties and upon perusal of records, the following points emerge for our consideration.

a) What exactly should be the date when the cause of action of the applicant for

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promotion to CTI-I against ST quota arose and whether he could be said a person aggrieved prior to a date when cause of action arose ?

- b) Whether there existed a vacancy of CTI-I belonging to ST category for promotion of the applicant ?
- c) Whether the Respondent-Railways have acted in accordance with Model Roster read with cadre restructuring policy ?
- d) Whether the applicant could be promoted against UR vacancy ?
- e) Whether the applicant is entitled to relief claimed and if not, to what relief ?

6. For the purpose of determining the points in issue, we would, at first, like to deal with the relevant provisions of restructuring of certain Group C and D cadres. It is to be noted that as per Estt. Sl. No.152/03 read with R.B.E.No.177/03, the above scheme came to be issued on 15.10.2003 (Annexure-A/3), which was later on modified by substituting the provisions appearing at 1,3,4 and 6 therein as per Estt.Sl.No.5/2004 read with RBE No.5/2004 (Annexure-R/2). In this



connection, the relevant provisions as modified in Estt.SI.No.5/2004 read with RBE No.5/2004 are quoted hereunder:

"Date of effect 1. This restructuring of cadres will be with reference to the sanctioned cadres strength as on 1.11.2003. The staff who will be placed in the higher grades as a result of implementation of these orders will draw pay in higher grades w.e.f. 1.11.2003.

Existing Classification and filling up of the vacancies

4. The existing classification of the posts covered by these orders as 'selection' and 'non-selection', as the case may be, remains unchanged. However, for the purpose of implementation of these orders, if an individual Railway servant becomes due for promotion to a post classified as a 'selection' post, the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records and confidential reports without holding any written and/or viva voce test. Naturally under this procedure the categorization as 'outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective of expediting the implementation of these orders. Similarly
- 4.1 Normal vacancies existing on 01.11.2003 except direct recruitment quota and those arising on that date from this cadre restructuring including chain/resultant vacancies should be filled in the following sequence.
 - (i) From the panels approved on or before 01.11.2003 and current on that date.
 - (ii) and the balance in the matter indicated in para 4 above.
- 4.2 Such selection which have not been finalized by 01.11.2003 should be cancelled/abandoned.
- 4.3 All vacancies arising from 02.11.2003 will be filled by normal selection procedure.
- 4.4 All vacancies arising out of the



restructuring should be filled up by senior employees who should be given benefit of promotion w.e.f. 01.11.2003 whereas for the normal vacancies existing on 01.11.2003 junior employees should be posted by modified selection procedure but they will get promotion and higher pay from the date of taking over the posts as per normal rules. Thus the special benefit of the promotion w.e.f. 01.11.2003 is available only for vacancies arising out of restructuring and for other vacancies, the normal rules of prospective promotion from the date of filling up of vacancy will apply.

4.5 xx xx xx

4.6 xx xx xx

Minimum years of service in each grade

6- While implementing the restructuring orders, instructions regarding minimum period of service for promotion issued from time to time should be followed. However, while considering any relaxation in the residency period prescribed for promotions to various categories, General Managers would personally ensure that the safety aspect of Railways is not compromised.”

Reading of the above quoted provisions of the scheme makes it clear that after issuance of promotion order dated 21.1.2004 in favour of Shri C.M.Murmu promoting him to CTI-I, Estt.S1.No.5/04 read with RBE No.5/04 dated 23.1.2004 came to be issued. As per the provisions contained in Para 4.2 of the scheme, such selections which had not been finalized by 01.11.2003 were to be cancelled/abandoned and obviously, the selection and appointment of Shri C.M.Murmu against UR vacancy of CTI-I having not been completed by 01.11.2003 stood cancelled as per order dated 20.10.2004. Therefore, there was nothing wrong in it.

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7. Next comes the vacancies arising out of cadre restructuring. It is not in dispute that due to cadre restructuring 4 (03 UR and 01 ST) vacancies in the grade of CTI-I fell vacant as on 01.11.2003. Keeping in view Para-4, i.e., the existing classification of post in the restructuring scheme, the selection process was initiated for filling up of the above stated four vacancies based on the scrutiny of service records and confidential reports without holding any written and/or viva voce test, which, in effect, placed Shri Murmu against ST vacancy. Apart from the above, it is to be noted that those four vacancies of CTI-I arose as on 01.11.2003 due to cadre restructuring, by which date the applicant was not at all eligible to be considered for promotion to CTI-I, he having been appointed to CTI-II on 24.12.2003 only. Therefore, there was no cause of action for him to assail the manner of filling up of vacancy of CTI-I by Shri Murmu with effect from 01.11.2003.

8. As regards filling up of newly created 5 (04 UR and 01 SC) vacancies of CTI-I, the Respondents have submitted that the applicant was declared qualified in the written test on relaxed standard only and he having not secured the qualifying marks, i.e., 60% in the professional ability, could not be empanelled. In this respect, the Respondents, by filing additional affidavit, have submitted that the minimum Bench marks or pass marks for UR category and SC/ST category are 60% and 50%



respectively. In other words, what the Respondents have made it clear that had the applicant secured 60% marks he could have been selected against UR vacancy. In the above background, it is profitable to quote hereunder as to what the Respondents have stated in the last sub paragraph of paragraph 3 of additional affidavit.

“It would be relevant to mention here that the selection has to be made on the basis of seniority/cum suitability. Therefore, one person has to qualify in written test only on securing the minimum Bench Mark or pass mark meant for the each category (UR 60% and SC/ST 50%). Any additional mark secured by the junior candidate has no meaning or by securing more marks in the test cannot supersede the senior persons. This policy has been adapted in the Railway because the final panel would be prepared on the basis of the seniority among the qualified persons as per the selection procedure laid down in Estt.Srl.No.266/99”.

We have considered the above submissions made by the Respondents. At the same time, with a view to closely scrutinizing the matter, we would like to quote hereunder Esttl.SI.No.97/2002 read with RBE No.128/2003 (Annexure-A/15) in the matter of reservation in promotion – treatment of SC/ST candidates promoted on their own merit:

“No.P/RP/SCT/Policy Dated 22.8.2002
Sub: Reservation in promotion – Treatment of SC/ST
candidates promoted on their own merit.
The Railway Boards letter No.99-E(SCT)1/25/13 dated
07.08.2002 (RBE No.128/2002) is as under:-

The Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide their O.M.No.36028/17/2001-Estt.(Res.) dated 11.7.2002 have considered the references from various Ministries regarding adjustment of SC/ST candidates promoted on their own merit in post based reservation rosters and clarified as under:

(i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against the reserved points of

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the reservation roster. They will be adjusted against unreserved points.

(ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point".

We have considered the above quoted clarifications. Admittedly, the applicant being a Scheduled Tribe candidate was within the normal zone of consideration in the feeder grade for promotion to CTI-I against the newly created 5 (04 UR and 01 SC) vacancies. It is also admitted that based on Clarification (ii) he had been called for written test along with others treating him as if he belongs to general category. It is also admitted that the applicant's seniority position is at Sl.No.4 in the grade of CTI-II. Admittedly, the applicant stands at Sl.No.3 in so far as publication of the result of written test for the post of CTI-I is concerned (Annexure-A/13). But the fact remains that having secured 57% marks, which is less than 60%, he could not be selected. Although the applicant has secured more marks in respect of category to which he belongs, there being no vacancy in ST category, he could not be empanelled. In other words, had he secured 60% marks meant for general category, certainly, he being senior to other general category candidates being placed at Sl. No.4 of the seniority list and at Sl.No.3 of the result of the written test, he could have



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been empanelled against UR vacancy. Viewed from this, the applicant could not be selected for being adjusted against UR vacancy.

9. As regards the contention of the applicant that Shri N.K.Tandia (SC) has been empanelled on relaxed standard, the applicant could have claimed equity had there been vacancy of CTI-I meant for ST category. Therefore, this submission has no relevancy with the promotion of Shri Tandida against a vacancy meant for SC category.

10. While dealing with each and every aspect of the matter, we had also taken into account the model roster for cadre strength up to 14 posts (Annexure-A/1) with a view to bringing to light any flaw, if any, in maintaining roster by the Respondent-Railways. According to roster, cadre strength 4th and 8th belongs to SC and ST respectively, whereas cadre strength 1st, 2nd, 3rd, 5th, 6th, 7th and 9th belongs to UR category. From the materials available and considered, as on 1.11.2003, there existed 4 (03 UR + 01 ST) vacancies of CTI-I, against which S/Shri B.D.Murgi(SC), C.M.Murmu(ST), R.S.Panda (UR) and S.P.Nair (UR) have been promoted. In this connection, we had entertained a doubt regarding promotion of B.D.Murgi(SC) against UR vacancy. But, we found that Shri Murgi being a Scheduled Caste candidate had been considered in view of clarification (ii) of Estt.Sl.No.97/02 read with Para 4 of restructuring policy, against the vacancies those arose as on

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1.11.2003 due to cadre restructuring under the modified selection procedure which was in operation as a one time exception by special dispensation and in the circumstances he was considered and selected having due regard to his seniority and on the basis of scrutiny of service records and confidential reports, without holding any written or viva voce test. Therefore, we have no hesitation to hold that there was no infirmity in maintaining roster from the 1st cadre strength up to 4th. So far as filling up of newly created 5 (04 UR + 01 SC) vacancies in the grade of CTI -I is concerned, as per our discussion held above, there being no deviation from any rules or instruction while adjudging suitability and effecting promotion in respect of S/Shri Abhiram Bisi (UR), Sushil Kumar Rath (UR), L.K.Gauda (UR) and N.K.Tandia (SC), we cannot but hold that the maintenance of roster from 5th cadre strength upto 9th is in order.

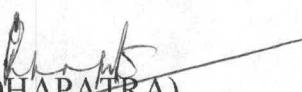
11. Having regard to what has been discussed above, we answer the points in issue as under:

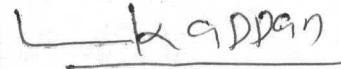
- i) The cause of action for promotion to CTI-I for the applicant arose with effect from 25.12.2005, when he completed two years regular service in the grade of CTI-II and therefore, he could not have any grievance regarding promotion as on 01.11.2003 and thus, he cannot be said to ^{be} a person aggrieved in that behalf.

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- ii) There being no vacancy of CTI-I meant for ST category, the applicant could not be promoted even though he had secured the marks prescribed for that category.
- iii) The Respondent-Railways have acted in accordance with the model roster having regard to Estl.SI.No.97/2002 read with Estl.SI.No.5/05.
- iv) The applicant having not secured 60% marks prescribed for UR category could not be selected for being promoted against that category.
- v) The applicant is not entitled to any relief.

12. In the result, this Original Application fails. No costs.


 (C.R.MOHAPATRA)
 ADMINISTRATIVE MEMBER


 (K.THANKAPPAN)
 JUDICIAL MEMBER