

18

OA No.743& 744 of 2010
B.Bhaskar Rao & Anr-Vrs-UI&Ors


**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

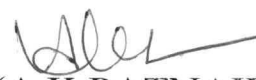
OA Nos. 743 & 744 of 2010
Cuttack, this the 23rd day of April, 2014

Sri B.Bhaskar Rao & Anr. Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ^o
2. Whether it be circulated to PB, CAT, New Delhi for onward circulation? ^p


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judicial)

19

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA Nos. 743 & 744 of 2010
Cuttack, this the 23rd day of April, 2014

CORAM
HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)
HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)

.....

O.A. No. 743 of 2010

Sri B.Bhaskar Rao, aged about 48 years son of Late B.Appa Rao working for gain as Lineman-cum-Wireman, Gr.II under Sr. Section Electrical Engineer (P), E.Co. Railway, Khurda Road at present residing at Railway Qr.No.737/A, Retang Colony, Khurda Road, PO. Jatni, Dist. Khurda, PIN-752 050.

....Applicant

(Advocate(s)-Mr.G.Rath)

-VERSUS-

Union of India represented through –

1. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda, Odisha.
2. The Chief Administrative Officer (Construction), E.Co. Railway, Chandrasekharpur, Bhubaneswar.
3. The Chief Personnel Officer, E.Co.Railway, Chandrasekharpur, Bhubaneswar, PIN-751 023.
4. The Divisional Railway Manager, E.Co. Railway, Khurda Road Po. Jatni, Dist. Khurda, PIN-752 050.
5. Senior Divisional Personnel Officer, E.Co.Railway, Khurda Road, Po. Jatni, Dist. Khurda, PIN-752 050.

.....Respondents

(Advocate (s)-Mr.T.Rath)



O.A.No.744 of 2010

Shri M.Bhaskar Rao, aged about 57 years, Son of Late Raja Rao working for gain as Lineman-cum-Wireman, Gr.II under Senior Section Engineer (Electrical), E.Co.Railway, Palasa at present residing t Railway Qr.No. 150/2, Railway Colony, Palasa, PO. Kasibugga, Dist. Srikakulam, PIN-532222.

.....Applicant

(Advocate(s)-Mr.G.Rath)

-VERSUS-**Union of India represented through –**

1. The General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist. Khurda, Odisha.
2. The Chief Administrative Officer (Construction), E.Co. Railway, Chandrasekharapur, Bhubaneswar.
3. The Chief Personnel Officer, E.Co. Railway, Chandrasekharapur, Bhubaneswar, PIN-751 023.
4. The Divisional Railway Manager, E.Co. Railway, Khurda Road Po. Jatni, Dist. Khurda, PIN-752 050.
5. Senior Divisional Personnel Officer, E.Co. Railway, Khurda Road, Po. Jatni, Dist. Khurda, PIN-752 050.

.....Respondents

(Advocate (s)-Mr.S.K.Ojha)

O R D E R**A.K.PATNAIK, MEMBER (JUDL):**

As we find from record, the main grievance of the Applicants (in both the Original Applications) is as against the manner of implementation of the earlier order of this Tribunal dated 13th October, 2009 in OA Nos. 434, 435 and 436 of 2006.



21

Shri B. Bhaskar Rao- applicant in the present OA No. 743 of 2010 was the applicant in OA No. 435 of 2006 and Shri M. Bhaskar Rao -applicant in the present OA No. 744 of 2010 was the applicant in OA No. 436 of 2006.

2. Their grievance in the earlier OAs was that Shri B. Bhaskar Rao was promoted to the post of Fitter, Grade II under 60% quota earmarked for PCR Posts as per order dated 01.12.1988 and Shri M. Bhaskar Rao was promoted to the post of Lineman Grade III as per the order dated . 13.02.1990. These promotions were taken place in the Construction Organization of the erstwhile South Eastern Railway. The said promotion orders were issued by the Deputy Chief Electrical Engineer (C) of the South Eastern Railway, Visakhapatnam. By subsequent orders, the promotion of the Applicants was confirmed by the competent authorities. But by order dated 25.03.2006, the applicants were reverted to the post of Khalasi Helper which was/is of a lower grade than Mason, Gr.III, Fitter Gr.II and Lineman Gr.III without assigning any reason except saying that they became surplus in the construction Organization.



22

3. This Tribunal while ordering notice to the Respondents to file their counter, by way of ad interim measure directed stay of operation of the impugned order and to maintain status quo of the applicants. Thereafter, the Respondents filed their counter in which it was stated that the applicants were working against PCR posts in the Construction Organization as Khalasi Helper and as per the Rules for promotion to the post of Mason etc. 60% of such posts were earmarked for accommodating PCR Khalasi Helpers. When it was found that absorption/promotion of the Applicants was beyond the quota earmarked for the persons like the applicants and similarly situated employees, the Senior Divisional Personnel Officer, East Coast Railway, Khruda Road Division issued order reverting the Applicants to the Lower Grade of Khalasi Helper. Accordingly, it was prayed by the Respondents that there having no irregularity or illegality in the order of reversion, the OAs filed by both the applicants need to be dismissed.

4. Finally, after going through the materials placed on record by both sides and the arguments advanced by the respective parties, this Tribunal disposed of both the OAs in a common order



23

dated 13th October, 2009. The relevant portion of the order is extracted herein below:

“5. **Admittedly**, the Applicants were promoted to the higher grade on regular basis and such promotion was confirmed by the Respondents-Authorities. If so, the present impugned order has to be justified with reason that the promotion of the applicant is beyond the 60% quota earmarked for PCR Khalasi Helpers. **But on going through the counter affidavits, we do not find anything to show that the Respondent-Railways have reviewed the total vacancy position so as to take a view that the applicants and similarly placed persons were promoted beyond the quota earmarked for them and thus they became surplus.** NO material has been placed before this Tribunal either along with the counters or at any time subsequent to the filing of the counters to show that the promotion of the applicants was beyond the quota of 60% and that the applicants became surplus. Even on the principle of equity, the applicants should have been given opportunity to show with materials that they are not rendered surplus. In the above circumstances, we are of the view that the interim orders passed by this Tribunal, while admitting the OAs, should continue until the Railways consider the cases of the applicants in the light of this order. **However, it is directed that the Respondents shall take immediate steps to review the vacancy position and the earmarked quota available to PCR Khalasi Helpers and take a decision in the matter.** This exercise shall be completed within a reasonable time at any rate within three months from the date of receipt of copy of this order. Till such a decision is taken, the Annexure-A/1 order shall be kept in abeyance. Ordered accordingly. (*emphasis supplied*)

5. In compliance of the aforesaid direction of this Tribunal, the Chief Administrative Officer (Con.), E.Co. Railway, Bhubaneswar issued letters dated 02/05.07.2010 one of the said order is quoted herein below:

“That you were initially engaged as Casual Khalasi then promoted to Casual BTM w.e.f. 16.07.1983 and attained Ty. Status as BTM in scale Rs.210-290/- w.e.f. 01.01.1984 in



24

Electrical Construction Organization of Visakhapatnam Unit. Thereafter, you were promoted as Fitter Gr.III in scale of Rs.950-1500/- w.e.f. 16.08.1985 on adhoc measure vide Dy.CEE/C/VSKP's O.O.No.E/107/85 dated 05.08.1985 under Annexure-A/3 and Fitter Gr.II in scale Rs.1200-1800/- w.e.f. 01.11.1988 on ad hoc measure vide O.O.No.E/205/88 dated 01.12.1988 under Annexure-A/4 to the OA in Electrical Construction Organization of VSKP's unit. As per Estt. Srl.No.78/1996 so far as the ad hoc promotion is concerned, the promote is purely on adhoc measure and the staff has not been selected for regular promote and the temporary promotion which was given to you confers no right for regular promotion and the promotion so given to you is purely provisional. When the matter stood thus you were declared surplus in construction Organization and were posted as LCWM Gr.II in scale Rs.4000-6000/- under Senior Section Engineer Electrical (Power)/Khurda Road with a condition that the lien will be maintained in the PCR cadre for future promotion till you absorbed in open line organization, on accepting bottom seniority in the recruitment grade if so desired as per CPO/S.E. Railway/GRC's guidelines and instructions laid down as per Order dated 22.09.2004 passed by Respondents No.4. Accordingly, options were called for regular absorption in Open Line on accepting bottom seniority in the recruitment grade on permanent basis.

Your grievance is that you were posted under Senior Section Engineer Electrical (Power)/Khurda Road as KSI Helper in scale of Rs.2650-4000 against existing vacancies whereas in similar circumstances staff namely Sri T.Rama Rao & Sri L.Sanyasi Rao who were working as Wireman Gr.III in scale of Rs.3050-4590/- have been posted in identical scale of pay of Rs.3050-4590/- vide Sr.SPO/KUR's Office Order No.46/2006 dated 25.03.2006. However, it is stated that Sri T.Rama Rao & Sri L.Sanyasi Rao are regularized in the grade of Rs.3050-4590/- in PCR cadre of VSKP's Electrical Construction Unit. Accordingly, the Divisional Competent Authority posted them in the same



25

scale of Rs.3050-4590/- after joining in the Khurda Road Division.

Railway Board's decision on review of system of Construction Reserve for Non-Gazetted Staff vide letter No. E (NG)II/2002/PO/Genl./1 dated 10.05.2002 circulated under CPO/S.E. Railway/GRC's Estt. Srl. No.66/2002 dated 20.06.2002 reads as under:

"The Board has reviewed the matter and come to the conclusion that with the above development having taken place the concept of Construction Reserve has already lost its utility and, therefore should no longer be used for any purpose whatsoever. If any staff happens to continue in construction/projects without a position/lien in the Open Line in the appropriate category, immediate action should be taken to provide him the same so that there is no difficulty at the time of his repatriation from the Construction/Project when the need arises and he does not suffer in the matter of seniority and promotion."

In view of the facts stated above as well as the ruling position of the Permanent Construction Reserve post, the undersigned come to the conclusion that since the concept of PCR has lost its utility and, therefore, should no longer be used for any purpose whatsoever. **Therefore, further review of PCR post cannot be made at present.**

The order of Hon'ble CAT/CTC is compiled accordingly." (*Emphasis supplied*)

6. Being aggrieved by the aforesaid order, the instant OAs have been filed by the Applicants praying for quashing of the order reverting them to lower grade/post vide Office Order No. 46/2006 dated 25.03.2006 and the order of rejection dated 02.05.2010 with



28

further prayer to direct the Respondents to grant them all their service and financial benefits retrospectively.

7. In the counter filed by the Respondents it has been stated that in the meantime, the cases of the applicants along with others were considered for promotion to the post of Technician Grade III based on the normal seniority in Open Line. They were found suitable to the post of Technician, Grade III in scale of Rs.5200-20-2000/- in Pay Band 1 with Grade Pay of Rs.1900/- w.e.f. 08.09.2010 i. e. the date of promotion of their immediate juniors. Accordingly order of regularization in the post of Technician Grade in the scale of pay of Rs.5200-20, 200/- in Pay Band 1 with GP Rs.1,900/- w.e.f. 08.09.2010 with retrospective effect has been issued on 26/27.09.2012 (Annexure-R/2). Further it has been stated that in compliance of the order of this Tribunal the cases of the applicants were reconsidered on the basis of the Railway Board's decision on review of system of Construction Reserve for Non-Gazetted Staff issued vide letter No. E (NG)II/2002/PO/Genl./1 dated 10.05.2002 and circulated under CPO/S.E. Railway/GRC's Estt. Srl. No.66/2002 dated 20.06.2002



27

and outcome of such consideration was intimated to the applicants in a well-reasoned order which needs no interference.

8. We have heard Mr.G.Rath, Learned Senior Counsel appearing for the Applicants assisted by Mr.D.K.Mohanty, Learned Counsel (in both the OAs) and Mr.T.Rath, Learned Standing Counsel for the Respondents in OA No. 743 of 2010 and Mr.S.K.Ojha, Learned Panel Counsel in OA No. 744 of 2010 and perused the materials placed on record.

9. Mr.Rath, Learned Senior Counsel appearing for the Applicants drew our attention to the common order dated 13th October, 2009 of this Tribunal passed in earlier OAs filed by the Applicants vis-à-vis the order of rejection dated 02/05.07.2010 to state that promotion of the applicants in the Open Line has nothing to do with regard to the issues involved in both the OAs. The issues involved in both the OAs were against the order of reversion of the Applicants as ordered in O.O. No. 46/2006 dated 25.03.2006 and in case the applicants succeed in these OAs, then they will be entitled to be placed in higher rank/pay than what has been allowed to them. It was argued that this Tribunal after going through the materials placed on record have held that as no evidence has been



filed to show that the Respondent-Railways have reviewed the total vacancy position so as to take a view that the applicants and similarly placed persons were promoted beyond the quota earmarked for them and thus they became surplus, the Respondents shall take immediate steps to review the vacancy position and the earmarked quota available to PCR Khalasi Helpers and take a decision in the matter and till then the order of reversion shall be kept in abeyance. The Respondents, in other words, in the impugned order dated 02/05.07.2010 denied to carry out the order of this Tribunal by stating in the said order that further review of PCR post cannot be made at present which is contemptuous and is liable to be set aside. On the other hand, Mr.Rath, Learned Standing Counsel for the Railway and Mr.Ojha Learned panel counsel for the Railway by referring to the relief sought in both the OAs have candidly submitted that they do not have any objection if the relief sought by both of them is, as it is, allowed.


10. In view of the points raised/canvassed by Mr.G.Rath, Learned Senior Counsel appearing for the Applicants and the stand taken by Learned Counsel appearing for the Railway-Respondent, we do not see any justification to enter into detailed discussion on




the merit of the matter. Accordingly, we quash the O.O. No. 46/2006 dated 25.03.2006 and the order of rejection dated 02/05.07.2010 and to direct the Respondents to treat the status of the Applicants as they were prior to the Office Order No. 46 of 2006 for all purposes till a decision is taken in the light of the order/direction issued by this Tribunal in common order dated 13th October, 2009 passed in OA Nos. 434, 435 and 463 of 2006 for which the impugned order dated 02/05.07.2010 is hereby quashed.

11. Though we have heard the matter one after the other since issues involved in both the OAs are same and similar for the sake of convenience, this common order is passed which will govern both the OAs.

12. With the discussions, observation and directions made above, both the OAs stand disposed of. There shall be no order as to costs.



(R.C.MISRA)
Member (Admn.)



(A.K.PATNAIK)
Member (Judicial)