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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.763 OF 2010

Cuttack this 27th day of January, 2014

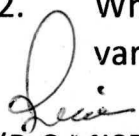
A.Bhagabati Rao...Applicant

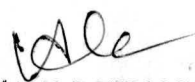
Vs.

Union of India ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.763 OF 2010

Cuttack this 27th day of January, 2014

CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

A.BhagabatiRao

Aged about 52 years

S/o. late Rabindrudu

At present working as Chief Commercial Inspector

E.Co.Railway

Bhubaneswar

Dist-Khurda

...Applicant

By the Advocate(s)-Mr.R.K.Kar

-VERSUS-

Union of India represented through

1. General Manager
E.Co.Railway
Rail Sadan
Chandrasekharpur
Bhubaneswar
Dist-Khurda
2. Chief Personnel Officer
E.C.Railway
Chandrasekharpur,
Dist-Khurda
3. Divisional Railway Manager
E.Co.Railway
Khurda Road Division
Town/PO/Dist-Khurda
4. Additional Railway Manager
E.Co.Railway,
Khurda Road Division
Town/PO/Dist-Khurda



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5. Senior Divisional Personal Officer
E.Co.Railway, Khurda Road Division
Town/PO/Dist-Khurda
6. Chief Commercial Manager
Rail Sadan, E.Co.Railway
Chandrasekharpur, Bhubaneswar
Dist-Khurda
7. Rudra Narayan Pani
S/o.Sri Benudhar Pani
At present working as Commercial Inspector
East Coast Railways
Talcher Railway Station
Dist-Angul

...Respondents

By the Advocate(s)-Mr.B.B.Pattnaik

ORDER

R.C.MISRA, MEMBER(A):

This Original Application has been filed by the applicant, who is working as Chief Commercial Inspector in the East Coast Railways at Bhubaneswar praying for the following relief.

- i) To quash the impugned order under Annexures-5, 10,11, 12, 15 and 16 as the same are bad, illegal, arbitrary and mala fide in law; and
- ii) direct/order/command the respondents No. 2,3, & 5 to declare the applicant as Senior to the Respondent No.7 retrospectively with all service benefits
- iii) pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.

2. In a nut shell the facts of the case are that the applicant was appointed as Commercial Clerk on 16.4.1977 and was promoted as Senior

R.C. Misra

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Clerk (Coaching) on 1.1.1984. Respondent No.7 was appointed as Commercial Clerk on 17.10.1981 and was promoted as Senior Commercial Clerk (Goods) on 25.9.1987 long after the applicant's promotion. The applicant had opted for Commercial Clerk (Coaching) and the Respondent No.7 had opted for Commercial Clerk (Goods). Therefore, the promotional avenues were different in respect of the applicant and Respondent No.7. Respondent No.7 was officiating as Commercial Controller when he was selected for the post of Senior Research Development Inspector (in short SRDI) which is an ex-cadre post in the scale of Rs.1600-2600, subsequently revised to Rs.5500-9000/-. There was a stipulation that the holder of this post will have no right for confirmation and would retain his lien in the parent post. On 28.7.1994, the Respondent-Department brought out a circular for filling up of the post of Commercial Inspector in the scale of Rs.1400-2300/- wherein it was laid down that both Commercial Clerks (Goods & Coaching) in the scale of Rs.1200-2040 of the Commercial Department were eligible for selection. Both the applicant and Res.No.7 applied for the aforesaid post of Commercial Inspector, Gr.III, but the Res.No.7 did not reach the zone of consideration. The applicant having faced the written and viva voce test was promoted to the post of Commercial Inspector, Gr.III on 31.1.1995. Respondent No.7 who was earlier appointed as Senior Research Development Inspector, (SRDI) an Ex-cadre post, was promoted in his parent line as Head Clerk. Further, on 27.11.1998 a decision was reached by the Respondent-Department after

Goods
Head Clerk

Recd

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consultation with the recognized unions of the Railways to open a channel of promotion to SRDI/RDI for further advancement of inspectorial staff of the Commercial Department. While the matter stood thus, Res.No.7 was served with a letter about his poor performance in his job on 13.7.1999 and subsequently, an order of repatriation dated 16.7.1999 was also served on Res.No.7 for its immediate implementation. But on 20.7.1999 the aforesaid order of repatriation was cancelled. Thereafter, three OAs were filed before this Tribunal. O.A.No.370/99 was filed by Res.No.7 with a prayer to quash Annexure-7 of the O.A. which was the order of repatriation dated 16.7.1999 and to implement the order of cancellation of the order of repatriation vide Annexure-8. O.A. No.554/99 was filed by the present applicant for quashing of the order dated 27.11.1998 (Annexure-A/5) regarding the opening of channel of promotion to the SRDI/RDI and also quashing of Annexure-8 which has been explained above. O.A.No.386 of 1999 was filed by one D.Gurudiha for quashing of Annexure-5 and Annexure-8. All the three OAs were heard and disposed of by the Tribunal through a common order dated 3.8.2000. The Tribunal held that the post of SRDI has not been en-caderised as Commercial Inspector, Gr.III. Only a channel of promotion has been opened for each of them who are in the scale of Rs.5000-8000 for promotion to the post of Commercial Inspector, Gr.II in the scale of Rs.5500-9000/-. The Tribunal further held that order dated 20.7.1999(Annexure-8) cancelling the order of repatriation which had proceeded on the assumption that the incumbent of the ex cadre post of



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SRDI/RDI would be merged in the cadre of Commercial Inspector was without any basis. Based upon these findings, the Tribunal rejected O.A.No.370/99 and partly allowed O.A.No.386 and 554 of 1999. The prayer of the applicant in O.A.No.554/99 for declaring that the decision to count ex cadre service experience of Res.No. 7 in Commercial line was illegal was rejected because no order was passed by the departmental authorities to count such experience towards the further promotion of Res.No.7. The repatriation of Res.No.7 was upheld and its cancellation vide Annexure-8 was set aside by the Tribunal.

3. Subsequently, Res.No.7 challenging the aforesaid orders of the Tribunal filed OJC Nos.7493, 8546 and 8548 of 2000 before the Hon'ble High Court of Orissa. Applicant also filed O.J.C.No.11847 of 2000 before the Hon'ble High Court. During pendency of the aforesaid Writ Petitions in the Hon'ble High Court, the Respondent-Department issued the following three official orders.

Order dated 23.10.02- The Respondent No.7 was allowed as SRDI in the scale of pay of Rs.5000-8000/-

Order dated 22.8.05- The Respondents fixed the seniority of Respondent No.7 in the Cadre of Commercial Inspector

Order dated 27.10.06- Respondent No.7 was interpolated in the seniority list of Commercial Inspector above the applicant.



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4. In view of the orders which were issued by the Respondent-Department as stated above, Respondent No.7 did not press the Writ Petitions before the Hon'ble High Court and accordingly, the Hon'ble High Court vide order dated 29.11.2006 disposed of the Writ Petitions giving liberty to the applicant to pursue the matter as per law. In the meantime, the applicant had filed a representation before the Respondent-Department challenging the orders, as stated above, issued by them and this representation was pending. After the WPs were disposed of, the applicant filed O.A.No.894 of 2006 challenging those orders. Another OA was also filed by another affected employee in O.A.No.31/2007. Both the OAs were heard and disposed of by a common order of this Tribunal dated 21.12.2009. After discussing the matter at length the Tribunal directed the Respondents to consider and dispose of the representation taking into consideration the earlier judgment of this Tribunal and also the orders passed by the Hon'ble High Court. But, Res.No.3 vide order dated 23.3.2010(Annexure-15) rejected the representation on the ground that the above mentioned orders had been passed based upon the policy decision taken by Respondent No.2.

5. The applicant has pleaded that in view of withdrawal of the Writ Petitions by Res.No.7, the judgment of the Tribunal dated 3.8.2000 stands and therefore, the Respondent-Department have committed an illegality by passing orders at Annexures-10, 11 and 12 in favour of Res.No.7. The orders passed by Respondent-Department run contrary to the judgment of



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this Tribunal. This Tribunal in their order dated 21.12.2009 had directed the Respondents that the representation pending before them should be decided taking into account the previous judgment of the Tribunal as well as the orders passed by the Hon'ble High Court of Orissa. The Respondent-Department have not properly complied with the directions of this Tribunal since without considering the previous orders of the Tribunal as well as the Hon'ble High Court of Orissa they have rejected representation on the ground of a so called policy decision of Res.No.2 and passed the impugned order vide Annexure-15. Res.No.3 in the speaking order has mentioned that the policy decision of the CPO cannot be challenged, which according to applicant, is totally unauthorized since only the Railway Board can take such a policy decision. The further ground of challenge made by the applicant is that the Tribunal had already held that the order dated 27.11.1998(Annexure-A/5) is not an order of en-cadrement of SRDI to be tagged with Commercial Inspector, Gr.II but only an order for opening a channel of promotion for CMI-III in the scale of Rs.5000-8000/-. But the authorities had allowed Res.No.7 to work as SRDI in the scale of Rs.5000-8000 vide order dated 23.10.2002 without repatriating him to his parent cadre as Head Clerk. This has taken place during pendency of various litigations and therefore, was illegal ^{with regard to} the settled position of law as well as it amounts to a contemptuous action against the orders of this Tribunal. Besides, it has been stated that the authority had also shown undue anxiety to pass the orders while litigations in the High Court of Orissa as well as in

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the Tribunal were pending. The allegation made by the applicant is that the authorities have willfully and intentionally violated the orders of this Tribunal dated 3.8.2000 which had not been set aside in the higher forum. In view of withdrawal of the Writ Petitions, the orders of this Tribunal stand as per the submission made by the applicant in this O.A. The applicant has also vigorously pleaded that placing Res.No.7 higher than the applicant in the seniority list is bad in the eyes of law.

6. On the other hand, the Respondent-Department have filed their counter reply. They have admitted that the post of SRDI in the scale of Rs.5000-8000 being an ex cadre post is filled up by conducting the Screening Test. The staff working as Ticket Collector, Senior Ticket Collector, Commercial Clerk and Senior Commercial Clerk are eligible to give their options for the post of SRDI. Res.No.7, (Rudra Narayan Pani), while working as Senior Goods Clerk in the Commercial Department was promoted to officiate as SRDI in the scale of Rs.5000-8000 vide office order dated 2.11.1989. It has been admitted in the counter reply that Res.No.7 was repatriated to his substantive post of Head Clerk in the scale of Rs.5000-8000 vide office order dated 16.7.1999 and he had not joined in his parent post and remained on the sick list. Thereafter, vide order dated 20.7.1999, the order of repatriation in respect of Rs.7 was cancelled. Therefore, he was allowed to continue as SRDI against an existing vacancy in administrative interest. Later on seniority of Res.No.7 was interpolated in the category of Commercial Movement Inspector, Gr.III in the scale of



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Rs.5000-8000 after taking into account his past service rendered in the ex cadre post of SRDI. However, it was mentioned that the interpolation of seniority of Res.7 was provisional and was subject to final outcome of OJC Nos. 7493/2000, 8546/2000 and 8548/2000 pending in the Hon'ble High Court of Orissa. Coming to the speaking order which is at Annexure-15 of the OA, the Respondent-Department have only said that the Tribunal has not given any direction to the Respondents not to count any past service rendered by Res.No.7 and not give him any further promotion. In fact the orders passed by the Respondent-Department is as per policy decision taken at the headquarters level. Further ground taken in the counter reply is that the Hon'ble High Court of Orissa while disposing of the OJCs vide order dated 29.11.2006 had held that the posting of the petitioner(Res.No.7) had already been approved by the Deputy Chief Personnel Officer(HQ) for Chief Personnel Officer by communication dated 22.8.2005. The seniority of the petitioner has also been determined by the Senior Divisional Personnel Officer/KUR and the petitioner accepted the same. Therefore, the petitioner was not pressing the W.Ps. Accordingly, the WPs were disposed. However, the Hon'ble High Court did not express any opinion on the merit of the order issued by the concerned authorities and as such, according to Respondents, the seniority of Res.No.7 has been interpolated in the cadre of CMI, Gr.III w.e.f. 3.11.1989 and he was promoted to the post of CMI-II, CMI, Gr.I and Ch.CMI w.e.f. 21.7.94,

Signature

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26.12.1997 and 1.11.2003 respectively at par with his next junior one S.S.Panda.

7. Private Respondent No.7 though noticed has neither entered appearance or chosen to file any counter.

8. We have anxiously heard the learned counsel for both the sides and also perused the records connected with this case.

9. It is important at first to refer to the decision taken by this Tribunal vide common order dated 3.8.2000 in O.A.Nos.370, 386 and 545 of 1999. O.A.No. 370/99 was filed by Res.No.7, O.A No.386/99 was filed by one D.Gurudhia and O.A.No.554/99 was filed by the present applicant. In view of the fact that all the three OAs pertained to one common issue, the Tribunal passed a common order dated 3.8.2000. In this order O.A.No.370/99 was rejected and OA Nos.385 and 554/99 were partly allowed. With regard to the important issues which have been involved in this case, the following findings of the Tribunal are worth quoting.

"On a plain reading of this circular it cannot therefore be said that the post of SRDI/RDI has been encaderised along with Commercial Inspectors, Gr.III. All that has been done is to provide that SRDI/RDI in the scale of Rs.5000-8000/- will be entitled to be considered for promotion to the post of Commercial Inspector Grade-II in the scale of Rs.5500-9000/- and the manner of counting their seniority has also been provided which does not concern us in the present case even though the learned counsels for Shri D.Gurudiah and Shri A.Bhagawati Rao have made elaborate submissions in this regard".

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"In view of the above, we hold that by the order dated 27.11.1998 the post of SRDI/RDI has not been encadaredised and this contention of the counsel for the petitioner R.N.Pani is accordingly rejected".

10. In OJC Nos.7493, 8546 and 8548 of 2000, the Hon'ble High Court of Orissa in their order dated 29.11.2006 have dealt with the order dated 23.10.2002 which was brought to the notice of the Hon'ble High Court by the petitioner Rudhranayan Pani, as under.

"Sri R.N.Pani, SRDI/KUR who was under order of repatriation and posting as Hd.Goods Clerk at BDPL (Long Sick) is allowed as SRDI/KUR IN SCALE Rs.5000-8000/-(RSRP) undrSr.DCM/KUR against an existing vacancy.


The posting of Sri R.N.Pani as SRDI in scale Rs.5000-8000/-(RSRP), has been done with the approval of DRM/KUR dtd.18.10.2002".

11. The Hon'ble High Court have further noted that the posting of the petitioner has already been approved by the Deputy Chief Personnel Officer (HQ) for Chief Personnel Officer by communication dated 22.08.2005. It also has been noted that seniority of the petitioner was determined by a subsequent order dated 27.10.2006 passed by the Senior Division Personnel Officer, KUR and the petitioner has accepted the same. Therefore, the learned counsel for the petitioner did not press the Writ Petition³² and accordingly, the Writ Petitions were disposed of. However, the Hon'ble High Court observed that they did not express any opinion on the merits of this order. Subsequently, the present applicant filed O.A.No.894/2006 and one D.Grudhua^{filed} O.A.No.31/2007 in this Tribunal which^{were} was disposed of by a common order dated 21.12.2009. In this order,

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the issues involved have been discussed in detail. However, it was brought to the notice of the Tribunal that one representation filed by the present applicant was pending consideration with the authorities since 2002 and it appeared that no decision had been taken thereon till date. In conclusion therefore, the Tribunal disposed of the O.A with direction to Respondent No.3 with whom the representation of the applicant was pending to consider and dispose of the same with a reasoned order keeping in mind the earlier orders of the Tribunal as also the orders of the Hon'ble High Court of Orissa and communicate the result thereof to the applicant within a period of 60 days from the date of receipt of the order. ~~Coming to~~ 
Annexure-15 which is a speaking order dated 23.3.2010 of Respondent No.3 passed by way of disposing of the representation in obedience to the orders of the Tribunal dated 21.12.2009 in O.A Nos.894/2006 and 31/2007, requires some discussion. At the beginning of the order, orders of this Tribunal have been quoted and thereafter at Para-5, the following has been mentioned.

"With the consultation of the recognized trade unions of S.E.Railway and appeal of CCM/S.E.Railway/GRC has taken a decision to open a channel of promotion to the post of SRDI/RTI of Commercial Department for further advancement with the Inspectorial staff of Commercial department. The seniority (non-fortuous service) in the grade of SRDI/RDI to be taken into consideration to determine the inter se seniority in the category of commercial InwspctorGr.III and the next promotion to the post of CMI-II and onwards. The same has been communicated vide Lr.No.P/H/3/Conf/AVC/SRDI/RDI dtd 27.11.98 has clarified that the present incumbents of SRDI/RDI who have already been screened earlier should not be subject to further suitability test/selection".



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12. Subsequently, at Para-10 of the speaking order, the following has been mentioned.

"The policy decision of CPO/SER/GRC cannot be challenged since CPO/SER/GRC has taken a decision with the consultation of both the Trade Unions and CCM/SER to merge the cadre of SRDI/RDI in the category of CM -III for further advancement and the same has also been upheld by the Hon'ble CAT/CTC.

After duly consideration and taking into account, the orders passed by the Hon'ble CAT/CTC and the administrative decision taken in the case till date, it is to inform you that the seniority of Sri R.N.Pani as CMI-III in scale Rs.5000-8000/-(RSRP) has been fixed correctly after following due procedure. Accordingly, your representation is hereby disposed of".

13. Prima facie, these two paragraphs of the speaking order run contrary to the decision of the Tribunal dated 3.8.2000. As has been quoted earlier, the Tribunal had held that it could not be said that that the post of SRDI/RDI had been encaderised along with Commercial Inspector, Gr.III. All that has been done is to provide that SRDI/RDI in the scale of Rs.5000-8000 will be entitled to be considered for promotion to the post of Commercial Inspector, Gr.II in scale of Rs.5500-9000/-. There was a clear finding that the post of SRDI/RDI had not been encaderised and only a channel of promotion was provided. In the speaking order it has been stated that the CPO has taken a decision in consultation with both the Trade Unions to merge the cadre of SRDI/RDI in the category of CM-III for further advancement and the same has also been upheld by the Tribunal. It

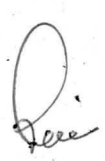


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is quite plain that such a statement runs contrary to the decision of this Tribunal. By citing a ~~zone~~^g policy decision of the CPO, the orders of the Tribunal cannot remain unimplemented. In fact the orders should be implemented both in letter and spirit.

14. The contention of the learned counsel for the applicant in this case has a strong basis that the orders of the Tribunal on this issue have not been strictly followed. In order dated 21.12.2009, this Tribunal had directed that the pending representation should be considered keeping in mind the earlier orders of the Tribunal as also the orders of the Hon'ble High Court of Orissa. In this regard, the speaking order suffers from a great lacuna of not giving due regards^g to the orders of the Tribunal as well as Hon'ble High Court while disposing of the representation of the applicant. It was the bounden duty of the Respondent-Department to strictly follow the orders of the Tribunal and examine each of the issues in the representation in the light of the earlier orders of the Tribunal as well as the orders of the Hon'ble High Court. Not only this has not been followed, but it appears prima facie that Para-10 of the speaking order is inconsistent with the orders passed by the Tribunal on 3.8.2000. The speaking order dated 23.3.2010(Annexure-A/15) therefore, suffers from infirmities and accordingly, it is quashed. The Respondent-Department are directed to pass a speaking order in strict compliance of the orders of this Tribunal dated 21.12.2009 keeping in mind the earlier orders of the Tribunal dated 3.8.2000 as well as the orders of the Hon'ble High Court of Orissa.



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15. Although the learned counsel for the applicant has made a prayer for quashing the orders of the concerned authorities filed at Annexures- 5,10,11, and 12, we at this stage do not find any ground to quash those orders since the same will be dependent upon the consideration by the concerned authorities while issuing a fresh speaking order as directed above.

With the above observation and direction, this O.A. stands allowed to the extent indicted above.. No costs.

(R.C.MISRA)
MEMBER(A)



BKS



(A.K.PATNAIK)
MEMBER(J)