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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

OA NO.898 OF 2010
Cuttack this the 26th day of June, 2013

Kailash Chandra Mohapatra...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi or not ? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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

Kailash Chandra Mohapatra, aged about 55 years, S/o. Sadhu Charan Nayak,
Previously working as Depot Store Keeper(DSO), Gr.III (Retired Jr.Clerk), O/o
Dy.Chief Engineer, E.Co.Railway, Sambalpur

...Applicant

By the Advocate(s)-M/s.D.S.Mishra
S.Das
S.L.Kunar

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Administrative Officer©, , East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Chief Personnel Officer, , East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
4. Chief Engineer(Const), , East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
5. Dy.Chief Engineer(Const.), , East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
6. Divisional Railway Manager, East Coast Railway, Khurda Division, Dist-Khurda

...Respondents

By the Advocate(s)-Ms.S.L.Pattnaik



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

The applicant in the present Original Application is a retired employee of the East Coast Railways who started his service career in the year 1972 as a Gangman in the Khurda Road Division of the S.E.Railways. He was regularized as a Gangman in Group-D post on 1.8.1973 and subsequently, on 26.2.1979, he was brought to the Construction Organization in which he was promoted as Junior Clerk on 1.8.1980. He was further given an ad hoc promotion as Sr.Clerk on 28.9.1984. He got a 2nd adhoc promotion as Ward Keeper which is at present designated as Depot Store Keeper on 2.9.1985. He maintained his lien in the open line of Khurda Road Division, but worked all through in the Construction Organization and retired on 30.9.2008. In his O.A. the applicant has submitted that although he was working as Depot Store Keeper, the Railways decided to follow a policy of reversion in cases where two ad hoc promotions were allowed in the Construction Organization as a consequence of which he was reverted to the post of Sr.Clerk on 13.11.2000 and thereafter, reverted to the post of Junior Clerk on 29.11.2001. The applicant had filed two Original Applications before this Tribunal. He had filed O.A.No.321/2000 for regularization of his service in the Construction Organization against the Permanent Construction Reserve. He also filed O.A.No.132/2000 challenging the order of reversion to the post of Junior Clerk. Both these OAs were heard along with other O.As of similar nature and disposed of by this Tribunal vide common order dated 21.3.2002. The Ministry of Railways challenged the orders passed by this Tribunal dated 21.3.2002 by way of



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filing Writ Petitions which formed the subject matter of O.J.C.No.5477 and 5459 of 2002. Some other petitioners/applicants also filed W.P.(C) Nos. 3198/02, 3199/02, 3451/02 and 4149/02. These Writ Petitions were disposed of by the Hon'ble High Court of Orissa by their orders dated 7.3.2006 and 8.3.2006. The submission made by the applicant in this O.A. is that the Hon'ble High Court decided that the Railway Board circular dated 13.12.1999 which restrained and prevented ad hoc promotions would not affect the ad hoc promotions made prior to the issuance of this circular, which meant that the circular will have only prospective effect and no retrospective application. Based upon the law decided by the Hon'ble High Court the applicant made a representation dated 12.4.2006 to the Chief Personnel Officer (Respondent No.2) for protection of his pay in the scale of Depot Store Keeper. The applicant retired on 30.9.2008 and by that time there was no response by the Respondents to his representation. After retirement the applicant made another representation on 18.6.2009 to the C.A.O.(Con) with a copy to the Chief Personnel Officer for the purpose of getting the benefit of the judgment passed by the Hon'ble High Court in the aforesaid Writ Petitions, delivered on 7.3.2006 and 8.3.2006. Thereafter, having received no response to his representations, the applicant filed O.A.No.431/09 in this Tribunal which was disposed of on 4.9.2009 with a direction to the Respondents to dispose of the representation submitted by the applicant. In compliance with the direction issued by this Tribunal, Respondent No.2 considered his representation but rejected the same communicating the orders to the applicant

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in letter dated 25.2.2010, which is the subject matter of challenge before this Tribunal.

2. The ground taken by the applicant in this O.A. is that his case is squarely covered by the decision of the Hon'ble ^{Orissa} High Court in Chintamani Mohanty case decided in OJC Nos.5477/2002 and 5459/2002 and W.P. ©Nos.3198/2002, 3199/2002, 3451/2002 and 4149/2002 on 7.3.2006 and 8.3.2006. His case is that the ad hoc promotions were conferred on him prior to the date of issue of the circular dated 13.12.1999 by the Railway Board, which restrained giving of ad hoc promotions and therefore, in accordance with the ratio decided by the judgment of the Hon'ble ^{Orissa} High Court, ad hoc promotions given to him must remain unaffected. His specific prayer is that the order of rejection passed by the Respondents placed at Annexure-10 of the O.A. should be quashed and directions should be issued to the Respondents by this Tribunal to give the applicant the complete benefit of the judgment of the Hon'ble ^{Orissa} High Court as mentioned above.

3. In the counter affidavit filed by the Respondents, it has been admitted that the applicant was appointed on 28.4.1972 as a substitute Gangman and was subsequently confirmed with effect from 1.8.1973 in the open line in the Engineering Department of Khurda Division. He came over to the Construction Organization on 26.2.1979 while holding a lien in the open line. He was promoted as Junior Clerk on 1.8.1980 on ad hoc basis and on ^{8 d} 18.9.1994 he was promoted as Senior Clerk again on ad hoc basis. He got his next promotion as Ward Keeper (DSK, Gr.III) on 2.9.1985 which was also on ad hoc basis. He was given all these

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promotions according to requirement of the Railway administration as an ad hoc measure, without his going through any departmental test as required in the case of regular promotion. According to instructions of the Railways, the applicant having retained his lien in the open line would not be eligible for confirmation against any ~~PRC~~^{R &} post. Regarding the reversion of the applicant, the counter affidavit mentions that in view of the policy decision at the higher level by the Railway Administration as communicated vide CAO/C/BBS's DO No.DCPO/Con/P/BBS/Adhoc/119 dated 26.05.2000 and subsequent circular No.DCPO/Con/P/BBS/Adhoc Promotion/536/03600 dated 13.11.2001 and also the instructions of the Railway Board communicated from time to time, the applicant was reverted from the post of DSK to Sr.Clerk on 13.11.2000 and from Sr.Clerk to Jr.Clerk on 29.11.2001. It is also mentioned that many others who are similarly situated railway employees were also reverted back to their first ad hoc promotional stage. Since it was a policy decision of the Railway Administration and the reversions were made on the basis of the instructions issued by the Railway Board, the applicant was not entitled to pay protection in the scale of DSK, i.e. Rs.5000-8000/-. The applicant has also retired on 30.9.2008 and his pensionary benefits have been paid to him.

4. The applicant had made a specific prayer about his entitlement to get the benefits of the judgment of the Hon'le High Court in the various Writ Petitions. Regarding this point, the stand taken by the Respondents in the counter affidavit is that the case of the present applicant and the case of other persons in whose



favour judgment was delivered by the Hon'ble High Court in OJC No.s3198/2002, 3199/2002, 3345/2002 and 4149/2002 and OJC Nos.5477/2002 and 5459/2002 are different and cannot be treated on the same level. In the judgment of the Hon'ble High Court, it was directed that the ad hoc promotion which was granted prior to the issue of the Railway Board letter dated 13.12.1999 would not be affected and the said letter dated 13.12.1999 will not have any retrospective effect. The other grounds² on which the Hon'ble High Court had laid the case was that the concerned employees had qualified the competitive test and therefore, their names were placed in the merit list. Their qualifying test was taken at every stage of selection before recommendations for their promotion. On the other hand, the present applicant only obtained ad hoc promotions before the issue of the circular dated 13.12.1999, but he did not pass any competitive test and was not in the merit list at any point of time and therefore, his representation was rightly rejected by the order dated 9.2.2011 which is placed as Annexure-10 of this O.A. It has been reiterated in the counter affidavit that the present applicant along with many other similarly situated railway employees have been reverted back to their first ad hoc promotional stage in accordance with the policy decision of the railway administration, and therefore, the applicant's case in this O.A. does not have any merit.

5. We have heard the learned counsels representing both the parties in this case. Both the learned counsels have also filed their written note of submissions.



6. In the written note of submission, the learned counsel for the applicant has again emphasized that the ad hoc promotions given to him were effected prior to the Railway Board circular issued on 13.12.1999 on the policy of restraining more than one ad hoc promotion and this cannot affect the promotions retrospectively as per the law settled by the Hon'ble High Court in their judgments dated 7.3.2006 and 8.3.2006. It is further stated that the applicant had physically worked as Depot Store Keeper till 27.3.2006 and was paid salaries of DSK by the orders of this Tribunal even though he was reverted with effect from 13.11.2000 as Sr.Clerk and with effect from 29.11.2001 as Jr.Clerk. After the position has been settled by the judgment of the Hon'ble High Court, the Respondents have to confer the benefit to him as has been given to similarly situated employees.

7. In the written note of submission of the learned counsel for the Respondent, it has been argued that in the Ministry of Railways letter No.E(NG) 1-80 PM 1/185 dated 11.8.1980 for the first time instructions were issued that ad hoc promotions should be discouraged and therefore, vide Estt.Sl.No 24/83 dated 28.1.1983 the Railway Board issued restrictions on ad hoc promotion. Subsequently also through various instructions of the Railway Board it was directed that rule of double ad hoc promotions should be avoided and that all possible steps should be taken to discourage ad hoc promotions with an instruction that no 2nd adhoc promotion should be allowed. In Estt.Srl.No.144/88, the railway Board again reiterated the same instructions that persons can at the most be granted one grade above held by them on a regular basis in their parent



cadre and that 2nd ad hoc promotion should not be allowed. Lastly, the Chief Administrative Officer(Con), Personnel Department, in the S.E. Railway vide letter No. DCPO/Con/P/BBS/Adhoc Promotion/536 dated 13.11.2001 instructed as under.

"All second or more ad hoc promotions granted to the staff in violation of Railway Board's extant instructions on ad hoc promotions should be terminated w.e.f. 01.12.2001. Necessary order in respect of this should be issued well in advance".

8. Keeping in view the various instructions, the case of the applicant was reviewed and he was reverted to the ~~post~~^l position of Junior Clerk.

9. It is the case of the learned counsel for the Respondents that the judgment of the Hon'ble High Court which has been mentioned by the applicant cannot be accepted as a judgment in rem because the decision was arrived at by the Hon'ble High Court ~~was~~^l on the basis of the facts and circumstances of the particular case. The Hon'ble High Court has not laid any law or policy in their judgment and that the observations made in their judgment will not have any binding effect in the case of the present applicant. In this regard, the learned counsel has cited the decision in **Dadu Dayalu Mahasabha, Jaipur vs. Mohantra Ram Niwas** (reported in **AIR 2008 SC 2187**) in which the Hon'ble Apex Court has clearly held that any observation made while deciding a particular case will not have the binding effect and it cannot be treated as a precedent. Further, on a bare perusal of the decision relied on by the applicant, the Hon'ble High Court in the case of



Chindamani Mohanty and S.Govind Rao & Ors. have observed that the applicants ^{were} ~~was~~ selected for promotion after going through a regular selection process but were not provided regular promotion in due course. They were given only ad hoc promotion from time to time. The case of the applicant is quite different from the case of the employees in whose favour the case was decided by the Hon'ble High Court.

10. We have heard both the learned counsels in extenso and perused the materials on record.

11. The predominant issue in this matter is whether the employees who were given two ad hoc promotions prior to issuance of Railway Board Circular dated 13.12.1999 will have to be reverted in keeping with the instructions of the Railway Board.

12. In OJC No.5477/2002 and 5459/2002, the Hon'ble High Court of Orissa in their judgment dated 7.3.2006 has dealt extensively with this issue. The relevant part of the judgment is quoted below.

"A perusal of the Railway Board's circular dated 13.11.2001 shows that it was directed therein that all second or more ad hoc promotions granted to the staff in violation of its instructions should be terminated with effect from 01.12.2001. As it appears from the record, for the first time the Board issued instructions not to make second ad hoc promotion in the year 1999. But opposite parties 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 ad hoc promotion given prior to the instructions

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issued by it for the first time should also be terminated. The instructions were only to the extent that those second or more ad hoc 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 ad hoc 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 2 to 9 do not come within the ambit of the said direction of the Railway Board. That apart, opposite parties 2 to 9 have already completed more than two years of service as Head Clerks on ad hoc 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 opposite parties 2 to 9 on ad hoc 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 ad hoc promotions, as mentioned above. The posts were lying vacant and the intention of the petitioners to fill up the posts was no other than the services on the posts in question were required. In such situation, if all the posts are filled up on ad hoc basis by giving 2 or 3 ad hoc promotions to a candidate after qualifying 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 encouragable. 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 2 to 9, there would be ~~no~~ huge loss in their salaries, which they have been getting from 1992 and 1997".

13. Therefore, the decision of the Hon'ble High Court is crystal clear that ad hoc promotions which were granted before the issue of the Railway Board circular dated 13.12.1999, will not be affected by the said instructions of the Railway Board as this circular will not have retrospective effect. The Hon'ble High Court in

this case found that the Opposite Parties 2 to 9 were given promotion in the year 1997 prior to the issuance of the said direction of the Railway Board and therefore, they do not come within the ambit of the said direction. Therefore, in so far as this issue is concerned, the Respondents in the present case will have to abide by the decision of the High Court and therefore, cannot legitimately reopen this question in the case of the applicant. In the result since the applicant had got his ad hoc promotion in the year 1984 – 1985, which was much prior to the issuance of the circular dated 13.12.1999, he would not be ^{liable to} ~~eligible~~ for reversion. In the written note of submission, the learned counsel for the Respondents has said that any casual observation of the Hon'ble Court will not bind the other cases where the facts and circumstances would be different. This, however, is not a casual observation and is a specific decision of the Hon'ble High Court which will bind the cases of employees whose ad promotions were granted before the issuance of circular of the year 1999. On this ground, therefore, the Respondents have no case.

14. However, there is another issue on which the learned counsel for the Respondents has pointed out that the case of the applicant is different from the cases decided by the Hon'ble High Court of Orissa. In the cases decided by the Hon'ble High Court it was observed that there was no occasion for the petitioners to promote the opposite parties on ad hoc basis when they had qualified the competitive test and their names found place in the merit list. The Hon'ble High Court has further observed that it is also noteworthy that their qualifying test



was taken with other candidates at every stage before the recommendation for their promotion. But still they have been given consecutive ad hoc promotions as mentioned above. The posts were lying vacant and the intention of the petitioners to fill up the posts was none other than the services on the post in question were required. In such a situation, if all the posts are filled up on ad hoc basis by giving two or three ad hoc promotions to a candidate after qualifying competitive test, we have no hesitation to say that the services were being taken on the basis of adhocism instead of making regular appointment. With regard to this observation of the Hon'ble High Court, the learned counsel for the Respondents has pointed out that in case of the present applicant, he has not passed any competitive test, and therefore, the case is not similar to the cases decided by the Hon'ble High Court. On this point, the pleadings of the learned counsel for the applicant ^{are} ~~is~~ not clear and the specific facts regarding this issue are not emerging out of the pleadings.

15. The applicant had filed O.A.No.431/09 in which he had submitted before the Tribunal that in spite of the decision of the Hon'ble High Court of Orissa and this Tribunal in several cases, annulling the order of reversion in terms of the decision of the authority that there should be no three ad hoc promotions, the applicant's case has received no consideration in spite of representation for extending the benefit. After hearing the case, this Tribunal had disposed of the O.A. at the stage of admission with a direction to the Respondents to examine the grievance of the applicant as outlined in his representation and pass a reasoned



order within a period of sixty days from the date of receipt of the order. This order of the Tribunal was passed on 4.9.2009. In obedience to the direction of the Tribunal, the Respondent No.2 passed a speaking order which was conveyed to the applicant vide letter dated 25.2.2010. (Annexure A 10)

16. We have gone through this speaking order passed by the Chief Administrative Officer, East Coast Railways, Bhubaneswar. In the representation, the applicant had made a specific prayer that he should be given the benefit of the judgment of Hon'ble High Court of Orissa and his pay should be protected in the scale of DSK, Gr.III(Adhoc) with all consequential benefits. After mentioning about this prayer in applicant's representation dated 18.6.2009, the Respondent No.2, viz., Chief Administrative Officer, East Coast Railway has observed that this representation is not admissible due to the following reasons. Then he has quoted the following:

"Railway administration should not as a rule make double adhoc promotions and that all possible steps should be taken to discourage adhoc promotions and further that no second adhoc promotions should be allowed.

17. Besides the above, the Railway Board's letter No.E(NG)1-88TR 28 dated 24.5.1988 circulated vide S.E.Railway Estt.SI.No.144/88 also provides that "at the most be granted one grade above that held by the employee on a regular basis and in no cases should be any double adhoc promotions be allowed to them".



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The Railway Board's instructions conveyed on 4.7.2003 and 11.4.2007 reiterate those instructions.

18. As has already been discussed, the Hon'ble High Court has already decided that ad hoc promotions which took place before the Railway Board Circular of the year 1999 would be protected. The applicant has represented for getting the benefit of the judgments of the Hon'ble High Court of Orissa in this regard. The C.A.O. has found it convenient to dispose of the representation only by quoting various guidelines again without touching upon the basic contention that the applicant should get the same benefit as similarly situated persons had got as a result of the judgment of the Hon'ble High Court. Therefore, the speaking order is defective as it does not address the exact prayer of the applicant. In the present O.A. the Respondents have taken a stand that the case of the applicant is different from the cases decided by the Hon'ble High Court since the applicant has not gone through the various qualifying test and his name was not there in the merit list for promotion. There is no mention of such fact in the speaking order. A speaking order should be such which should address the specific issues raised by the applicant since the applicant needs to be satisfied that the grievances that he had expressed have been suitably addressed. When there was a specific prayer that the benefit of the judgment of the Hon'ble High Court should be given in the case of the applicant, it is quite surprising how the ratio of the decision of the Hon'ble High Court has not been mentioned in the speaking order. Even if the facts in the case of the applicant were different those also should have been pointed out in the speaking order itself. The speaking order




is passed in obedience to the direction of the Tribunal and therefore, is different from a routine administrative order. The speaking order which has found place at Annexure-10 of the O.A. is defective and incomplete and therefore, the same is quashed.

19. We may now recall the discussion that has been made above regarding the ratio decided by the Hon'ble High Court which has to be applied in the case of the applicant since his ad hoc promotions were issued prior to the order of 1999. However, the difference which is pointed out by the Respondents between the case decided by the Hon'ble High Court and the case of the applicant, has to be looked into specifically by the Respondents. Therefore, the matter is remanded back to the Respondents to consider the case of the applicant afresh by strictly applying the ratio decided by the Hon'ble High Court and also the facts and circumstances of the specific case of the applicant and pass a reasoned and speaking order within a period of sixty days from the date of receipt of this order. It is also directed that if the applicant is considered eligible, he may be granted the benefit as decided by the Hon'ble High Court of Orissa in their judgments dated 7.3.2006 and 8.3.2006.

20. With the above observations and directions, this O.A. is disposed of. No costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)