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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NO. 892 OF 2011
CUTTACK, THIS THE 12TH DAY OF DECEMBER, 2012

CORAM :

HON'BLE DR. RAMESH CHANDRA PANDA, MEMBER (ADMN.)
HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

Narasingh Gosain,
aged about 69 years,
S/o. Late Lill Das Gosain,
Retired Vechile Driver Grade-II,
O/O- Deputy Chief Engineer/Construction,
East Coast Railway,
Jajpur Keonjhar Road,
At present C/o- Krushna Chandra Das,
Badahata Colony, Keonjhar.

.....Applicant

(Advocate(s) for the Applicant M/s- N.R. Routray, S. Mishra, T.K. Choudhury, S.K. Mohanty)

VERSUS

Union of India

1. Represented through
The General Manager,
East Coast Railway,
Rail Vihar,
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.
2. Chief Administrative Officer/Con./
East Coast Railway,
Rail Vihar,
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.
3. Deputy Chief Engineer/ Con./
East Coast Railway,
Jajpur Keonjhar Road,
At/PO-Jajpur Road,
Town/Dist-Jajpur.
4. Sr. Personnel Officer,
Con./Co-ord/
East Coast Railway,
Rail Vihar,
Chandrasekharpur,
Bhubaneswar,
Dist-Khurda.

..... Respondents

(Advocate.....Mr. D.K. Behera)



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ORDER (ORAL)

DR. RAMESH CHANDRA PANDA, MEMBER (ADMN.):

M.A.26/2012

For the reasons given in this application the delay in filing the present O.A. is condoned under Section 21(3) of the Administrative Tribunals Act.

O. A. NO. 892/ 2011

Sri Narasingh Gosain a retired Vehicle Driver, Grade-II of the East Coast Railways, the applicant herein, is aggrieved by the order of his reversion dated 12.12.2001 and has prayed to restore him to the post of Vehicle Driver Grade-I with all consequential benefits. He has sought the following relief(s) in the present Original Application:-

- "a)To declare the order of reversion dated 12.12.2001 under Annexure-A/4 as nonest in view of principle decided under Annexure-A/5 & A/6.
- b)To restore the applicant in the post of Vehicle Driver Grade-1 w.e.f. 01.09.1992 and pay the differential arrear salary by extending benefit of Annexure-A/6."

2. In order to adjudicate the above issues, it would be appropriate to provide here the brief factual matrix. The applicant was initially appointed in South Eastern Railway on 01.05.1965 and was removed subsequently to be re-engaged on 05.02.1988. He was promoted to the post of MTDM Grade -III on 26.07.1989. He was again promoted to the next higher post of Vehicle Driver Grade-II on 01.09.1992 and Vehicle Driver Grade-I on 01.04.1996. While working in the said post, the Respondent No.2 undertook the review of ad-hoc promotion extended to the applicant along with others on 13.11.2001 and the applicant was reverted from the post of Vehicle Driver Grade-I to Vehicle Driver Grade-II on 12.12.2001. Thus he was reduced in his pay in the pay scales from Rs.4500-7000/- to Rs.4000-6000/-. It is the case of the applicant that other similarly situated persons having been reverted to the lower post moved several O.As before the Tribunal and the Tribunal vide order dated 21.03.2002 quashed such orders of reversion in respect of the applicants those who were PCR staffs of Construction Organisation for all purposes and consequential relief was extended to them. The copy of the order in a batch of 21 O.As with a leading O.A. being O.A. No.509 of 2001 in the matter of Chintamani Mohanty and Others Vs. Union of India & Others is relevant and which

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is available at Annexure-A/5 of the O.A. Aggrieved by the above order Union of India & Others approached the Hon'ble High Court in OJC No.5477/2002 along with OJC No.5459 of 2002 which on consideration was finally decided on 07.03.2006. While dismissing the OJCs the Hon'ble High Court upheld the judgement of the Tribunal. In compliance of the above judgements of the Tribunal as well as Hon'ble High Court of Orissa, the Senior Personnel Officer (Con.) of East Coast Railway issued a detailed order vide his Office Order No.127/2011 dated 14.12.2011. In view of these developments, the applicant submitted a detailed representation to the Respondents with a prayer for cancellation of the reversion order and to restore him to the post of Vehicle Driver Grade-I. He has specifically mentioned in his representation that his case was squarely covered by the above mentioned judgements of the Tribunal and Hon'ble High Court of Orissa. It is the applicant's case that though he retired from service on 30.05.2002 till August 2011 Respondents did not take any action and issued the Pension Payment Order dated 18.08.2011 and released his financial benefits for which he could not challenge his reversion order in the year 2002, but has come only in the year 2011. It is the grievance of the applicant that inspite of the orders of the Tribunal as confirm'd by the Hon'ble High Court, Respondents did not examine the grievance of the applicant as raised in his representation.

3. Learned Counsel for the applicant submits that the present O.A. is fully covered by the law laid in the aforesaid decisions of the Hon'ble High Court and the Tribunal.

4. Respondents have filed a detailed reply indicating therein that the applicant was initially engaged as casual labourer and on being regularized was posted on different posts and ultimately reached the position of Vehicle Driver Grade -1 on ad-hoc basic.

Ld. Counsel for the Respondents would submit that the applicant was initially appointed as Driver in the Open Line on 01.05.1965 and was removed from the Railway Service w.e.f. 05.02.1989 and later on he was re-appointed as Ty. Box Carrier / Porter vide order dated 24.04.1987, the duty of which he resumed on 05.02.1988. He was posted as Khalasi / Vehicle helper on 29.12.1988 and was promoted as MTDM Grade-III on 01.07.1989 and later on promoted as Grade-II Vehicle Driver vide order dated 18.09.1992 and ultimately on 1996 he was promoted as Driver Grade-I vide order dated 01.04.1996 on ad-hoc basis as the

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promotion was issued by the Construction Organisation. As per the general circular of Chief Administrative Officer dated 13.11.2001 indicating therein that ad-hoc promotions granted to the staff should be terminated w.e.f. 01.12.2001, the applicant was reverted from the post of Vehicle Driver Grade-I to the post of Vehicle Driver Grade-II. Ld. Counsel submits that the applicant's purported representation was never received by the Respondent No.3 and no documentary proof of acknowledgement has been brought in the O.A. to show that such a representation was sent by the applicant. As such there is no question of response in acting on his representation. The settlement of his dues was delayed just because of the applicant's non cooperation rather than Respondents sleeping over the matter.

5. Having heard the contentions of the parties we have very carefully gone the pleadings. Ld. Counsel for the applicant submitted that the facts and circumstances of the present case and the relief prayed for are fully covered by the referred and relied on judgements passed on similarly placed applicants in the O.A. No.509/2001 decided on 21.03.2002 and the judgement of Hon'ble High Court in W.P.(C) No.15824/2008 passed on 03.02.2009 and OJC No.5477/2002 decided on 07.03.2006. The applicant's case seems to have been covered by the above judgements and therefore the Ld. Counsel for the applicant submits that the present Original Application being covered by the judgement of the Tribunal and Hon'ble High Court of Orissa the same benefits needs to be extended to the applicants. In this context it would be appropriate for us to take the extract of the judgement passed by the Tribunal in O.A. No.509/2001 which reads as under:-

“ 4.In Original Application Nos.509 and 603 of 2001 it has been disclosed that the applicants while continuing as Junior Clerks/Jr. Typists on ad-hoc basis from 1985 they were asked to face a centralized selection against a limited departmental promotional quota posts in the year 1989 and upon being qualified in the said test, they were empanelled in the year 1990 as per the advocate for those applicants to be treated as regular Jr. Clerks/Jr. Typists as against the PCR posts of the Construction Organisation and it is alleged that from 1990 onwards they were treated as PCR staff. It is the case of the applicants that once they cleared in the test in question and allowed to continue in the PCR posts they no longer remained adhoc Jr. Typist/Clerk and as a consequence they lost their lien in Open Line Establishment and, therefore, for all purposes they should have been taken to be in 'PCR' staff of Construction Organisation. From the facts and circumstances, as given out in the cases in hand, everything points at one conclusion that from 1990, the applicants became members of the Staff of Construction Organisation and automatically lost their lien in

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Open Line; especially when they were not even considered for being called to face departmental tests/not considered for promotion in Open Line Organisation. But the Advocates for the Respondents state that in absence of the regular appointment orders (appointing the applicants in Jr. Clerk/Jr. Typists in the year 1990) being produced the claims of applicants that they were absorbed as PCR staff ought not to be accepted. To this, the Advocate for the applicants in O.A. No.509 and 603 of 2001 drew out attention to Annexure-3 by which two of the applicants were given regular appointments and posting without any mention that such appointment/posting to be 'Ad-hoc'. It has been explained to us that other applicants of those two cases, were continuing on ad-hoc basis under Annexure-1 dated 05.02.1985 in Construction Organisation and their regularization as Jr. Clerk/Jr. Typist were ordered to be noted in their service books, as has been from Annexure-3 dated 07.06.1990. In the last line of the said Annexure-3 (2nd page) it is clearly ordered as "OS(E)/CTC to see that necessary entry is made in 2/file of the staff concerned". Therefore, non-production of any individual appointment order of the applicant, can not be taken to their prejudice. In the said premises, there are no reason not to accept the applicants of these two cases, (and similarly placed other applicants) not to have lost their lien in open line. Once we take the applicants in O.A. No.509 and 603 of 2001 (and similarly placed other applicants) to be in PCR posts of Construction organization there were no reason to treat their promotion to be "Ad-hoc". (As it appears, by treating the applicants to be continuing with their lien in Open Line the Respondents branded the promotions granted to those applicants to be "Ad-hoc"). Thus, we are inclined to hold those applicants had regularly been absorbed/appointed in Gr.'C' posts in Construction Organisation and if the Respondents have not taken them to be in the regular/PCR posts of Construction Organisation as yet then they should treat them as such. Therefore, before reverting the applicants promotional post, the Respondents ought to have given the notices to the applicants to have their say in the posts. Such opportunity having not been given to them before reverting the applicants from service there were violation of principles of natural justice/Article 14 of the Constitution of India as we have already held that the promotions granted to the applicants in these two cases (and other similarly placed applicants) were in real sense not on ad-hoc basis. In the peculiar facts and circumstances of the case the objections raised by the advocates for the Respondents that no notice was required at the time of reversion of the applicants" is overruled; as the applicants were in real sense not on adhoc promotions. As a consequence, the reversion orders passed against the applicants in O.A. Nos.509/2001 and 603/2001 (and against the other similarly placed applicants) are hereby set aside and they are to be treated as regular 'PCR' staffs of Construction Organisation for all purposes and consequential relief need be given to them within a period of three months hence.

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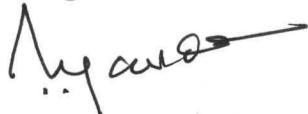
5. In O.A. No.597/2001 – B.V. Sanyasi Vrs. Union of India and others it is the case of the applicant that while implementing the policy/revised policy and reverting the so called adhoc promotees as has been reverted wrongly to a lower post than what has been desired in the policy/revised policy. We are sure, the authorities would reconsider the case of the said applicant within a period of three months from the date the said applicant submits a representation to that effect. This applicant have to submit a representation for redressal of his grievance within ten days hence.

6. The Advocates for the applicant in all the cases state that while reverting the applicants several others (who received promotions like them) have not been reverted and that has been done (simply because the applicants were taken to be personnel of Open Line establishment for same time) discriminatorily. This aspect of the matter ought to be examined by the Respondents before taking any further step as against the applicants, for which we hereby record.

7. In the result, therefore, the prayer for a direction to the Respondents to regularize the applicant in Construction Organisation (or in the Promotional posts thereof) is dismissed. However, subject to other observations and directions all the Original Applications are disposed of. No costs.”

6. Up-holding the above judgement of the Tribunal, the Hon'ble High Court of Orissa at Cuttack in OJC No.5477/2002 decided on 07.03.2006 directed in the following terms:

“ 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 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 f the said direction of the Railway Board. That apart, opposite parties 2 to 9 had 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



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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 a 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 he 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 a huge loss in their salaries, which they have been getting from 1992 and 1997

8. In view of the above mentioned facts and circumstances we see no ground to interfere with the impugned judgement and order passed by the Tribunal. Therefore, the Writ applications have no merit and are accordingly dismissed."

7. Above orders of the Hon'ble High Court of Orissa and the Tribunal have been implemented by the Respondents. Though the Ld. Counsel for the Respondents argued that the applicants in the above case are not identical as the applicant in the present O.A, we find that the law laid down by the Hon'ble High Court of Orissa is fully applicable to the present case. Confronted with the above question the Ld. Counsel for both the parties agreed that the applicant was promoted on ad-hoc basis as against the available vacancies and there was no dispute that the applicant was continuing on ad-hoc basis in the higher post for long time. As the applicant was promoted to the higher grade on ad-hoc basis against the vacancies and was fully eligible for the said post we do not find any specific ground to apply the Board's instruction so far as the present applicant is concerned and the law laid down by the judgement of the Hon'ble High Court of Orissa reproduced above are fully applicable to the present case.

8. Considering the totality of facts and circumstances of the case, and in the background of the discussions made within, we are of the considered view that the O.A. deserves to be allowed. We order accordingly. Resultantly the impugned order dated 12.12.2001 is hereby quashed. Consequently, the Respondents are directed to extend all the benefits that has been given to the applicants in the earlier O.A.s and as per the orders of the Hon'ble High Court of Orissa in the aforesaid W.P. (C) as expeditiously as possible preferably within a period of 09 (nine) weeks from the date of receipt of a copy of this order.

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9. In the result the O.A. is allowed in terms of our above orders, directions and observations leaving the parties to bear their respective costs.

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(A.K. PATNAIK)
MEMBER(JUDL.)

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(DR. R.C. PANDA)
MEMBER(ADMN.)

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