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OA No.292 of 2009

Rabinaryan Mohanty .... Applicant  
Versus

UOI & Ors. .... Respondents

1. Order dated 21<sup>th</sup> August, 2009.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

Heard Mr. A.Kanungo, Learned Counsel for the

Applicant and Mr. S.K.Ojha, Learned Standing Counsel for the Respondents and perused the materials placed on records. It is seen from the record that the Applicant is at present working as Jr. Clerk in the Office of the Chief Electrical Engineer (Construction), East Coast Railway, Bhubaneswar, Dist. Khurda. Fact of the matter is that the Applicant is a victim of the policy decision taken by the Railway Authority directing that there should not be more than one adhoc promotion and whenever adhoc promotions are found inescapable in the exigency of service, the same shall be ordered only for short duration up to four months that too from amongst the senior-most eligible staff strictly in accordance with the existing guidelines under the Indian Railways Establishment Manual. He approached this Tribunal as also before the Hon'ble High Court. Be that as it may, the fact remains that he was reverted from the post of Head Clerk to the post of Junior Clerk vide order under Annexure-6 dated 19.02.2004. By filing the present Original Application along with an application seeking condonatioin of delay, he seeks the following directions:

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2. His contention is that, he submitted representation under Annexure-A/1 seeking extension of the benefit of the aforesaid order of the Hon'ble High Court. Since no action was taken on the said representation he approached this Tribunal in the present OA. His further stand is that as per the decision of the Hon'ble Supreme Court in the case of as per the decision of the Hon'ble Supreme Court in the case of K.C. Sharma and others v Union of India and others, (1997) 6 SCC 721, the Respondents ought to have extended the benefit of the aforesaid order of the Hon'ble High Court as his case is similar to that of the cases cited above and the delay should not stand as a bar for entertaining this OA by this Tribunal.

3. The issues raised in this OA came up for consideration before the Division of this Tribunal in OA No. 89 of 2008 filed by Shri P.K.Acharya v Union of India and others. The full text of the order passed by this Tribunal is reproduced below:

"By filing the present Original Application, the Applicant has challenged his reversion from Head Clerk to Senior Clerk which was done by the Railway authorities due to the circular putting restrictions on multiple ad-hoc promotions. On perusal of the records, we find that the promotion of the Applicant to the post of Sr. Clerk and Head Clerk w.e.f. 06.09.1992 and 31.05.1997 respectively on ad-hoc basis is not in dispute. The fact of the matter is that pursuant to the instruction dated 13.12.1999 of CPO, SERly, Garden Reach Kolkata directing there should not be more than one adhoc promotion and whenever adhoc promotions are found inescapable in the exigency of service, the same shall be ordered only for short duration up to four months that too from amongst the senior-most eligible staff strictly in accordance with the existing guidelines under the Indian Railways Establishment Manual. According to the Respondents, in compliance of the above instruction, the case of the employees who got more than one adhoc promotion was

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reviewed. Applicant being the holder of more than one adhoc promotion, he was reverted to the post of Sr. Clerk vide order Annexure-A/3 dated 30.11.2001. Being aggrieved by such order of reversion, applicant submitted representation on 20.02.2002. Meanwhile, similarly situated employees having faced the order on reversion on similar grounds, approached this Tribunal in OA No. 509 of 2001. In common order dated 21.03.2002 all the OAs were disposed of by this Tribunal with certain observations and against the said order of this Tribunal dated 21.3.2002, the Respondents approached before the Hon'ble High Court of Orissa in OJC Nos.5477 and 5459 of 2002(Union of India and others v CAT, Cuttack Bench and others). The Hon'ble High Court of Orissa while dismissing the Writ Petition, in its order dated 07.03.2006 held as under:

"7. A perusal of the Railway Board's Circular dated 13.11.2001 shows that it was directed therein that all second or more adhoc promotions granted to the staff in violation of its instructions should be terminated w.e.f. 1.12.2001. As it appears from the record for the first time the Board issued instructions not to make second adhoc promotion in the years 1999. But opposite parties No. 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 adhoc 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 adhoc 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 adhoc 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 No.2 to 9 do not come within the ambit of the said direction of the Railway Board. That apart Ops No.2 to 9 had already completed more than two years of service as Head Clerks on adhoc 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 Ops No.2 to 9 on adhoc 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 adhoc promotions, as mentioned above. The posts were lying vacant and the intention of the petitioners to fill up the posts

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was not other than the services on the posts in question were required. In such a situation, if all the posts are filled up on adhoc basis by giving 2 or 3 adhoc 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 encourageable. 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 No. 2 to 9 there would be a huge loss in their salaries, which they have been getting from 1992 to 1997.

8. In view of the aforementioned facts and circumstances, we see no ground to interfere herewith the impugned judgment and order passed by the Tribunal. Therefore, the writ applications have no merit and are accordingly dismissed."

2. In the instant case, adhoc promotion of the applicant prior to issuance of the instruction of the Railway Board has not been disputed by the Respondents in the counter filed by them. However, the Respondents contested the case of the Applicant on the ground of law of limitation by stating that as the applicant has approached this Tribunal much after the period of limitation provided in section 21 of the A.T. Act, 1985 by applying the ratio of the decision of the Hon'ble Apex Court that submission of representation one after the another would not save the limitation (**K.V.Raja Lakshmiah v State of Mysore**, AIR 1967 SC 993); if Government turned down one representation making another representation on similar line will not extend the period of limitation (**State of Orissa v Sri Pyarimohan Samantaray**, AIR 1976 SC 2617); repeated representations would not save the limitation, (**State of Orissa v Arun Kumar**, AIR 1976 SC 1639), and disposal of representation on the direction of the order of the Court would not give a fresh cause action (**C.Jacob v Director Geology and Mining and another**, AIR 2009 SC 264) and prayed for dismissal of this Original Application.

3. Upon hearing the Learned Counsel for the parties on the above aspect, we have perused the materials placed on record. In view of the decision of the Hon'ble High Court of Orissa that the Railway Board's instruction based on which the applicant faced the reversion having no retrospective implication, and the promotion of the applicant being prior to the Railway Board instruction, we do not have any doubt to hold that the reversion of the applicant was unjustified. Now question for consideration whether hyper-technicality rule of limitation, in view of the facts narrated above, will stand on the way of dispensation of justice. In this connection we may state that in very many cases, it has

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been consciously held by the Division Bench of this Tribunal that hypertechnicality law of limitation should not stand on the way of dispensation of justice where glaring omission is tale-tell on the face of the order causing miscarriage of justice in the decision making process of passing the order denying the benefits. Admittedly, in the present case, order of reversion of the applicant was passed under Annexure-A/3 dated 30.11.2001 against which he made representation under Annexure-A/4 dated 20.02.2002. As it appears from the record, no consideration was given by the Respondents on the said representation of the applicant. Meanwhile, decisions of this Tribunal as well as Hon'ble High Court of Orissa, on similar cases came into effect. Thereafter, by making representation under Annexure-A/7 dated 11.7.2006, applicant prayed for extension of the benefits granted to others. Non-consideration of such grievance, forced him to approach this Tribunal in OA No.113 of 2007 and on the direction of this Tribunal, the Respondents disposed of the representation and communicated the result thereof to the Applicant under Annexure-A/9 dated 21.5.2007. On perusal of the aforesaid order of rejection, it reveals that the Respondents rejected claim of the applicant without appreciating the true merit of the order of the Hon'ble High Court of Orissa, whether the adhoc promotion of the applicant was prior to the order of Railway Board based on which reversion of applicant took place. Besides the above, it is seen that the delay, if any, occasioned is also attributable to the Respondents for not timely replying the representation submitted by the applicant against the order of reversion. When the delay is not fully attributable to the applicant, law of limitation as pleaded by the Respondents cannot be a ground for dismissal of this OA. Also it is trite law that benefit once granted by court of law should be extended to the similarly situated person (Maharaj Krishan Bhatt & Anr v State of Jammu & Kashmir & Ors, (2008) 2 SCC (L&S) 783). Co-ordinate Bench of this Tribunal in the case of Nem Singh v Union of India and others, 10/04 SwamysnewsS 68 (Jodhpur) OA No. 273 of 2002, January 2004 that when benefit of earlier judgment is prayed by similarly placed persons, the bar of limitation would not be attracted. Government should give the benefit of a final decision to all similarly placed persons and should not unnecessarily send people to Court. In view of the above, the law of limitation raised by the Respondents does not persuade us to take a view that there has been no injustice in the decision making process of denying the benefit of the decision of the Hon'ble High Court of Orissa in OJC Nos.5477 and 5459 of 2002 disposed of on 07.03.2006. Hence, the order under Annexure-A/3 so far as the Applicant is concerned and the order under Annexure-A/9 dated 21.05.2007 are hereby quashed. The

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Respondents are directed to bring back the applicant to his position prior to issuance of Annexure-A/3 without any back wages, except notional fixation of pay, within a period of 30 days from the date of this order.

4. In the result, this OA stands allowed to the extent stated above. No costs."

4. It is evident that the Applicant's representation submitted under Annexure-A/1 (to the MA No.436/09), is still pending. Since the representation of the Applicant is pending, without expressing any opinion on the merit of the matter, this OA is disposed of at this admission stage with direction to the Respondents 2&3 to consider and dispose of the pending representation of the Applicant if not already done and communicate the result thereof to the Applicant with the outer limit of 45 days from the date of receipt of this order.

5. Send copies of this order to the above Respondents along with OA.

  
(C.R. MOHAPATRA)  
Member (Admn.)