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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 46 of 2009
Cuttack, this the 9th day of September, 2011

M.Anil Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


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


(C.R.MOHAPATRA)
MEMBER (ADMN.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.46 of 2009

Cuttack, this the 9th day of September, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A);
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.).

M.Anil, aged about 38 years, Son of Late
M.Ramadas, at present working as Khalasi-Helper
under SEE/HQ/Maintenance, Rail Vihar,
Chandrasekharpur, Bhubaneswar, Dist. Khurda.

....Applicant

By legal practitioner: M/s.C.A.Rao, S.K.Behera,
A.K.Rath, Counsel.

Versus

1. Union of India represented by the General Manager, East Coast Railway, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Electrical Engineer, East Railway, Bhubaneswar, Dist. Khurda.
4. D.R.M (P), East East Railway, Khurda Road, Bhubaneswar, Dist. Khurda.

.....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

ORDER

MR.C.R.MOHAPATRA, MEMBER(ADMN.):

Applicant's case in nut shell is that his father, after putting 14 years of service as Saranga in the Railway, died in harness on 7.1.1999.



(i) Applicant is a Matriculate ITI. Therefore, consequent upon the death of his father, he was appointed, on compassionate ground, as Casual Labour on 23.7.1992, in Construction Organization of the Railway. He was not given the appointment on regular basis as his father was not a regular employee of the Railway.

(ii) The father of the applicant was regularized against 40% PCR post of Khalasi in Gr. C, post vide order under Annexure-1 dated 10.2.2000, retrospectively i.e. w.e.f. 01-07-1989. Following the aforesaid order of regularization dated 10.2.2000, Applicant who was appointed on compassionate ground as Casual Labour, was treated as Khalasi and accordingly he was granted the seniority w.e.f. 23.7.1992.

(iii) Thereafter, vide order under Annexure-2 dated 07.12.2005, the CPO, ECoRailway, Bhubaneswar fixed the lien of the Applicant along with others in Electrical (General) Department of KUR Division in

their respective category and consequently allowed them to work temporarily on deputation basis in the office of the CEE/ECoR/HQs against existing vacancy of Khalasi and Peon.

(iv) Vide Annexure-3 dated 01-03-2007, provisional seniority list of Khalasi Helper was published in which the date of promotion of the Applicant to Khalasi Helper was shown as 01-11-2003 and his name was shown at Sl.No.96. His grievance is that one Shri P.Pradeep Kumar Patnaik although joined much after him (17-10-1992) was shown to have been promoted w.e.f. 11-08-1999 and his name was placed in the seniority list above the applicant at Sl.No.16. He submitted representation against such wrongful action seeking rectification on 12.07.2007 and the same was forwarded under Annexure-4 dated 30.11.2007. The CPO,ECoRly,BBSR, without any reason or opportunity in compliance with principle of natural justice, under Annexure-5 dated 25.4.2008 modified the date of seniority '23-07-1992' earlier given to the Applicant to



that of '23-07-1995'. It is the case of the Applicant that he had taken up the matter for unilateral change of his effective date of seniority without any notice with the next higher authority through Union under Annexure-6 dated 22/23-04-2008 but as no reply was received by him, he has approached this Tribunal in the present OA filed under section 19 of the A.T. Act, 1985 praying therein as under:

“i) The original application be admitted and connected records be called for and after hearing the parties the respondents/Railway be directed to grant similar benefits of promotional post of Khalasi Helper which was granted to the person appointed as Khalasi subsequent to the applicant i.e. 21.7.1992, with all service and financial benefits accruing from the said direction.

ii) To quash the corrigendum dt.25.4.2008 (Annexure-5);

iii) To reconsider applicant's case to Group C post as the applicant was having required qualification when he was initially appointed on 23.7.1992 on compassionate ground.”

2. Respondents' case, in their counter, is that Applicant's lien is maintained in the Electrical (General) Department of KUR but on being spared



from Construction Organization, of ECoRly, Bhubaneswar, he was posted as Khalasi (KSI) under the Section Engineer (TRD, Khurda Road vide Sr.DPO, Khurda's Office order under Annexure-R/1 dated 11-06-2002. While issuing the order under Annexure-R/1 it was clearly given the understanding to the Applicant so also others whose names appeared in the said list that their lien will continue to be maintained in the Project Construction Reserve (PCR) post of S.E.Railway for their future promotion till absorption in Open Line on accepting bottom seniority in the recruitment grade as desired by the staff himself.

2(i) Meanwhile, vide Sr.DPO, KUR O/O dated 16.04.2003, the applicant has been transferred from Sr. Section Engineer (TRD), Khurda Road to East Coast Railway, HQ, Bubaneswar and the lien of the applicant was suspended from Construction Organization of the Applicant w.e.f. 31.08.2004 to enable the applicant to avail of the opportunity of restructuring of cadre w.e.f. 01.11.2003 vide Sr.DPO, KUR order dated 27.08.2004.

Accordingly, the seniority list of KSI of Elect.(TRD) Department was published in which the name of the applicant was shown at Srl.No.27 taking his date of appointment as 23.07.1992 and effective date of seniority as KSI on 06.06.2002; as the applicant has reported to KUR Division on 06.06.2002 giving the unconditional undertaking to accept the bottom seniority.

2(ii) Further case of the Respondents is that vide O/O dated 18.03.2004, the applicant was promoted to the post of Khalasi Helper in the Scale of Rs.2650-4000/- (RSRP). Though the CPO, ECoRly,BBSR communicated the effective date of seniority of the applicant as 23.07.1992 in the category of Khalasi, the same was modified to 23.7.1995 i.e. the date of his regularization as Khalasi. However, as the applicant has already been promoted to Khalasi Helper in the scale of Rs.2650-4000/- w.e.f. 1.11.2003 in the Elect. (TRD) Department, his seniority position in the grade of Khalasi could not be altered. However, it has been

stated that meantime the name of the applicant was inserted in between Shri D.Mohan Rao and Sri Sukant Khatua who are still continuing as Khalsi Helper. Therefore, the Respondents have denied the plea of promotion of his junior to next Tech.Gr.III.

2(iii) Hence the Respondents, while objecting to the prayer of the Applicant on merit, have also vehemently opposed grant of any of the reliefs on the grounds of delay and laches as interference in this matter would tantamount to unsettling a settled thing after long lapse of time, non-joinder of necessary party etc.

3. Applicant in his rejoinder, has stated that he was appointed as Project casual labour on compassionate ground on 23.7.1992 and regularized after three years. Thereafter, vide order dated 6.9.2001 he was transferred to KUR Divn on the principle of bottom seniority and was posted as Junior Trackman under SE (PW), Talcher. He was released from the office of SE Construction vide order dated



1.10.2001. The applicant was taken back from where he was transferred vide order dated 15.10.2001 and he was again re transferred vide order dated 27.5.2002. The applicant had not submitted any option for his transfer. He was forcibly released from the office of SE (Elect) Construction vide order under Annexure-7&8 dated 27.5.2002 and 5.6.2002. As such question of his transfer accepting the bottom seniority does not arise.

3(i) Consequent upon carving out the new East Coast Railway, the applicant was transferred to Hqrs., Bhubaneswar on his own option vide order dated 27.3.2003. He was released on 27.3.2003. As such counting his seniority from 6.6.2002 is not correct. Hence while reiterating his prayer in regard to seniority and promotion, it has been stated that as his father was regularized as per the orders of the Courts in Gr. C post, he having the qualification was entitled to be appointed in Gr. C on regular basis retrospectively.

4. Reiteration of factual position in the respective pleadings of the parties having been heard,

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we have perused the material placed on record. In order to justify that this OA has no legs to stand and the prayer of the applicant is bound to fall flat, on the ground of delay and laches as also non joinder of necessary party, Learned Standing Counsel appearing for the Respondents has relied on the following decisions:

- (a) Order dated 21-03-2011 of this Tribunal in OA No. 204/2008 (Kanhu Ch. Nayak V Union of India and others);
- (b) C.Jacob V Director, Geology & Mining & Anr, AIR 2009 SC 264;
- (c) Rajbir Singh HFS-II V State of Harayana & Anr, 1996 (1) SCSLJ 237;
- (d) M.P.Palanisamy & Ors V A.Krishnan & Ors, (2009) 2 SCC (L&S) 205;
- (e) Siba Shankar Mohapatra V State of Orissa & Ors, (2011) 1 SCC (L&S) 229;
- (f) Swapna Ku Pal V Samitabhar Chakraverty & Ors, AIR 2001 SC 2353.

5. While giving consideration to the points raised by the respective parties, we have also perused the decisions relied on by the Learned Standing Counsel for the Respondents. It is noticed that in this Original Application the prayer of the applicant is two fold viz; to direct the Respondents to treat the applicant

to have been appointed in Gr. C post on compassionate ground retrospectively with effect from 23-07-1992 as his father was regularized after his death in the post of Gr. C and to direct the Respondents to promote him to the post of Khalasi Helper w.e.f. the date Shri P.Pradeep Kumar Patnaik was promoted/10-08-1999 after quashing the corrigendum under Annexure-5 dated 25.4.2008. Undoubtedly the prayers made by the Applicant in this OA are distinct and different from each other. Rule 10 of the CAT (Procedure) Rules, 1987 deals with regard to plural remedies in which it has been provided that "an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another". But the prayer in this OA is neither based upon a single cause of action nor consequential to one another. Be that as it may, law is well settled that post to post in other words appointment on compassionate ground in Gr. C post as the father of the applicant was working in Gr. C post

cannot be claimed as a matter of right. This apart, delay and laches in ventilating such grievance seeking appointment retrospectively from 1992 in Gr. C without availing of the opportunity of making representation is strictly prohibited both under the A.T. Act, 1985 and the law on the subject.

6. In so far as his second prayer for direction to the Respondent to promote him to the post of Khalasi Helper from the date Shri P.Pradeep Kumar Patnaik was promoted/10-08-1999 is concerned, it is seen that the promotion of Shri Patnaik to the post of Khalasi Helper was dated 11-08-1999. The Applicant has neither challenged nor sought for such promotion when Shri Patnaik was promoted before his authority by way of making representation or before any court of law having jurisdiction on the issue. However, after the seniority list was published on 1.3.2007 he submitted his representation on 10/12-07-2007. Thereafter he kept silent on the matter. Only when corrigendum at Annexure-5 was issued instead of making

representation individually he represented his case through Union under Annexure-6 and, thereafter approached this Tribunal on 9th January, 2009 seeking his promotion w.e.f. 11-08-1999. He sought the relief without making the person against whose promotion or placement in the seniority list he has the grievance as party to this OA. Besides the above, the Applicant was regularized w.e.f. 23.07.1995. He has not challenged his date of regularization at the relevant time. Law is well settled that authority has ample power, authority and competence to rectify any error occurred at any point of time. An employee is entitled to count his seniority only from the date of appointment substantively/regular basis. Since the date of regular appointment of the applicant in the post of Khalasi is 23.7.1995 assignment of seniority on a previous date cannot be accepted under the law.

7. In the aforesaid premises, viewed the matter from any angle we see no merit in this OA.

Hence this OA stands dismissed by leaving the parties
to bear their own costs.

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

C.R. Mohapatra
(C.R.MOHAPATRA)
MEMBER (ADMN.)

