

5
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 11 OF 2010
Cuttack this the 22nd day of June, 2012

M. Suryanarayana.....Applicant
Vs
Union of India & Ors.....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

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

(A.K.PATTNAIK)
MEMBER (JUDL.)

6
 CENTRAL ADMINISTRATIVE TRIBUNAL
 CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 11 OF 2010

Cuttack this the 22nd day of June, 2012

CORAM

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
 AND
 HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

M. Suryanarayana, aged about 46 years, Son of
 M.Chinna Appadu, Grade-II Driver, A.E.N (C)
 Headquarters, Vishakhapatnam under CE (C),
 Vishakhapatnam, ECoRly.

...Applicant

By the Advocates :M/s.C.A.Rao,S.K.Bhera,A.K.Rath, Counsel
 -Versus-

1. Union of India represented by General Manager, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Chief Administrative Officer (Con.), ECoRly, Personnel Department, Bhubaneswar, Dist.Khurda.
3. Chief Personnel Officer (C), ECoRailway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Chief Engineer (C), Vishakhapatnam, E.Co.Railway, At-Chandrasekharpur, Bhubaneswar.
5. Senior Personnel Officer (C), Coordination, ECoRailway, Chandrasekharpur, Bhubanewar,Dist. Khurda.

...Respondents

By the Advocates: Mr.S.K.Ojha, SC

.....

O R D E R

A.K.PATNAIK, MEMBER (JUDL):

Applicant is a Grade II Driver working in the office of the AEN (C) Headquarters, ECoRly, Vishakhapatnam under Chief Engineer (C) ECoRly, Vihakhpnam. He has filed this

[Signature]

Original Application U/s.19 of the A.T. Act, 1985 seeking the following reliefs:

"The Original Application be admitted and connected records be called for and appropriate direction be issued for quashing the order dated 27.10.2009 of CAO (C), ECoRly (Annexure-2) and to extend the similar benefits to applicant which was given to S.Govind Rao, B.K.Mohanta, M.Gangapati Rao and B.Suryanarayan, Petitioner in WP (C) No. 3198, 3199,4149 and 3451 of 2002 disposed of on 08.03.2006, reported in 2006 (1) (Suppl),OLR 453 who are also similarly placed with similar circumstances in the light of the above decision within specific time;

And/or any other orders/directions as may be deemed fit and proper be passed for which applicant shall ever pray."

2. Facts of the matter are that the Applicant faced reversion on account of a 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 4 months that too from amongst the senior most eligible staff strictly in accordance with the existing guidelines under the Indian Railways Establishment Manual.

3. Similarly placed employees having faced such type of reversion approached this Tribunal and ultimately the matter went to the Hon'ble High Court of Orissa in WP (C) No. 3198, 3199, 4149 and 3457 of 2002. The Hon'ble High Court of Orissa disposed of the matter on 08.03.2006 granting relief to the applicants therein. By making representation the applicant claimed extension of the benefit granted by the Hon'ble High

Court of Orissa to similarly situated employees in the above Writ Petitions. Thereafter, alleging non consideration of his representation the applicant filed OA No. 368 of 2009 in this Tribunal and this Tribunal without expressing any opinion on the merit of the matter disposed of the same on 21st August, 2009 with a direction to the Respondents to consider and dispose of the representation of the applicant and communicate the result thereof within a period of 45 days. In compliance of the aforesaid order of this Tribunal dated 21st August, 2009, the Respondents considered the representation of the Applicant and communicate the result thereof to the applicant in letter under Annexure-2 dated 27.10.2009 which reads as under:

"In obedience to the Hon'ble CAT/CTC's Order dated 21.08.2009 in OA No. 368/2009, the undersigned as Respondent No.2 has gone through your representation dated 19.05.2007 carefully and Railway Board's circulars issued from time to time on the matter.

1. You were initially engaged as a Casual Motor Vehicle Helper in Leeligumma in KRPU-RODA Project and was granted Ty. Status as Motor Vehicle Helper in scale Rs.750-940/- w.e.f. 30.01.1989. You were promoted as TPCL Motor Vehicle Drive Gr.III in scale Rs.950-1500/- (RSRP'86) in Skilled category w.e.f. 26.02.1989 on temporary stop gap measure vide Dy.CE(Con.III)/Laxmipur's Order No.P/27/89 dated 02.03.89 communicated under Dy.CE (Con.III)/Laxmipur's Endorsement No.DCE/C/III/LXP/E/08/382 dated 07.03.89. Further, you were promoted as TPCL Vehicle Driver Gr.II in scale Rs.1200-1800/- (RSRP'86) on stop gap measure vide Dy.CE (Con.I)/Leeligumma's Order No. E/11/91 dated 18.4.91.

2. You were absorbed in a Gr.D category against 60% permanent construction Reserve post in scale Rs.2550-3200/-(RSRP'97) w.e.f. 26.10.98.

3. With the approval of the competent authority all 2nd or more adhoc promotion granted to the staff in Construction Organization of erstwhile S.E.Railway in violation of Railway Board's instruction

Val

on adhoc promotion were terminated w.e.f. 01.12.2001.

4. Accordingly, you were reverted from the post of Vehicle Driver Gr.II in scale Rs.4000-6000/- (RSRP'96) to Vehicle Driver Gr.III in scale Rs.3050-4590/- (RSRP'96) w.e.f. 11.01.2002 and you were retained as Vehicle Driver Gr.III (Adhoc) with reference to substantive status in a Gr.D PCR post.

5. You were regularized/absorbed as Vehicle Driver Gr.III in scale Rs.3050-450/- (RSRP'96) w.e.f. 14.5.93 retrospectively vide Dy.CPO (Con).BBS's Office Order No. 23/2003 dated 08.04.2003. When you PCR status was changed from Gr. D to Gr.C as per Railway Board's instructions circulated vide S.E.Railway's Estt.Srl.No.66/2002 dated 20.06.2002 indicating that the concept of Construction Reserve Post has already lost its utility, therefore, the PCR wording should no longer be used for any purpose whatsoever.

6. Your representation dated 29.05.2007 to promoted you as Vehicle Driver Gr.II (Adhoc) w.e.f. 11.01.2002 i.e. the date of reversion is not admissible at present due to the following reasons:

(i) Railway Board vide letter No. E (NG)1/2003/PM-1/13 dated 04.07.2003 have clarified that :-

"Work charged posts in the Construction and other Projects should be reckoned as an extension of the cadre of posts in the Railway/Division in the jurisdiction of which such Construction or other Projects are headquartered and no recruitment through RRBs or otherwise and no promotions against these work charged posts will be made by the Officer in Charge of the Construction or other Projects themselves. Instead all vacancies must be reported to the concerned Railway/Division who will take necessary action to fill up such vacancies taking the same as vacancies in the Railway/Divisional cadre."

(ii) Further Railway Board vide letter No.E (NG)I-2007/PM/1/2/CC dated 11.04.2007 have clarified that incidentally the Railway's contention that more than one adhoc promotions are not admissible is also not correct inasmuch as even one adhoc promotion is not admissible.

In view of the extant instructions, your representation dated 19.05.2007 is accordingly disposed of."

4. Respondents have filed counter opposing the stand

of the applicant in which besides reiterating the stand taken by them in the impugned order under Annexure-2 dated

1/2e

10

27.10.2009. It has been stated that with the approval of the Competent Authority, all two or more adhoc promotions granted to the staff in Construction Organization of erstwhile S.E.Railway in violation of Railway Board's instructions circulated under Estt. Srl.No.212/1985 and Estt. Srl.No. 144/1988 were terminated w.e.f. 01.12.2001. Hence, in terms of Dy.CPO/C/BBS letter dated 13.01.2001 circulated through CE/C/VSKP's office order dated 20.02.2002, the applicant was reverted from the post of vehicle Driver Gr.II in scale Rs.4000-6000/- to Vehicle Driver Gr.III in scale Rs.3050-4590/-w.e.f. 11.01.2002 and he was retained as Vehicle Driver Gr.III (Adhoc) with reference to substantive status in group (D) PCR post. In so far as extension of the benefits of the decision of the Hon'ble High Court of Orissa, it has been stated in the counter at paragraph 5 that any decision/order contrary to constitution or statutory rules cannot be accepted as precedent for other cases. The Hon'ble High Court while deciding the Writ Petitions made it clear that the circulars issued by the Authority only6 having the prospective operation and this will not affect the promotions already granted prior to appointed date. At no point of time Railway Board issued any such circular dated 13.11.2001 directing that all second or more adhoc promotions granted to the staff in violation of instruction should be terminated w.e.f. 01.12.2001. Rather the order/letter dted

13.11.2001 was issued by the CAO, Con/BBS from the administrative side directing the subordinate officers to follow the rules laid down by the Railway Board from time to time. Railway Board issue circular on 24.5.1988 which was circulated under the Estt. Srl.No.144/1998 in which it was made clear that the persons drafted from zonal railways can at the most be granted one grade above that held by them on a regular basis in their parent cadre and no cases should any double adhoc promotion be allowed to them. Since the local authorities issued orders from time to time for giving double adhoc promotion violating the Railway Board instruction, the CAO/Con/BBS issued letter dated 13.11.2001 to correct the administrative error. Accordingly, Respondents have prayed for dismissal of this OA.

5. Learned Counsel appearing for both sides have filed their respective notes of argument in which they have also placed reliance on some of the decisions in support of their cases and having heard them at length, we have also perused the materials placed on record.

6. We find that from the beginning it is the specific case of the Applicant that his case though covered by the decision of the Hon'ble High Court of Orissa, still then the Respondents did not consider his case while granting the same benefit of the decision to the applicants in the writ petitions. The

Verdict

12

Respondents did not whisper anything on the decision of the Hon'ble High Court based on which the Applicant claims his relief in this case. We find that termination of more than one adhoc promotion was the subject matter of challenge before this Tribunal and thereafter before the Hon'ble High Court of Orissa in very many cases. The Hon'ble High Court of Orissa reiterated the view taken in the case reported in 2006 (Suppl) OLR 453 (S.Govinda Rao and others Vrs UOI and others) which has been relied on by the present Applicant. The relevant portion of the order of the Hon'ble High Court of Orissa in the case of S.Govinda Rao (supra) reads as under:

"12. In the result, the writ petitions are allowed in part. The impugned judgment and order passed by the Tribunal in so far as it relates to the instant petitioners is quashed. The orders of reversion of the instant petitioners dated 30.11.2001 are also quashed. Consequently, the petitioners shall be reinstated with the same terms and conditions which were fixed by the opposite parties at the time of their adhoc promotion. It goes without saying that on reinstatement, the petitioner's services shall be treated as continuing on adhoc basis on the respective posts held by them. They shall be given consequential benefits accordingly. However, it will be open for the opposite parties to consider the regular promotion of the petitioners and other eligible persons in accordance with the existing guidelines. Till the regular promotion is considered and the regular candidates become available, the petitioners shall be allowed to continue on adhoc basis."

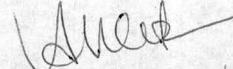
7. Law is well settled in the case of **Commissioner of Police, Bombay v. Gordhandas Bhanji** reported in AIR 1952

13

S.C-16 that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of the explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Apparently, orders issued by public authorities are meant to have common effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. This view has also been reiterated in the case of **Mohinder Singh Gill and Anr. V. The Chief Election Commissioner, New Delhi & Others** reported in AIR 1978 SC-851 in which it has been held that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out". The Hon'ble Apex Court, from time to time, ruled that when persons are identically situated, they should not be discriminated. Further it is settled that that even if the order of competent court is erroneous, mistaken or improperly obtained, they cannot be substituted, altered or modified by the authorities according to their own rules or whims. Articles 14 and 16 strike

at the arbitrariness in State action and ensure fairness and equality of treatment. As extracted above since the impugned order is bereft of any decisions about the applicability of the decisions of the Hon'ble High Court of Orissa and the Respondents have tried to justify the said order by giving additional reasons other than what has been stated in the order of rejection but without stating that the applicants in the writ petition are not similarly situated like that of the present applicant, we do not see any reason to uphold the order of rejection under Annexure-2 dated 27.10.2009. Hence the impugned order is hereby quashed and the Respondents are hereby directed to examine the case of the applicant in the light of the decision of the Hon'ble High Court of Orissa, referred to as above and communicate their decision to the Applicant in a well reasoned order within a period of 45 days from the date of receipt of copy of this order. With the aforesaid observation and direction this OA stands disposed of. No costs.


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


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