

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**ORIGINAL APPLICATION NO.595 of 2012**

Cuttack this the 9<sup>th</sup> day of October, 2013


**Mosu** ...Applicant


-VERSUS-

**Union of India & Ors.** ...Respondents

**FOR INSTRUCTIONS**

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

  
(R.C.MISRA)  
Member (Admn.)

  
(A.K.PATNAIK)  
Member (Judicial)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O. A. No. 595 of 2012

Cuttack the ~~9th~~ day of October, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

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

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Mosu, aged about 54 years, Son of Late Baldev, Vehicle Driver Grade-II, O/O FA & CAO/Construction/East Coast Railway/Chandrasekharpur, Bhubaneswar, at present resident of Qr.No.D-1/G,Railway Colony/Rail Vihar/Chandrasekharpur/Bhubaneswar.

...Applicant

(Advocates: M/s.N.R.Routray,S.Mishra,T.K.Choudhury,S.K.Mohanty)

VERSUS

**Union of India Represented through –**

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Administrative Officer/Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. FA & CAO/Con./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. Sr. Personnel Officer/Con./Coordination/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

..... Respondents

(Advocate: Mr.M.B.K.Rao)

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**O R D E R**

(Oral)

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

Facts, which are not in dispute, are that the Applicant was initially engaged on casual daily rated basis as Khalasi/Helper with effect from 07.11.1980 in the erstwhile South Eastern Railway. He got temporary status w.e.f. 01.01.1985 which was subsequently antedated to 01.01.1984. Thereafter, the applicant was absorbed against Gr.D PCR post as a Khalasi in the pay scale of Rs.196-232/ (3<sup>rd</sup> CPC) Rs.750-940/- (4<sup>th</sup> CPC) w.e.f. 01.4.1988. He was promoted as Vehicle Driver Gr.III in the pay scale of Rs.950-1500/- w.e.f. 04.12.1987 purely on adhoc basis vide order dated 04.12.1987 and was regularized in the said grade w.e.f. 04.12.1990 vide order dated 08.7.1997. He was again promoted as Vehicle Driver Gr.II in the scale of pay scale of Rs.1200-1800/- w.e.f. 29.9.1992 purely on adhoc basis vide order dated 29.9.1992 and thereafter as Driver Gr.I in the pay scale of Rs.4500-7000/- w.e.f. 01.8.1996 purely on adhoc basis vide order dated 17.9.1996. While continuing as such, in pursuance of the letter issued by the Deputy Chief Personnel Officer (Con.) S.E.Railway, Bhubaneswar dated 13.11.2001, Respondent No.3 reverted the Applicant from the post of Vehicle Driver Gr.I to Vehicle Driver Gr.II vide order vide order dated 30.11.2001.



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2. The case of the Applicant is that similarly situated employees having faced the order of reversion, in pursuance of the letter issued by the Deputy Chief Personnel Officer (Con.) S.E.Railway, Bhubaneswar dated 13.11.2001, approached this Tribunal in OA No. 509 of 2000 (**Chintamani Mohanty and Others-Vrs Union of India and others**) which was disposed of on 21.3.2002. The Railway-Respondents challenged the said order of this Tribunal before the Hon'ble High Court of Orissa in OJC Nos. 5477 of 2002 and 5459 of 2002 which were dismissed on 7.3.2006. Some other similarly situated employees of Construction Organization also challenged their order of reversion before this Tribunal in OA Nos. 220/2007, 245/2007, 169/2007, 321/2007 and others. This Tribunal, in view of the order dated 21.3.2002 passed in OA No. 509/2000 upheld by the Hon'ble High Court of Orissa vide order dated 7.3.2006 in OJC Nos. 5477 of 2002 and 5459 of 2002, quashed the orders of reversion of the Applicants in OA Nos. 220/2007, 245/2007, 169/2007, 321/2007 and others and ultimately they have been restored to their respective posts from which they were reverted. In the meantime one Shri B.Venkat Rao has also been restored to his promotional post of Driver Gr.I by the order dated 7.5.2012. It is case of the Applicant that though his case is similar to those cases in which the



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employees have been restored back to their original promotional post, the case of the applicant was ignored and hence he has been discriminated. Further case of the Applicant is that he was promoted to Driver Gr. I against sanctioned post much prior to the order dated 13.11.2001, but he has not been restored to his post till date despite representation dated 07.8.2012. Hence by filing the instant OA, the Applicant has prayed to quash the order of reversion dated 30.11.2001 and to direct the Respondents to restore him to the post of Vehicle Driver Grade I w.e.f. 01.12.2001.

3. By filing MA No. 725 of 2012 under section 21 (3) of the Administrative Tribunals Act, 1985, the Applicant has prayed to condone the delay, if any, in filing this OA belatedly. The grounds taken in the MA seeking condonation of delay is that once a principle has been decided by a competent court and implemented by the Respondents, there is no need on the part of the other similarly situated employees to approach the Tribunal/Court seeking for the same relief. The Respondents, as a benign employer, ought to have *suo motto* recalled the order dated 12.12.2001, by following the law laid down by this Tribunal upheld by the Hon'ble High Court of Orissa and would have restored all the similarly situated employees including the applicant to their



respective promotional posts. To fortify his claim that the delay in filing the instant OA is to be condoned and the Respondents be directed to grant the benefits as have been granted to other similarly situated employees, the applicant has placed reliance on the decisions of the Hon'ble Apex Court in the cases of **Union of India & Ors Vrs K.C.Sharma and Others** reported in (1997) Vol – VII SCC, page 721 and **Maharaj Krishna Bhatt and another Vrs State of Jammu Kashmir and others**, reported in (2008) 2 SCC (L&S) page 783.

4. The main objection of the Respondents in the counter filed in this OA is that the applicant accepted the ad hoc promotion without any murmur and, therefore, it is not fair on his part to approach this Tribunal after long lapse of time when his reversion was as a result of the policy decision. The applicant having acquiesced with the decision of the Railway Administration over a decade cannot question the said action to be in any manner illegal after long lapse of time which shows the lack of bona fides on the part of the Applicant. Lastly it has been contended that the decision to revert the applicant was based on cogent grounds supported by relevant guidelines which cannot be held to be irrational or unreasonable and needs no interference by this Tribunal. Accordingly, the Respondents have prayed for dismissal of this OA.

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5. We have heard Mr.N.R.Routray, Learned Counsel for the Applicant and Mr.M.B.K.Rao, Learned panel Counsel of the Railway- Respondents and perused the materials placed on record. Before proceeding further into the matter, we feel it expedient to quote the relevant portion of the order of the Hon'ble High Court of Orissa dated 7.3.2006 passed in OJC Nos.5477 and 5459 of 2001 which is quoted herein below:

“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 promotion granted to the staff in violation of its instructions should be terminated with effect from 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 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 instruction 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 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 2 to 9 do not come within the ambit of 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 adhoc basis when the said direction of the Railway Board was issued. It is also



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noticeable that there was no occasion for the petitioners to promote the opposite parties 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 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 a situation, if all the posts are filled up on adhoc 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 a huge loss in their salaries which they have been getting from 1992 and 1997.” (Emphasis Added)

6. Mr.Rao's contention is that there is a specific provision under the A.T. Act, 1985 within which time an OA should be filed against an order issued by the Government. The persons those who have filed the OA challenging their order got the relief but the applicant did not challenge and therefore he being an indolent not vigilant is not entitled to the relief as claimed in this OA, and, therefore, this OA should not be entertained. Per contra Mr.Routray contended that seeking quashing of the order of reversion issued in the year 2001 in the light of the decision of the Hon'ble High Court of Orissa dated 7.3.2006 in OJC Nos. 5477

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and 5459 of 2002, two similarly situated employees had approached this Tribunal in the years 2007 & 2008 by filing OA Nos.245 of 2007 (Raghab Moharana -Vrs UOI & Ors) and OA No. 89 of 2008 (P.K.Achary Vrs UOI and Ors). In those cases also the Railway-Respondents raised the same question of limitation and after considering the said points, this Tribunal vide orders dated 17.4.2008 and 30.7.2009 by applying the law laid down by the Hon'ble Apex Court, quoted above, quashed the orders of reversion and directed to extend all the benefits that has been given to the applicants in earlier OAs as per the orders of the Hon'ble High Court of Orissa. The Respondents tested the legality of both the orders before the Hon'ble High Court of Orissa in WP(C) Nos. 15824 of 2008 and WP(C) No. 16986 of 2009 respectively but both the Writ Petitions were dismissed on 03.02.2009 and 15.12.2009 thereby upholding the orders of this Tribunal. He further submitted that the present case being one and the same should not be dismissed on the ground of delay and laches as it would tantamount to perpetuating the injustice/discrimination caused to the applicant in the decision making process of the matter. Accordingly, Mr.Routray has sincerely prayed for granting the relief to the Applicant.



7. Undisputedly, the Applicant was promoted to Vehicle Driver Gr.II in the scale of pay of Rs.1200-1800/- w.e.f. 29.9.1992 purely on adhoc basis vide order dated 29.9.1992 and thereafter to Driver Gr.I in the scale of pay of Rs.4500-7000/- w.e.f. 01.8.1996 purely on adhoc basis vide order dated 17.9.1996. In other words his promotion on adhoc basis was prior to the issuance of the Railway Board's instruction during the year 1999 and the letter of Deputy Chief Personnel Officer (Con.) S.E.Railway, Bhubaneswar dated 13.11.2001. It is also the specific case of the Applicant that he was promoted on adhoc basis against sanctioned posts after being successful in the trade test conducted by the Authorities.

8. It is not the case of the Respondents that in case the order of reversion of the applicant is quashed, the interest of a third party would be affected adversely but he is not a party in this OA. Law is well settled that delay and laches is a matter within the discretion of the Court and such discretion must be exercised fairly and justly so as to promote justice and not to defeat it and if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Further, law is well settled that in the event that the claim made by the applicant is legally sustainable then the



delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. The Court should not harm innocent parties if their rights have in fact emerged by delay on the part of the Applicant. In this connection relevant portion of the decision of the Hon'ble Apex Court rendered in the case of **Tukaram Kana Joshi and Others –Vrs- M.I.D.C. and Ors**, reported in **AIR 2013 SC 565** being relevant is reproduced herein below:

“10. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate <sup>to</sup> itself ~~to~~ a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another fact. **The Court is required to exercise judicial discretion.** The said discretion is dependent on facts and circumstances of the case. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. **There can be mitigating factors, continuity of cause of action, etc.** That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. **Thus analyzed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.**

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11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it, that there can never be a case where the Courts cannot interfere in the matter, after the passage of a certain length of time. There may be a case where the **demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay.** Ultimately, it would be a matter within the discretion of the Court and **such discretion must be exercised fairly and justly so as to promote justice and not to defeat it.** The validity of the party's defence must be tried upon principles substantially equitable (Vide P.S.Sadasivaswamy v State of T.N., AIR 1974 SC 2271; State of MP & Ors V. Nandlal Jaiswal & Ors, AIR 1987 SC 251; and Tridip Kumar Dingal & Ors V. State of West Bengal & Ors, (2009) 1 SCC 768=AIR 2008 SC (Suppl.) 824).
12. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have a vested right in the injustice being done because of a non-deliberate delay. The Court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners (Vide: Durga Prasad V. Chief Controller of Imports and Exports & Ors, AIR 1970 SC 769; Collector, Land Acquisition Anantnag & Anr v. Mst. Katiji & Ors, AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd v. District Board Bhojpur & Ors, AIR 1993 SC
- 12/10/12

802=(1992 AIR SCW 3181; Dayal ISingh & Ors v. Unoin of India & Ors, AIR 2003 SC 1140=(2003 AIR SCW 685); and Shankara Coop Housing Society Ltd. V.M.Prabhakar & Ors, AIR 2011 SC 2161=(2011 AIR SCW 3033).”

9. In the case of **H.D.Vora v. State of Maharashtra & Ors**, reported in **AIR 1984 SC 866**, the Hon’ble Supreme Court of India condoned 30 years delay in approaching the court where it found violation of substantive legal rights of the applicant.

10. Further while dealing with a matter of payment of compensation in land acquisition matter, the Hon’ble Apex Court in the case of **Tukaram Kana Joshi and Others –Vrs- M.I.D.C. and Ors**, reported in **AIR 2013 SC 565** (paragraph 17) held as under:

“17. The Appellants have been seriously **discriminated against quo other persons**, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. **This kind of discrimination not only breeds corruption, but also dis-respect for governance as it leads to frustration and to a certain extent, forces persons to take the law into their own hands.** The findings of the High Court that requisite records were not available or that the **appellants approached the authorities at a belated stage are contrary to the evidence viable on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality which is the soul of our Constitution.** Even under valid acquisition proceedings there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest and to make payment of requisite compensation. The appeals etc are required to be decided

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expeditiously for the sole reason that if a person is not paid compensation in time he will be unable to purchase any land or other immovable proper<sup>ty</sup> for the amount of compensation that is likely to be paid to him at a belated stage.”

11. We are of the considered view that after the order of the Hon'ble High Court of Orissa, the Railway-Respondent ought to have reviewed the reversions imposed on all the employees including that of the Applicant, based on the order of the Deputy Chief Personnel Officer (Con.) S.E.Railway, Bhubaneswar dated 13.11.2001. Having not done so, the Applicant was forced to approach this Tribunal after being unsuccessful in his representation and, therefore, he cannot be unsuited due to delay and laches and, if it is done then this would amount to allowing the injustice to perpetuate and it will be contrary to the law laid down by the Hon'ble Apex Court as well as the Hon'ble High Court of Orissa.

12. In the light of the discussions made above we find no substance on any of the ground advanced/canvassed by the Respondents. Accordingly, the order of reversion of the applicant dated 30.11.2001 is hereby quashed and as a consequence, the Respondents are directed to extend all the benefits that has<sup>ve</sup> been granted to the applicants in earlier OAs as per the order of the Hon'ble High Court of Orissa in the

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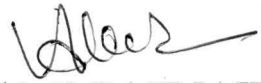
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aforesaid Writ Petitions as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order. It is made clear that the applicant shall not be entitled for any arrears of pay or other monetary benefits arising out of this order.

13. In the result with the aforesaid observations and directions this OA stands allowed to the extent stated above. There shall be no order as to costs.



(R.C.MISRA)  
Member (Admn.)



(A.K.PATNAIK)  
Member (Judiciali)