

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

Original Application No. 897/96  
This the 14<sup>th</sup> day of January, 2005.

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CORAM :

Hon'ble Mr. A.V. Harijagan, Vice Chairman  
Hon'ble Mr. G.R. Patwardhan, Administrative Member

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V.V. Ramana Murthy S/o V.S. Ramaiah,  
working as Works Supervisory Mistry  
Under the District Electrical Engineer(Con)  
S.E. Railway, Korapur, PO & Distt. Korapur.

..... Applicant.

(By Mr. A.K. Banerjee, Advocate, for applicant)

Versus

1. Union of India service through  
the General Manager, S.E. Railway,  
Garden Reach, Calcutta.
2. General Manager, South Eastern Railway,  
Garden Reach, Calcutta.
3. Chief Personnel Officer, South Eastern Railway,  
Garden Reach, Calcutta.
4. Chief Administrative Officer (Con.),  
S.E. Railway, Garden Reach, Calcutta,  
also @ at Visakhapatnam (A.P.).
5. Dy. Chief Electrical Engineer (Con.),  
S.E. Railway, Distt. Visakhapatnam.
6. Deputy Chief Personnel Officer (Con.),  
S.E. Railway, Visakhapatnam, A.P.

..... Respondents.

(By Mr. K. Chakraborty, Advocate, for respondents).

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**ORDER**  
**[PER G.R.PATWARDHAN, MEMBER (A)]**

This is an application by V.V. Ramana Murthy, working under District Electric Engineer, S.E. Railway, Koraput against six respondents led by the General Manager S.E. Railway, Garden Reach, Calcutta, including Chief Personnel Officer, S.E. Railway Calcutta, Chief Administrative Officer, S.E. Railway, Vishakhapatnam, Dy. Chief Electrical Engineer (Construction), Vishakhapatnam and Dy. Chief Personnel Officer (Construction), Vishakhapatnam – all of S.E. Railway. The application has been filed on 24.7.1996 and its reply under the signature of Mr. Susanta Kumar Das, Dy. Chief Electrical Engineer (Construction), Vishakhapatnam as respondent no. 5 filed on 4.1.1999.

2. Certain dates – admitted by both the parties, need to be quoted at outset to appreciate the case easily. They are as follows :-

- 16.09.1980 District Engineer, S.E. Railway, Waltair, notifies ten vacancies of Casual Supervising Mistry on daily rates of pay in Civil Engineering Department of Waltair – Kirandul Railway Electrification Project – candidates to possess Diploma in Civil, Electrical or Mechanical Engineering.
- 17.11.1980 Applicant gets appointment letter.
- 21.10.1986 Applicant gets temporary status.
- 04.07.1991 Chief Administrative Officer, Vishakhapatnam, issues orders regarding absorption of applicant in a Group 'D' post describing him as Works Mistry.
- 26.07.1991 Applicant represents to Chief Personnel Officer, S.E. Railway, Calcutta against proposal to absorb

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him in Group 'D' posts and requests to absorb him in Open Line as Works Mistry.

Some time in 91 O.A. 347/1991 filed in C.A.T. Cuttack Bench by applicant against the General Manager, S.E. Railway, Calcutta, Chief Administrative Officer, S.E. Railway, Vishakhapatnam and District Electrical Engineer (Construction), Korapat.

07.04.1995 O.A. 347/1991 disposed of with direction to respondents to absorb him in Open Line in pay scale Rs. 1400-2300 immediately when the vacancy becomes available subject to his seniority in the grade in which he was working.

06.11.1995 Hon'ble the Supreme Court of India dismisses S.L.P. filed by the respondents against the C.A.T. order of 7.4.1995.

3. We have heard the learned counsel for both the parties and have gone through the pleadings. The applicant has prayed for the following reliefs:-

- (i) To direct the respondents to regularize the services of the applicant in Group 'C' post in scale Rs. 1400-2300 (RP) from the date the services of his juniors were regularised and to accord all benefits arising out therefrom including seniority.
- (ii) To direct the respondents to implement the order and judgement of the Hon'ble Tribunal contained in Annexure 'M' hereof since clear vacancies were and/or are there in the Open Line.
- (iii) To direct the respondents to implement the order and judgement of the Hon'ble Tribunal and consider the representations contained in Annexure 'O' in the light of the order and judgement contained in Annexure 'M' hereof and accord all benefits including monetary as given to the juniors as also scale of pay and seniority as Works Mistry and/or equivalent in the Open Line.

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- (iv) To direct the respondents to restore the seniority position of the applicant reckoning the services rendered in the construction line as Works Mistry.
- (v) To draw and disburse all arrears consequential thereto.”

4. The respondents have taken the following pleas in opposing the application :-

- (i) In compliance with the orders of the Tribunal, Cuttack, as aforesaid, the applicant was directed to attend the written examination on 14.8.1998 for absorption in the post of Permanent Way Mistry in the scale of Rs. 1400-2300 (Revised Rs. 4500-7000) in Civil Engineering Department in Open Line, Waltair vide Senior DPO/WAT's letter No. Wpi/446/PWM/Court case dated 30.7.1998.
- (ii) The applicant is in fact repeated his prayer for being absorbed in Grade 'C' post carrying scale of Rs. 1400-2300 with consequential reliefs. It is therefore, hit by the principal of res judicata as he could not approach this Tribunal for one and the same relief for which he has been already given relief by the Cuttack Bench as aforesaid. However, if his intention was to approach this Tribunal for his grievance that the orders of the Cuttack Bench, have not so far been implemented, the only course was left open to him, to file Contempt Petition and not a separate Original Application before this Bench.
- (iii) The Department wanted to implement the orders of the Cuttack Bench by calling him for written test and interview for the said post as Permanent Way Mistry in the equivalent grade as per the orders of the Cuttack Bench.

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- (iv) The applicant being a Diploma holder in the Mechanical Engineering is not even eligible to apply for the post of Works Mistry in terms of the recruitment notification of Work Mistries.
- (v) The applicant is all along working as Casual Supervising Mistry belongs to skilled grade in the pay scale Rs. 330-480 / 1200-1800. The applicant never worked as Works Mistry and also in the pay scale Rs. 1400-2300.

It would thus appear that the respondents have :-

(a) admitted; though in a circuitous manner that the orders of the C.A.T. dated 7.4.1995 have not been implemented;


(b) maintained that this Tribunal has no jurisdiction to entertain this O.A. and it is only the Cuttack Bench that has the jurisdiction;

(c) contended that filing an O.A. is not the solution for the applicant – the appropriate course for him would be, to file an application for initiating contempt of court proceedings and

(d) said that even on merits, the applicant does not have a case (the last part of the paragraph above i.e. (v) where the respondents maintain that the applicant has no case for absorption).

5. At this stage, it would be appropriate to refer to the operative part of the order of the Tribunal dated 7.4.1995 which has been made the basis of this O.A. Even at the cost of repetition, it appears necessary to reproduce the same :-

“In our considered view, looking to the continuous service that the petitioner has put in and the orders made from time to time by the competent officers giving him certain higher scales, it would be unreasonable to direct him to accept the Group ‘D’ post now offered at much lower scale. He is entitled to be absorbed in an equivalent post carrying the



revised scale of Rs. 1400-2300 in the Open Line immediately when the vacancy is available subject to his seniority in the grade in which he is now working and till then, there should be no impediment for him to continue in the post in which he is now working."

This order has attained finality - the respondents having lost their case in the Hon'ble Supreme Court. It, therefore, appears funny that they should take recourse to attack this order even on merits. Suffice it to say that when the Union of India through the General Manager, South Eastern Railway, Calcutta and the Chief Personnel Officer of South Eastern Railway, Calcutta, have been made a party, this Bench has full jurisdiction to hear the matter and to that extent the plea of the respondents of lack of jurisdiction has no force.

We also find that the prayer in the earlier O.A. before the ~~Calcutta~~ Bench and the present application are not the same. Earlier the grievance made out related to attempted absorption against a Group 'D' post in open line which the Tribunal found unreasonable. The case before us is materially different. We are, therefore, unable to accept the plea of respondents that it is hit by the doctrine of res judicata.

6. The reply filed by the respondents makes one thing amply clear - that the order passed in 1995 by the Tribunal has not been implemented and even now, the respondents do not propose to do the same. This is most unfortunate and does not behove an Organisation like the Indian Railways. The order was for absorption of the applicant in a particular scale in the vacancy that would be arising following the date of the judgement. It has neither been pleaded in the reply nor through argument that no vacancy has arisen in the last ten years. Rather...

*[Handwritten signature]*

there were vacancies and the respondents wanted the applicant to take an examination towards the same. This was an open ended proposal; in the eventuality of failure to clear the examination, the applicant was to be nowhere - an eventuality neither intended nor comprehended by the Tribunal. That being the case, no other presumption can be drawn except that the respondents did not want to implement the earlier order.

7. That respondent No. 5 has been very casual in the matter is writ large on the face of reply that has been filed on 4.1.1999. It seems, the reply was typed earlier and the Verification part left blank - the purpose seems to be that anybody could file the same. This has led to ridiculous averments. In the very first paragraph, the Deponent Sushant Kumar Das, describing himself as Dy. Chief Electrical Engineer (Construction) maintains that "he is competent and duly un-authorized to make this reply and to verify the same on his behalf and on behalf of the other respondents". Secondly, there are only 13 numbered paragraphs of the reply. The Deponent says that he verified the statements made in paragraphs 1 to 13 which are true to his personal knowledge but, hastens to add, "statements made in paragraphs ....., are believed to be true on legal advice". It is difficult to appreciate how and which paragraphs have been verified on legal advice, if the reply contains only 13 paragraphs.

8. In the result, the O.A. succeeds and is disposed of with the following directions :-

- (a) The respondents shall immediately and within 30 days of the receipt of a copy of this order, give appointment, as directed by the Cuttack Bench of the Tribunal, to the applicant.

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(b) The respondent No. 5, the Dy. Chief Electrical Engineer, shall through an Affidavit report compliance of this direction to this Bench by 28<sup>th</sup> February, 2005.

(c) Rs. 10,000/- is awarded as Costs to be deposited with the Registrar, C.A.T., Kolkata, by the respondent no. 5 which would be utilized for upgrading the facilities of the C.A.T. Bar Library. This order also to be complied with within thirty days of the receipt of a copy of this order.



(G.R. Patwardhan)  
Administrative Member



(A. V. Haridasan)  
Vice Chairman

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