

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
OA 615 OF 1997

Present : Hon'ble Mr. S. Biswas, Member (A)  
Hon'ble Mr. A. Sathath Khan, Member (J)

1. A.V.S.Prasad  
S/o A.S.N.Patnaik,
2. J.Rajeswararao,  
S/o Someswararao
3. V. Manikyalara,br/>S/o Ramamurthy

All working as H.S.Gr.II in ELS/Walatair

VS

1. Union of India through the  
General Manager, S.E.Rly.  
Garden Reach, Calcutta-43
2. The General Manager, S.E.Rly.  
Garden Reach, Calcutta-43
3. The Chief Personnel Officer,  
S.E.Rly. Garden Reach, Cal-43
4. The Chief Administrative Officer(Project)  
S.E.Rly. Chadraksharpur,  
Bhubaneswar, Orissa

.... respondents

For the applicants : Mr. Samir Ghosh, Counsel

For the respondents : Mr. K.Md. Ali, Counsel  
Mrs. S.Banerjee, Counsel

Heard on : 6.1.03 : Order on : 09.1.03

O R D E R

S.Biswas, A.M.:

This application has been filed jointly by three applicants challenging the speaking order dated 3.3.97 passed by the respondent No. 2 pursuant to the direction of this Tribunal dated 24.9.96 in OA 1494/95 filed by the applicants earlier.

2. Briefly stated the case of the applicants is that they were initially appointed as casual Supervisory Mistry on daily wage basis on 22.11.80 in construction side under the S.E.Rly. They were accorded temporary status in the said post of Supervisory Mistry in the scale of Rs. 330-480/- (unrevised) w.e.f. 1.1.84. However, they were regularised w.e.f. 1.9.84 in the post of Skilled Fitter, Gr.III

*S. Biswas*

in the lower scale of Rs. 260-4800/- in open line and were promoted as H.S.Gr.II in the next higher grade of Rs. 1200-1800/-. Their grievance is that even though they were working as Supervisory Mistry in a higher grade, they have been regularised in a lower grade and post w.e.f: 1.9.84 and not from the date of their initial appointment whereas some similarly circumstanced persons were regularised from the date of their initial appointment in the higher post. Being aggrieved, they made several representations but to no effect. Thereafter, they approached this Tribunal by filing OA No. 1494 of 1995 praying for their regularisation as Supervisory Mistry in the higher grade with effect from 1.1.84 i.e. the date of their appointment on temporary basis at par with similarly circumstanced employees of the same project. The said OA was disposed of by an order dt. 24.9.96 by directing the General Manager to consider and dispose of the representation of the applicants dt. 8.2.95 by passing a speaking and reasoned order. Pursuant to that direction, the General Manager (respondent No. 2) has passed the impugned order dt. 3.3.97 (annexure-C) rejecting the claim of the applicants for the reasons stated therein. Challenging this speaking order, the applicant has filed the instant OA praying for a direction on the respondents regularise their services as Supervisory Mistry w.e.f. 1.1.84 and to assign them appropriate scale of pay of Rs. 380-560/- (Rs. 1400-2300/-) accordingly. They have also prayed for fixation of their seniority above 200 locally recruited casual Works Mistries in 1988.

3. The respondents have filed a reply contesting the application. It is stated therein that the applicants were initially appointed as casual Supervisory Mistry on daily rates of pay i.e. Rs. 9.50, Rs. 8.00 and Rs. 7.00 in Waltair Division in the year 1980. According to them, the post of Supervisory Mistry is in skilled category for which the pay scale is Rs. 260-400/- and as such the applicants were regularised in the skilled category in that scale only in open line on their option. It is contended that the applicants are not entitled to



get parity with Works Mistry, which is a supervisory post and not a similar post like Supervisory Mistry held by the applicants. It is further stated that the applicants were absorbed in open line w.e.f. 1.9.84 on their signifying willingness for the same and in the open line they also got promotions subsequently. So far as the claim of the applicants that some similarly situated persons were granted the benefit of regularisation with effect from the date of their initial appointment in higher scale, it is contended that the applicants are not similarly situated like those viz. S/Sri G.L.Sarkar and Raman Chakraborty. They were appointed as Works Mistry in a regular scale of pay and not daily wage basis. Besides, they were holder of Diploma in Civil Engineering which is the requirement for the post as per rules whereas the applicants are diploma holder in Mechanical Engineering. It is further contended that the posts of Works Mistry and Supervisory Mistry are different posts and belong to different category. Whereas the former is in the supervisory category, the latter is in the skilled category in a lower cadre. Therefore, both the posts cannot be equated and as such the applicants cannot claim parity with the aforesaid two persons. Regarding the applicants' claim for seniority over 200 Works Mistries, it is contended that these persons were recruited in 1988 as per recruitment rules by which time the applicants were regularised in open line in the year 1984 and as such they cannot be given seniority over those 200 persons who are in the different seniority unit.

4. We have heard the 1d. counsel for the parties at length and perused the documents produced.

5. Mr. Samir Ghosh, 1d. counsel for the applicants has very strenuously argued that the applicants were appointed as Supervisory Mistry on casual basis in the year 1980 and they were granted temporary status w.e.f. 1.1.84 in the scale of Rs. 330-480/-. Therefore, they cannot be regularised in the lower scale of Rs. 260-400/- in a lower post of Fitter, Gr.III from 1.9.84 as has been done. He has cited the case of Shri G.L.Sarkar and Shri Raman

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Chakraborty, who were also initially appointed on daily rate basis like the applicants but who were subsequently regularised in regular scale from the date of their initial appointment in 1975 vide order dt. 19.8.80 (annexure-A). He has placed reliance on a decision of the Cuttack Bench of this Tribunal in OA No. 347 of 1991 (V.V.Raman Murty -vs- UOI & Ors) decided on 7.4.1995, a copy of which has been annexed at Annexure-E. It is submitted that this decision of the Tribunal was also upheld by the Hon'ble Apex Court by dismissing the SLP vide order dt. 6.11.95 (annexure-E). Mr. Ghosh submits that the applicant of that OA was also appointed as supervising Mistry along with the applicants and the Cuttack Bench of the Tribunal has directed the respondents to absorb him in the same post in the scale of Rs. 1400-2300/-.. Mr. Ghosh contends that when the applicants were also appointed along with the applicant of the aforesaid OA, they should also be granted similar benefits and denial of the said benefit to the applicants will amount of discrimination infringing the principle of equality.

6. Ld. counsel for the respondents, on the other hand, has contended that the applicants are not similarly circumstanced like the applicant of the aforesaid OA. He has pointed out that the applicants were initially appointed as Supervisory Mistry which is in Skilled category in the scale of Rs. 260-400/-, though they were given higher scale at that time wrongly and hence they were rightly absorbed in the open line in identical scale and post, when vacancy was available. It is further stated that the applicants gave willingness for being absorbed in open line as the promotional scope there is more. They have in the meanwhile been promoted in the higher grade also. Now they cannot claim that they should be granted higher scale and absorbed in the post of Work Mistry w.e.f. 1.1.84 when they were granted temporary status. He has pointed out that the post of Work Mistry and Supervisory Mistry are different posts and not identical one. Therefore, there is no question of absorbing the applicants in higher post as claimed by them.

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7. We have given our anxious consideration to the rival contentions. Through the speaking order dated 3.3.97, the respondent No. 2 has passed a very elaborate and reasoned order rejecting the claim of the applicants for absorption in the scale of Rs. 1400-2300/w.e.f. 1.1.84. He has discussed at least five issues raised by the applicants in their representations. The sum and substance of the reasons stated by the respondent No. 2 in rejecting the claim of the applicants has been stated above. However, we find that while discussing issue No. 3, it is pointed out the case ( OA 347/91) filed by V.V.Raman Murth, before Cuttack Bench was still sub judice whereas the said case was decided on 7.4.95 and SLP was also dismissed on 6.11.95. Thus, it appears that the respondent No. 2 was not aware of this development and hence there was no discussion on the issue. However, in para 16 of the reply, the respondents have stated that the applicants had already been absorbed in open line in 1984 whereas Shri V.V.Ramana Murthy (applicant before Cuttack Bench) was still working as Supervisory Mistry in the constructions organisation.

7. On a perusal of the decision of the Cuttack Bench we find that the said applicant was appointed along with the applicants of the present OA as Supervisory Mistry in 1980 and was granted temporary status and were granted the pay scale of Rs. 330-480/-/Rs. 1200-1800/on attaining temporary status. The said scale was revised to Rs. 1400-2300/-, which was alleged to be wrongly given. However, the said applicant was considered for absorption in open line as Gr. D employee which he resented and ultimately he filed the aforesaid OA. The Cuttack Bench after elaborate discussion of the various contentions, passed the following directions :-

" 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 officerrs 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

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working. Soon after the vacancy arises in an equivalent post in the open line subject to the conditions referred to above, the respondents shall absorb him in the open line.."

8. This order of the Tribunal was subsequently upheld by the Hon'ble Supreme Court in SLP.

9. It appears that in the aforesaid case, on which much reliance has been placed by the ld. counsel for the applicants, the Cuttack Bench only directed the respondents to consider his absorption in the same post in open line when vacancy will be available according to his turn and till then he will continue to work in his former post. On that basis, the said applicant, at least at the time of filing of the reply, was working as Supervisory Mistry in construction wing whereas the present applicants had already been absorbed in open line in 1984 on their own volition. Thus, the applicants are not similarly circumstanced like the applicant of the aforesaid OA though they were initially appointed along with him. Once the applicants switched over to open line and enjoyed the benefit of promotion there, they cannot now turn around and claim parity with the applicant before the Cuttack Bench who is still working in the construction side. Admittedly, construction side and open line are different streams and have different channels of promotion based on different seniority units. Even otherwise, the applicants cannot now be allowed to go back to their original position after so many years to unsettle the settled position. It is too late for the applicants to claim such benefit.

10. So far as the claim of the applicants regarding seniority over 200 Work Mistry recruited in 1988 is concerned, it is observed that these persons were recruited after the applicants left the constructions wing and absorbed in open line and as such they cannot claim seniority over them, particularly when these persons have not been impleaded as party in this proceeding. The applicants have also not been able to establish that the posts of Work Mistry and Supervisory Mistry are similar posts and interchangeable. The respondents on the other hand have produced a Rly. circular dt. 14.8.80 (annexure-R1) showing that the post of Supervisory Mistry is

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in skilled grade in the scale of Rs. 260-400/-. It is stressed that the post of Works Mistry is in the supervisory category whereas the post of Supervisory Mistry is in skilled category and as such both the posts are not similar. Since the applicants have never worked as Works Mistry, they cannot claim absorption in that category.

11. For the reasons stated above, we are unable to find any infirmity in the impugned speaking order passed by the respondent No.
2. Consequently, the application must fail being devoid of any merit.
12. Accordingly, the OA is dismissed. No costs.



(A. SATHATH KHAN)

MEMBER(J)



(S.BISWAS)

MEMBER(A)