

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 260/00445 of 2013
Cuttack, this the 03rd day of November, 2017

CORAM:

THE HON'BLE MR.S.K.PATTNAIK, JUDICIAL MEMBER
THE HON'BLE DR.M.SARANGI, ADMN. MEMBER

.....

JANAKAR PATRA,
Aged about 54 years,
S/o. Banambar Patra,
at permanent resident of At-Gadakan,
PO. Mancheswar, RS-Bhubaneswar, Dist. Khurda
presently serving as Senior Clerk (Personnel Branch)
in the Office of the Deputy Chief Electrical Engineer,
Mancheswar Carriage Repair Workshop, Mancheswar,
PO. Mancheswasr, Bhubaneswar, Dist. Khurda.

..... Applicant

By the Advocate :M/s. D.K.Panda, G.Sinha, A.Mishra

-Versus-

1. UNION OF INDIA represented through its General Manager, East Coast Railways, Rail Sadan, Chandrasekharpur, Bhubaneswar-751013.
2. Chief Workshop Manager, Mancheswar Carriage Repair Workshop, Mancheswar, PO. Mancheswar, Bhubaneswar, Dist. Khurda.
3. Workshop Personnel Officer, Mancheswar Carriage Repair Workshop, Mancheswar, Po. Mancheswar, Bhubaneswar, Dist. Khurda.
4. Deputy Chief Electrical Engineer, Mancheswar Carriage Repair Workshop, Mancheswar, Po. Mancheswar, Bhubaneswar, Dist. Khurda.
5. Manoj Kumar Barisal, Office Superintendent, Personnel Branch, Carriage repair Workshop, Mancheswar, Po. Mancheswar, Bhubaneswar, Dist. Khurda.
6. Arabinda Barik, Office Superintendent, Personnel Branch, Carriage repair Workshop, Mancheswar, Po. Mancheswar, Bhubaneswar, Dist. Khurda.
7. Jyotshna Ray, Senior Clerk, Personnel Branch, Carriage Repair Workshop, Mancheswar, Po. Mancheswar, Bhubaneswar, Dist. Khurda.

8. Gouranga Charan Rout, Junior Clerk under the Office Superintendent (Bills), Personel Department, Bhubaneswar Carriage Repair Works, Mancheswar, Bhubaneswar, Dist. Khurda.

..... Respondents

By the Advocate : Mr.T.Rath

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O R D E R

S.K.PATTNAIK, JM:

The applicant has filed this O.A. for the following reliefs as reflected in paragraph-8 of the O.A.

“8(i) To direct the respondents to antedate his promotion to the date when the respondent nos.5 to 8 were promoted to the rank of Senior Clerk and Office Superintendent.

(ii) To direct the respondents to declare the applicant to be senior to the respondent nos. 5 to 8 in the rank of Senior clerk and Office Superintendent,

(iii) To direct the respondents to treat the applicant to be belonging to the Personnel cadre of the Carriage Repair Workshop,

(iv) to quash the order dated 27-05-2013 to the extent it relates to the repatriating the applicant back to the electrical Department,

(v) Consequentially to quash the order dated 28-05-13 in relieving the applicant from Personnel Department.

(vi) To direct the respondents to give all service and financial benefits retrospectively.”

2. After going through the pleadings of the Applicant so also of the Respondents it may be noteworthy to reflect, at the outset, that they are misleading, vague and not pinpointed rather misconceived.

However, the case of the Applicant and Respondents as gathered from their arguments are summarized below for adjudication of the present lis. The applicant, Shri Janakar Patra, working as Senior Clerk (Personnel Branch) under the Deputy Chief Electrical Engineer, Mancheswar Carriage Repair Workshop, Mancheswar, Bhubaneswar, has filed this Original Application seeking multiple reliefs, which is not one and the same nor consequential to other. On being pointed out, Mr. A.K.Mishra, Senior Counsel appearing for the Applicant, has confined his relief sought in paragraph 8 (i) which is quoted below:

“8(i) To direct the respondents to antedate his promotion to the date when the respondent nos.5 to 8 were promoted to the rank of Senior Clerk and Office Superintendent.

3.(a) According to the applicant, he was appointed as a Khalasi on 30/08/1983 and, thereafter, he was promoted to the post of Junior Clerk on ad hoc basis on 20/11/1984. He was reverted to his substantive post of Khalasi w.e.f. 01/01/1986 and was promoted to the post of Khalasi Helper on 19/04/1990 on ad hoc basis. Subsequently, he was again reverted to the post of Khalasi. He challenged his order of reversion before this Tribunal in OA No. 146/1990 which was allowed on 18/12/1990 with direction to adjust the petitioner against the available post of Junior Clerk and also fix his seniority. As against the said order of this Bench, the Respondent-Department filed SLP (Civil) Nos. 16298-99/91 before the Hon'ble Apex Court and the Hon'ble Apex Court

quashed the order of this Tribunal, and, consequently, the Applicant was reverted to the post of Khalasi.

(b) Thereafter, the applicant was promoted to the post of Junior Clerk on ad hoc basis on 30/06/1993 and after continuing for a period of two years, he was reverted to the post of Khalasi . He was again promoted to the post of Junior Clerk on ad hoc basis and continued as such till 20/01/1999. He appeared at the selection conducted by the Respondents but could not come out successful. He challenged his non selection before this Tribunal which was dismissed with direction that the petitioner may be allowed to continue in the vacant post of Junior Clerk meant for direct recruitment till the post is filled up as per Rules. He was again subjected to test for promotion to Junior Clerk on 31/07/2001 but again he failed. He filed another OA No. 397/2001 challenging his non selection with prayer to direct the Respondents to regularize him in the post of Junior Clerk as he has in the meantime completed five years of service in the post of Junior Clerk. The OA was dismissed by this Bench. Thereafter, he challenged the said order of this Bench before the Hon'ble High Court of Orissa in WP (C) No. 8793 of 2004 and the Hon'ble High Court vide order dated 10th February, 2012 while upholding the order of this Bench directed that if the applicant is continuing in the post of Junior Clerk solely on the basis of the result of the written examination w.e.f. 03.08.2005, on completion of five years of continuous service in the said post on ad hoc basis, he be regularised in the said post without being subjected to any viva voce test.

(c) According to the applicant, in compliance of the order of the Hon'ble High Court of Orissa (supra), he was regularized in the grade of Jr. Clerk w.e.f. 08/03/1996. It has been submitted that even though the applicant belongs to personnel cadre of the Railway he was shown to be an employee of Electrical Branch. Accordingly his promotion to the rank of Senior Clerk was ante dated to 05/08/2005. It has been contended that the applicant submitted representation praying for his promotion to Senior Clerk from the date when his immediate juniors were promoted which was not considered by the Respondents till filing of the O.A.

4. According to Mr. T.Rath, Ld. Counsel for Railways, the Applicant intentionally and deliberately attempted to suppress the facts of his working in Electrical Department cadre to gain undue advantage of seniority over some of the persons working in personal branch cadre. It has been stated that in CRW/Mancheswasr there are three distinct ministerial cadres i.e. Mechanical, Electrical & Personnel. Although the Applicant was given ad hoc promotion on stop gap measure in Electrical Department, he misrepresented the status thereby comparing with the status of Shri M.K.Barisal, Smt. Jyostna Ray and Sri A.Barik who were in Ministerial cadre of Personnel Branch of the Railway. It is further argued that the applicant attempted to conceal the facts about his selection and promotion in Personnel cadre being selected through a fresh selection in personnel branch cadre against 33 1/3% DPQ w.e.f. 05/08/2005 in terms of Notification No. CRW/MCS/P-88/Pt.III/312 dated 27/18/01/2005 but not by way of regularisation of his ad hoc

promotion, as he was at no point of time promoted as Jr. Clerk on ad hoc basis in the personnel branch ministerial cadre. As such in personnel Branch cadre he was no locus standi to claim any seniority over the existing staff and also from any earlier date prior to his entry in personnel branch cadre by virtue of the selection as per extant rules. It has been stated that in compliance of the order of the Hon'ble High Court he was regularized in Jr. Clerk of Electrical Department w.e.f. 08/03/1996 in which cadre he was given ad hoc promotion in different spells and, thereafter, considering his seniority position, he was promoted to the post of Senior Clerk with effect from the date his immediate junior Shri Bikash Mohapatra was promoted to Senior Clerk i.e. w.e.f. 08/03/2005. It was emphatically submitted that his claim for antedating his regularization as Office Superintendent (In short, O.S.) in Electrical Department at par with Shri Bikash Mohapatra is not maintainable since as per the Rules, the post of O.S. is filled up by way of positive act of Selection. Moreover, there is no O.S. post available in Electrical Department at present. Next contention of Mr. Rath, is that according to the applicant he has submitted representation on 25/06/2013 & 17/07/2013. The representations were considered and the same was rejected and communicated to the applicant on 14/08/2013 (Annex.R/5) which he refused to receive. The order of promotion to O.S. of his so called junior has not been challenged by the applicant or even the order of rejection of his representation even though he was aware through the counter that his representation has been rejected. This O.A. is vague as

he has not stated when his so called juniors were promoted to O.S. even by way of positive act of selection. Hence, Respondents prayed for dismissal of this OA.

5. We have considered the rival submissions of the respective parties with reference to the pleadings and materials placed in support thereof. The prayer of the applicant in this O.A. is to direct the respondents to antedate his promotion to the date when the respondent nos.5 to 8 were promoted to the rank of Senior Clerk and Office Superintendent. From the pleadings it is clear that the Applicant belongs to Electrical wing of the Railway. But the OA is conspicuously silent as to when the Opposite Parties were promoted to the post of Senior Clerk; especially when it is the specific stand of the Respondents in their counter that the promotion of the applicant to Senior Clerk was antedated to 08/03/2005 when his immediate junior in the Electrical Department was promoted to the post of Senior Clerk. It is not the case of the Applicant that the promotion to the post of Senior Clerk or O.S. is like the promotion under Flexible Promotion Scheme under which irrespective of availability of vacancy in higher scale/grade one can automatically be promoted after acquiring the eligibility in the feeder grade/scale. Rather, as per the Rules, promotion is subject to acquiring eligibility and availability of vacancy. The applicant has sought direction to the Respondents for ante dating his promotion in the grade of Senior Clerk without specifying the date or even challenging the order of promotion of his so called juniors.

6. Similarly, it is noteworthy that promotion to O.S., as per Rules is by way of positive act of selection. The applicant was continuing in the grade of Senior Clerk and was not promoted to O.S. after being qualified through positive act of selection as per Rules whereas, he has sought direction to the Respondents to ante date his promotion to O.S. which is absolutely vague and misconceived.

7. Another important aspect which needs to be emphasized is that this Bench while admitting the OA on 15/07/2017 has directed that pendency of the OA shall not stand as a bar on the respondents to give consideration to the pending representation of the applicant. The representation of the applicant as it appears was rejected on 07/08/2013 (Annexure-R/5) which order, at least, if not earlier, the applicant must have noticed through the counter but he has not sought to quash the same in the OA.

8. We are reminded by the decision of the Hon'ble Apex Court in the case of *Abhyudya Sanstha Vrs Union of India and others, reported in 2011 (4) Supreme 148 (para-16)*, wherein it has been held by the Hon'ble Apex Court that those who attempts to pollute the stream of justice or who touches the pure function of justice with tainted hand by stating falsehood, misrepresentation and suppression of facts is not entitled to any relief.

9. Before parting with this order, we would like to keep on record how misconceived the applicant is about infringement of his right.

In fact, there is no infringement. In paragraph 8(v), the applicant seeks quashing of the order dated 28.05.2013 (Annexure-7) by which the Office of the Chief Workshop Manager, Mancheswar, has passed the impugned order directing release of the applicant from Personnel Branch on 28.05.2013 after working hours and further directed his posting as Sr. Clerk in Electrical Department against one vacant post of Mechanical Department temporarily transferred to Electrical Department in obedience to the order of the Hon'ble High Court of Orissa dated 01.05.2013 in contempt case No. 1887/2012 (arising out of WP(C) No. 8793/2004). So, once an order is passed in response to any direction of the Hon'ble High Court, this Tribunal is not competent to annul it or to make it sterile or infructuous, as it may amount to judicial indiscipline and infringe judicial decorum. Annexure-A/7, by which the applicant was transferred from Personnel Branch to Electrical Branch, cannot be questioned by this Tribunal. Needless to say that the applicant himself had initiated the contempt proceeding before the Hon'ble High Court for not transferring him to Electrical Department and retaining him in Personnel Department for which such an order was passed. If the applicant was really aggrieved by such order, passed in response to the direction by the Hon'ble High Court of Orissa in contempt petition, he should have agitated the matter before the Hon'ble High Court instead of threshing such matter before this Tribunal as the Tribunal is not competent to scan the orders passed by the Hon'ble High Court, which power is only available to the Hon'ble Apex Court.

10. Next point that may arise for consideration is that why this Bench is regularly harping that the prayer of the applicant is evasive. This is due to the fact that though under paragraph 8 (iv), the applicant is seeking quashing of order dated 27.05.2013, there is no such order. The only impugned order available is dated 28.05.2013, which has been annexed under Annexure-A/7.

11. To conclude, since there is no basis of antedating promotion of the applicant, at par with Respondent Nos. 5 to 8, the said prayer made in paragraph 8(i) is emphatically denied as not tenable in law. We would have imposed heavy cost on the applicant for misusing the judicial forum but by way of judicial restraint, we refrain from doing so. In a nutshell, the applicant is not entitled to any relief. Hence ordered.

12. O.A. being devoid of merit is dismissed. No costs.

(DR.M.SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judicial)