

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 612 of 2011

Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Beta Jayalaxmi, aged about 52 years, widow of Late B.V.Rao.
2. Beta Kumar Swamy, aged about 39 years, S/o Late B.V.Rao.
3. Beta Balaji Das, aged about 38 years, S/o Late B.V.Rao.

All are legal heirs of B.V.Rao, permanent resident of Kothuru Raju Palem, Anakapalli, Visakhapatnam, Andhra Pradesh.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Administrative Officer/Con/East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Deputy Chief Engineer/Con/Design./East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.

.....Respondents

For the applicant : Mr.N.R.Routray, counsel

For the respondents : Ms.S.L.Patnaik, counsel

Heard & reserved on : 25.2.2019

Order on : 8.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this OA seeking the following reliefs:-

- "(a) To declare the order of reversion dtd. 17.5.2004 as non est under Annexure A/5 in view of principle decided under Annexure A/12.
- (b) To quash the order under Annexure A/18 & A/19.
- (c) To restore the applicant in the post of Vehicle Driver Grade-I w.e.f. 17.5.2004 and pay the differential arrear salary by extending benefit of Annexure A/12 & A/14.

And to pass any other appropriate order as deems proper and fit in the interest of justice."

2. In this case, the OA was filed by the husband of the present applicant (referred hereinafter as 'deceased employee') and after his death, the name of the applicants have been substituted as legal heirs. Briefly stated, the facts in this OA are that the deceased employee was engaged as a casual helper from

18.7.1978 and was then promoted as Driver Grade-III on 1.12.1989 and then as Driver Grade-II from 31.12.1991. He was promoted as Driver Grade-I w.e.f. 1.10.1996 on ad hoc basis. He approached the Tribunal (Calcutta Bench) for regularization of his service as PCR Vehicle Driver and the Tribunal vide order dated 8.1.2001 (Annexure-A/2) directed the respondents to consider his case. On 5.5.2004, the respondent no. 4 requested the respondent no.3 to review the ad hoc promotions in Construction Department as per the instructions of the Railway Board and hence, the matter was reviewed and the respondent no.3 issued the order dated 17.5.2004 (Annexure-A/5) reverting the deceased employee from Vehicle Driver Grade-I (ad hoc) to Vehicle Driver Grade-III. The order of reversion was challenged by him in Tribunal in OA No. 873/2004 and the respondents in their counter in that OA had contended that the order of reversion has not been implemented in the interest of the employees. The OA No. 873/2004 was disposed of vide order dated 14.7.2006 (Annexure-A/8) directing the respondents to decide the case of the applicant as per the decision of Hon'ble Calcutta High Court in similar cases.

3. Finally, the respondents vide order dated 7.5.2012 (Annexure-A/19) restored the pay of the deceased employee in the pay scale of the Vehicle Driver Grade-I ignoring the reversion order on 17.5.2004 and his current pay w.e.f. 7.5.2012 was brought at par without giving the arrear differential pay. The present OA was filed claiming the arrear differential pay fixing the pay of the deceased employee from 18.5.2004 on notional basis. The grounds advanced in the OA are as under:-

- (i) The deceased employee was allowed to work at a higher post for more than 5 years on ad hoc basis which is contrary to the judgments in different cases, since he was not considered for promotion in time.
- (ii) The respondents reverted the deceased employee without regularizing his services at the higher post.
- (iii) As per the judgment dated 7.3.2006 of Hon'ble Orissa High Court in OJC No. 5477/2002 and 5459/2002, double or more ad hoc promotion in the Construction Department prior to 1999 was permissible.
- (iv) Implementation of the order of reversion was done by the respondents in spite of the counter filed in OA No. 873/2004 stating that the Railway administration did not act on the order of reversion.

4. Counter was filed by the respondents stating that the judgment dated 7.3.2006 of Hon'ble Orissa High Court in OJC No. 5477/2002 and 5459/2002 was not applicable to the deceased employee who was not a party in that case.

It is further stated that although ad hoc promotion was possible but double or more ad hoc promotions are not permissible as per the guidelines of the Railway Board. It is further stated that after regularization of the deceased employee to the post of MV Driver Grade-III w.e.f. 15.2.2005, it was found that it was permissible for him to avail ad hoc promotion to the grade of MV Driver Grade-I and accordingly, vide order dated 14.3.2012 (Annexure-R/1) the deceased employee was restored to the rank of MV Driver Grade-I w.e.f 18.5.2004 fixing his pay on notional basis without payment of arrear differential salary. It is averred that the deceased employee did not shoulder the responsibilities of higher post, for which he would not be entitled for the arrear differential salary as per the Railway Board circular dated 25.7.2003 (Annexure-R/3).

5. The respondents have also filed an Affidavit at the time of hearing on 25.2.2019 stating that in the judgment dated 7.3.2006 of Hon'ble High Court in OJC No. 5477/2002 and No. 5459/2002, the order to set aside the reversion order was upheld on the ground that prior to 1999 there was no instruction of the Railway Board to disallow second or more ad hoc promotions. It is stated in the Affidavit that there was instructions of Railway Board dated 28.8.1985 prohibiting second or higher ad hoc promotion. It is further submitted that in the above cases, the employees concerned were restored to the grade prior to reversion granting the benefit on notional basis and there was no direction for payment of arrear differential salary. Some of the employees filed OA No. 341/2009 for arrear salary and the OA was dismissed. The applicants filed Writ petition challenging the decision of the Tribunal and Hon'ble High Court allowed the Writ and the relief claimed by them was granted by the respondents. It is further stated that as per the para 228 of the IREM Volume-I, the employee in such situation is entitled for notional benefit.

6. We have heard learned counsels for both the sides, who also filed written notes of submissions. Learned counsel for the respondents has filed an extract of the deceased employee's service record which shows that he was reverted to Grade-III w.e.f. 18.5.2004, on which there is no dispute. It is stated in para 15 of the Counter that the deceased employee was regularized as MV Driver Grade-III w.e.f. 15.2.2005 and after this regulation, he can get two ad hoc promotions and accordingly he was restored to the post of MV Driver Grade-I w.e.f. 18.5.2004.

7. The paragraph 228 of the I.R.E.M. Volume-I referred to by the respondents relate to "Erroneous Promotions" where an employee is not allowed promotion because of administrative error from the date he was entitled and was allowed subsequently. It is also stated in para 228 that each

case should be dealt with on merits. The circular dated 25.7.2003 of the Railway Board (Annexure-R/3) also related to "Erroneous Promotions" and it is stated that if the employee concerned has not shouldered higher responsibility, then his pay be fixed on notional basis with no arrear payable.

8. In the light of the circular at Annexure-R/3, it is to be decided whether the deceased employee had shouldered higher responsibility even after his reversion w.e.f. 17.5.2004 to the post of MV Driver Grade-III from Grade-I. Prima facie the work of the MV Driver Grade-III is same as that of the work of the MV Driver Grade-I, i.e. to drive vehicles. If there is any higher responsibility to be discharged by the Driver Grade-I, the details have not been furnished by the respondents in their pleadings. In this case, as stated in para 4.9 of the OA that the respondents had averred before the Tribunal's Calcutta Bench in the Counter (Annexure-A/7) filed in OA No. 873/2004 that the reversion order had not been given effect to in case of the deceased employee and such averment in the OA has not been contradicted or denied by the respondents. But subsequently, it was averred by the respondents that the reversion order was implemented. This would clearly imply that there was no difference in duty in both the posts before and after reversion as far as the applicant was concerned, because had there been any difference then it would have been stated in the order or in the pleadings of the respondents.

9. Further, as stated in para 15 of the Counter the ad hoc promotion of the deceased employee to the rank of MV Driver Grade-I was in order after his regularization in the post of MV Driver Grade-III w.e.f. 15.2.2005. There is nothing on record to differentiate the work and duty of the MV Driver Grade-III from that of the MV Driver Grade-I. Moreover, the order dated 14.3.2012 (Annexure-R/1) states as under:-

"..... Sri B. Venkata Rao presently working as M.V. Driver Gr.III under Secy. To CAO(C)/BBS is restored back to the post of M.V. Driver Gr.I (ad-hoc) w.e.f. 18.5.2004 and the Office Order bearing No. Dy.CE/C/Design/BBS/E/2/0384 dt. 17.5.04 is hereby cancelled....."

It is clear from the above order of the respondents that the order of reversion dated 17.5.2004 was cancelled while restoring the deceased employee to the post of MV Driver Grade-I w.e.f. 18.5.2004. If the deceased employee was entrusted with a posting with different duties after reversion, then that will not be taken into account after cancellation of the reversion order dated 17.5.2004. The averment of the respondents in the counter is that he had not shouldered higher responsibility during the period the deceased employee was under reversion is not supported by any order passed by them to that effect. It is also noticed that the deceased employee was not posted to a different post after cancellation of his reversion order vide order dated 14.3.2012 and he continued

in the same post after restoration his grade to the post of Driver Grade-I. It is clear that there is no difference in duty and work of the deceased employee before reversion and after reversion and after cancellation of his reversion. In view of these facts, we are not able to accept the averment that the deceased employee had not shouldered higher responsibility during the period when the reversion order was in force.

10. In view of above discussions, since the contention that the deceased employee had not shouldered higher responsibility during the period of his reversion is not proved on record and since the said reversion order was cancelled vide order dated 14.3.2012 without any change of his posting, the provision for notional benefit as per the Railway Board circular dated 25.5.2003 (Annexure R/3) will not apply in this case and the deceased employee will be entitled for the arrear differential salary from 15.2.2005 when he was regularized as Driver Grade-III till his restoration to the post of MV Driver Grade-I vide order dated 14.3.2012. The respondents are directed to pay the arrear differential salary for the above period to the applicants as per the rules within three months from the receipt of a copy of this order.

11. The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath