

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 231 of 2011

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Rabinarayan Panda, aged about 51 years, S/o Sri Sadasiv Panda, at present working as Junior Telephone Operator under CSTE/C/BBS, East Coast Railway, Bhubaneswar.

.....Applicant

VERSUS

1. Union of India, represented by the General manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. Chief Administrative Officer (Personnel), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Senior Personnel Officer (C)/ Co-ordination, Chandrasekharpur, East Coast Railway, Bhubaneswar, Dist. – Khurda.
4. Dy. CSTE (Con), Deputy Chief Signal & Telecom Engineer (C), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.C.A.Rao, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 13.2.2019

Order on :

O R D E RPer Mr.Gokul Chandra Pati, Member (A)

The OA has been filed with the prayer for the following reliefs:-

"In view of the facts and grounds mentioned in paras 4 and 5 above, the applicant prays for the following reliefs :

- (a) The original application be admitted and connected records be called for and an appropriate direction be issued for quashing the order dated 15.12.2010 of Senior Personnel Officer (con.)/Co-ord., East Coast Railway, Bhubaneswar (Annexure – 10) and to extend the similar benefits to the applicant which was given to S.Govinda Rao, B.K.Mohanta, S.Ganpati Rao and B. Suriyanarayan, petitioners in WP(C) 3198, 3199, 4149 and 3451/2002 dated 83/2006 reported in 2006 (1) (AUIPP) OLR 453, Union of India and others vrs. Chintamani Mohanty and others (OJC No. 5477/02, OJC 5459/02, reported in 2006 (1) Suppl OLR page 449, Golak Das, OJC 6504/02, and S.K.Panda WP(C) 5468/07 who are also similarly placed with similar circumstances in the light of the above decisions within specific time.
- (b) Any other appropriate order/orders be passed as would be just and proper."

2. The applicant is aggrieved due to his reversion from a higher post against which he was officiating when he was posted under Construction department. The reversion was on the ground that double ad-hoc promotion is not permissible as per the Railway Board circular. For his grievance, the applicant had filed the OA No. 337/2010, which was filed for quashing the reversion order. The Tribunal, vide order dated 2.7.2010 (Annexure-1 to the OA), allowed the said OA by quashing the impugned order with direction to the respondents to extend the benefits to the applicant in terms of the benefits extended to other similarly placed employees by virtue of the order of the Tribunal, which was upheld in Hon'ble High Court and Hon'ble Apex Court.

3. The applicant was initially appointed under physically handicapped quota for appointment in Class IV in Khurda division on 10.6.1988. It is stated in the OA that although he was appointed as Class-IV in open line, but all along he was allowed to work in construction department (Annexure-2 and 3). There he got promoted as peon and then to the post of telephone operator at a higher pay scale, on temporary basis on 17.12.1993 w.e.f. 1.12.1993 (Annexure-4). He was appointed as Telephone operator at a higher pay scale on ad hoc basis vide order dated 1.4.1997. It is stated that on 13.11.2001, he was reverted from the ad hoc promotion post by virtue of the Railway Board instructions.

4. It is further stated in the OA that some other employees who had availed of second or higher ad hoc promotion, approached the Tribunal in which the respondents were directed to take a policy decision to absorb the employees who were continuing on ad hoc promotion for long years. Hence, such employees were continued in the higher post although the applicant and many others, who were seniors, were reverted by the Railway administration. The applicant, thereafter, was further reverted from the post of Sr. Telephone Operator to the post of Jr. Telephone Operator. After the order dated 7.3.2006 of Hon'ble High Court in OJC No. 5477/2002 in which it was held that the Railway Board circular will not have retrospective effect and hence, it will not affect the ad hoc promotions given prior to 1999.

5. The applicant after knowing about the order of Hon'ble High Court, made a representation dated 5.4.2010 praying for similar benefits and filed OA No. 337/2010 which was disposed of with direction to the respondents to consider the case of the applicant. Thereafter, the respondents considered and rejected the case of the applicant vide the impugned order dated 15.12.2010 (Annexure-10) which is challenged in this OA. It is the case of the applicant that his case is similar to other employees who had got the benefit as per the order of the Tribunal or Hon'ble High Court.

6. The respondents in their counter have stated that as per the policy guidelines of the Railway Board, the applicant was reverted to his original scale w.e.f. 1.3.2004 which has been accepted by the applicant who has joined in the open line department in Khurda division where he has been promoted to the post of Junior Clerk vide order dated 14.3.2012. It is stated that the OA has been filed at this belated stage and hence, it is not maintainable. The counter denied the contention in the OA that the applicant did not work for a single day in open line. The applicant was promoted as Telephone operator purely on ad hoc basis ignoring the case of his seniors with the condition that he will have no claim for the said post and the order was passed without taking the approval of the competent authorities. It is stated that the Railway Board circular No. 144/1988 clearly stipulates that double ad hoc promotion is not permissible. It is also submitted that the applicant's case is not similar to the case of Chintamani Mohanty and it is similar to the OA No. 69/2004 and OA No. 870/2010 which were dismissed by the Tribunal (Annexure-R/1). It is stated that in the case of Inder Pal Yadav and others vs. Union of India reported in 2005(11) SCC 301, Hon'ble Apex Court has already rejected similar claims.

7. We heard Mr. Rao, learned counsel for the applicant who submitted that the issue involved in this OA has already been settled by Hon'ble High Court and Hon'ble Apex Court and it has been held that the provisions in the Railway Board circular which were used to revert the employees who had availed second or higher ad hoc promotion, will not be applicable retrospectively to the promotion effected prior to 1999. He also cited the following judgments in support of the applicant's case:-

- (i) OA No. 11/2010 – M.Suranarayan –vs- UOI order dated 22.6.2012.
- (ii) K.C.Sharma & Ors. –vs- UOI & Ors. [(1997) 6 SCC 721] judgment dated 25.7.1997 of Hon'ble Apex Court.
- (iii) S.Govinda Rao & Ors. –vs- UOI & Ors. [2006 (Suppl-1) pg 453] along with A. Mohan Rao – WP(C) No. 8087/2010, Ratnakar Rout – WP(C) No. 5691/2010 and P.K.Achaarya – WP(C) No. 16986/2009, judgment dated 8.3.2006 of Hon'ble High Court.

8. Learned counsel for the respondents, Mr. Rath opposed the arguments from the applicant's side and submitted that the reversion order was issued on 1.3.2004 which was accepted by the applicant and he was posted to open line and promoted as Junior clerk in open line. The OA filed is barred by limitation. He cited the judgment of Hon'ble Supreme Court in the case of Chairman, UP Jal Nigam vs. Jaswant Singh & Anr. reported in AIR 2007 (SC) 924, which is applicable to the present O.A. regarding the issue of delay/limitation. It was also submitted that the applicant has not filed any application for condonation

of delay in filing the OA. It is also pointed out by the respondents' counsel that as per the Tribunal's order similar claims have been rejected and a copy of the judgment has been enclosed in Annexure-R/1 of the Counter. It was also submitted that the cases cited by the applicant's counsel are not applicable for the present case.

9. In reply to the submissions of Mr. Rath, learned counsel for the applicant submitted that delay is not an issue in this case since the judgment of Hon'ble High Court dated 8.3.2006 deciding similar cases is the judgment in rem and the respondents should have allowed the same benefit to all other similar cases including the present case of the applicant, without waiting for the court orders.

10. The main issue to be decided in this OA is whether the applicant is entitled to the same relief which was granted to other employees by virtue of the judgments cited in the OA and also by the applicant's counsel at the time of hearing of the OA. The first case cited by applicant is the case of M. Suryanarayan vs. UOI in OA 11/2010 vide order dated 22.6.2012 in which, the concerned employee was still working as Grade II Driver under Construction department when the OA was filed and the order dated 22.6.2012 was passed. Hence, in the light of the order dated 8.3.2006 of Hon'ble High Court granting relief to similarly placed employees, the impugned order of reversion in OA No. 11/2010 was quashed and the respondents were directed to examine the case in the light of the said decision of Hon'ble High Court and the said judgment was found to be applicable to the OA No. 11/2010 since the applicant in that OA was still working in the Construction department when the OA was decided. In case of the present OA before us, the applicant had accepted the reversion order long back and has also been repatriated from Construction department to open line long back. He had also availed promotion to the post of Junior Clerk in his cadre in the open line. Hence, the case of the applicant in present OA is not the same as the applicant in OA No. 11/2010 who had approached the Tribunal soon after reversion when he was still working in Construction department where he had got ad hoc promotions.

11. We have carefully gone through the judgment dated 8.3.2006 of Hon'ble High Court reported in [2006 (Supp-I) O.L.R. page 453], relied upon by the applicant's counsel. It is noted that the employees in this judgment have been reverted as per the circular dated 13.12.1999 of the Railway Board prohibiting for the first time the second and higher ad hoc promotions. In compliance of the said circular, the employees were reverted and they challenged their reversion in Construction department by filing OA when they were still working in Construction department. In none of the case, the employee had been

reverted from Construction department to the parent cadre before approaching the Tribunal. The Tribunal had cited the decision in the case of Chintamani Mohanty who was also reverted under similar circumstances and it was found to be unsustainable, since the Railway Board circular dated 13.12.1999 was held to be applicable prospectively and not retrospectively. It is clear that the employees were continuing to work under Construction department after reversion from ad hoc promotions. The factual circumstances under which Hon'ble High Court allowed the benefits to the concerned employees are extracted below from the judgment:-

"10. There was no occasion for the opposite parties to promote the petitioners on ad hoc basis when they had qualified the competitive test and their names were 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 promoting. But still they have been given 2 or 3 consecutive ad hoc promotions, as mentioned above. The posts were lying vacant and the intention of the opposite parties 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 ad hoc 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 adhucism 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. If the services on the posts in question are still required, the justice demands that regular promotion on the instant petitioners should be considered on the basis of their participation in the competitive test and keeping in view that they are continuing on the posts in question since a long time and by making their reversion there would be a huge loss in their salaries which they have been getting from 1988, 1991, 1995 and 1997, as mentioned in the preceding paragraph. If the same is not possible for some reason, at least the petitioners' continuance should be allowed till the regularly selected persons become available. Needless to mention that the petitioners are also entitled to participate in the competitive test if the same is held, in case it is not possible to consider the regular appointment of the petitioners, as already mentioned.

11. In view of the above mentioned facts and circumstances, we are of the view that the instant petitioners were also entitled to the same benefits which were given to other persons by the Tribunal, namely Chintamani Mohanty and others, applicants in OA No. 509 and 603 of 2001 and the Tribunal has committed manifest error of law in not providing the same to the instant petitioners."

12. It is clear that the circumstances in case of the present applicant are completely different from the circumstances as stated in the judgment dated 8.3.2006 of Hon'ble High Court as extracted in the preceding paragraph. The applicant, after his reversion in Construction department, had been posted to his parent cadre in open line which has not been disputed by him. Had the applicant been continuing in Construction department doing the same work as he was doing before his reversion, then the circumstances would have been similar. But the applicant has already been reverted from Construction department to open line long back, as stated in the Counter and the reversion has not been disputed by the applicant. It is also stated in the Counter that the applicant has already been promoted on regular basis as Junior Clerk as stated in para 4 of the Counter. Hence, we are of the considered opinion that

the circumstances in case of the applicant are quite different from the circumstances of the employees covered in the judgment dated 8.3.2006 of Hon'ble High Court for which, it will not be applicable for the present OA before us.

13. It is seen that the order dated 9.12.2005 of the Tribunal in the case of Rabinarayan Mohanty vs. Union of India and others (Annexure-R/1), the employee affected by reversion had challenged the reversion order immediately and a stay order was issued by the Tribunal. The said OA was disposed of without granting any relief to the employee since he was already shifted from the higher post against which he was officiating. The judgment dated 8.3.2006 was passed by Hon'ble High Court subsequent to this order of the Tribunal. It is noted that even that OA, in which no relief was allowed to the concerned employee, the OA was filed challenging the reversion order soon after it was passed.

14. In Other cases where the judgments/orders have been cited by learned counsel for the applicant, the concerned employees/petitioners had approached the Court of law soon after the reversion order was passed and in no case any relief was granted to an employee who had been reverted long back and posted out of the Construction department, as is the case of the present applicant. Hence, the cited judgments will not be helpful for the applicant's case.

15. From the above discussions of the case, the applicant's reliefs do not include the direction for posting him to the Construction department where he was allowed the ad hoc promotions in question. His claim is virtually for the payment of the arrear benefits of salary and other allowances for the period he was working in Construction department, if he will be found to be entitled for the same if the OA succeeds and for such a relief the question of delay and limitation will be relevant as it is not a continuing cause of action. It is not established by the applicant that such arrear claim of the benefits if allowed to him, is within the limitation as per the section 21 of the Administrative Tribunals Act, 1985. In fact from the facts of the case, it is clear that he was posted back in open line from Construction department long back, for which such claim of arrear dues will be barred by limitation. There is no direction in the judgments cited by the applicant's counsel for payment of such arrear claims made long time after it had accrued. After the judgment dated 8.3.2006 of Hon'ble High Court, filing of the first OA by the applicant that is, OA No. 337/2010 disposed of vide order dated 2.7.2010 (Annexure-1 to the OA), by the Tribunal without going into merits of the case, was itself delayed. The order dated 15.12.2010 (Annexure-10) issued by the respondents in pursuance to

the direction of the Tribunal in OA No. 337/2010, rejecting the representation dated 15.4.2010 filed by the applicant first time raising his grievance.

16. The order dated 15.12.2010 passed in OA No. 337/2010 cannot be considered to be a fresh cause of action in view of the fact that the representation dated 15.4.2010 was submitted at a belated stage. In the case of **Chairman U.P. Jalnigam vs. Jaswant Singh AIR 2007 SC 924**, it was held by Hon'ble Apex Court as under:-

"In view of the statement of law as summarized above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussion on the financial management of the Nigam. Why the Court should come to the rescue of such persons when they themselves are guilty of waiver and acquiescence."

17. In the case of **C.Jacob vs Director Of Geology reported in AIR 2009 SC 267**, it was held by Hon'ble Apex Court as under:-

"7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action."

Applying the above judgment to present case, it is clear that submission of the representation dated 15.4.2010 and direction of the Tribunal to dispose of the said representation, which led to the impugned order dated 15.12.2010, cannot give rise to a fresh cause of action for the present applicant, who did not file his representation within a reasonable time after the judgment dated 8.3.2006 of Hon'ble High Court cited by the applicant's counsel.

18. The judgment of Hon'ble Apex Court in the case of **K.C. Sharma and others vs. Union of India and others reported in AIR 1997 SC 3588**, cited by applicant's counsel, the dispute was regarding applicability of the retrospective amendment of the rules for payment of running allowance to the retired guards of the Railways for calculation of average emoluments which is required fro deciding the amount of pension admissible. It was held by Hon'ble Apex Court that having regard to the facts and circumstances of the case, the delay should have been condoned. It is noted that in that case, the pension of the affected employees was affected since it depends on the average emoluments, which is a case of continuing cause of action for which delay is to be condoned. In the present OA before us, the claim pertains to the benefits of ad-hoc promotion long time back and it cannot be considered to be a case of continuing cause of action as the applicant's salary in his parent cadre in open line did not depend on such ad-hoc promotion availed by him. It was necessary for the applicant to have raised his grievance within the time as stipulated under law. Therefore, the judgment in K.C. Sharma case is not applicable to the facts of the present OA.

19. It is noticed that there is no application filed by the applicant for condoning delay in filing the present OA. Hence, we agree with the averments in the Counter that this OA is barred by limitation under section 21 of the Administrative Tribunals Act, 1985.

20. In the facts and circumstances of the case as discussed above, we are not convinced by the case projected by the applicant in favour of the OA, which is barred by limitation and is also devoid of merit, for which it is liable to be dismissed. Accordingly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (A)

(GOKUL CHANDRA PATI)
MEMBER (J)

I.Nath