

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.303 of 2011

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

Y. Prasad Rao, aged about 60 years, Son of Late Y. Rama Rao, permanent residence of 55-3-15/2, old Venkoji Pallen, At present working as EXM-III, Office of Dy. CST(C) East Coast Railway, Visakhapatnam, Andhra Pradesh.

.....Applicant.

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. The Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. The Chief Engineer (Con.), East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. The Deputy Chief Signal and Telecommunication Engineer (Con)/Waltair, East Coast Railway, Visakhapatnam, Andhra Pradesh.

.....Respondents.

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

For the respondents : Mr. B.B. Patnaik, counsel

Heard & reserved on : 13.02.2019

Order on : 27.2.2019

O R D E R

PER MR. GOKUL CHANDRA PATI, MEMBER(A) :-

The applicant was working as Tracer under the Respondents with effect from 16.01.1981. He had earlier filed the O.A. No.1443/2001 before Calcutta Bench of the Tribunal with a prayer to direct the Respondents for regularization of his services as Tracer from the date of initial appointment as a Tracer on ad-hoc basis. This O.A. was dismissed on territorial jurisdiction and thereafter, he had filed another O.A. No.147/09. This Tribunal vide order dated 09.04.09 (Annexure-A/3) disposed of the said O.A. with liberty to the applicant to make a fresh representation to the Respondents for consideration and disposal under intimation to the applicant. Accordingly, the applicant made a representation which was rejected by the respondents vide order dated 03.05.09 (Annexure-A/4), which is impugned in this OA.

2. The applicant joined initially as Khalasi (Group-D) on 18.09.1974 and was promoted to the post of semi-skilled Fitter on 16.01.1981. Then he was

promoted to the post of casual Tracer (Group-C) on 16.01.1981 and was given temporary status with effect from 01.01.1981. All promotions were given to the applicant on ad-hoc basis in the construction department.

3. It is the case of the applicant that he is entitled fro regularization against the post of Tracer in Group-C with effect from 16.01.1981, when he was appointed on ad-hoc basis. Instead of promoting and regularizing his services, the applicant was reverted to the post of Khalasi, Group-D in the year 1986 and was transferred from the construction department to his parent cadre in open line. Thereafter, he was promoted to the post of ESM-III in his parent cadre. But it is averred in the OA that although he was posted in open line, but he was working all along in drawing Section as Tracer in Construction department. It is further stated in the O.A. that in case of similarly situated employees, O.A. No.304/1993 was allowed by Calcutta Bench of this Tribunal vide order dated 05.09.2000 (Annexure-A/7) and the Respondents were directed to give the benefit of regularization to the employees who were applicants in the O.A. No.304/1993 with effect from the date of regularization of some of their colleagues. The present applicant claims that he is also entitled for the same benefit of regularization which was allowed in O.A. No. 393/1993 as his case is similar.

4. As stated in the O.A., the applicant repeatedly represented to the authorities for regularization of his service against the post of Tracer, but no action was taken by the Respondents. On the other hand, the applicant was reverted vide orders dated 29.11.2001 and 13.11.2001 (Annexure-A/9) against which he had made representation dated 30.11.2001 (Annexure-A/10). It was further averred that this reversion was done on the ground that two ad-hoc promotions were not permissible as per the circular of Railway Board. It is stated in the OA that this ground was against the judgment dated 07.03.2006 and 08.03.2006 of Hon'ble High Court in OJC No.5477/2001 reported in 2006 (sup-1) OLR Page-449 and 453. In these judgments it was held that Railway Board's letter dated 13.11.2001 to cancel the second ad-hoc promotion, referred to the Board's earlier instructions in 1999 and it was held by the Hon'ble High Court that the Board had not directed second ad-hoc promotions given prior to 1999 are also to be cancelled and that the instructions were held to be applicable for those applicants on ad-hoc promotion given contrary to the Railway Board's instructions in 1999, that is given after 1999. Therefore, the concerned employees who were given ad-hoc promotion prior to 1999 were allowed the benefit of second ad-hoc promotion. The applicant states that his case is also covered by these judgments of Hon'ble High Court and hence, he should not have been reverted in the year 2001. It

was further held that the second ad-hoc promotion given prior to 1999 was not to be cancelled as per the instructions of the Railway Board.

5. In this factual background, the applicant has filed this O.A. praying for the following main reliefs:

(i) To quash the order dated 16.9.2009/30.9.2009 annexed in Annexure-4 and to direct the respondents to cancel the order or reversion dated 13.11.2001 and 29.11.2001 as contained in Annexure-9 so far it relates to the applicant.

(ii) To direct the respondents to extend the benefit of order passed in O.A. No.304/93 on 05.09.2000 as contained in Annexure-A/7 of the O.A. for regularization of his service as casual Tracer.

6. Counter has been filed by the respondents without disputing the basic facts. It is stated that the applicant was working as a casual Tracer from 16.1.1981 till he was released on 17.10.1986 from the Construction department to open line under Electrical Foreman, Waltair where he worked as a Khalasi upto 3.5.1988, when he was transferred to Construction department where he joined as a Khalasi on 4.5.1988 on his representation. Then he was promoted on ad-hoc basis as ESM-III w.e.f. 9.6.1989 and then to ESM-II w.e.f. 17.11.1990 at a higher pay scale on local arrangement, although his lien was in the post of Khalasi under Electrical department of Waltair division. It is stated that such ad-hoc promotion was given for local consideration even though the applicant did not fulfil the criteria for such promotion as per the rules. As per the Railway Board decision to cancel second and higher ad-hoc promotions, the applicant was reverted from the post of ESM-II to ESM-III vide order dated 4.1.2002. Further, as per the direction of the Tribunal in O.A. No. 1268/2001, the representation of the applicant regarding regularization in the post of casual Tracer from 1981 was examined and rejected vide order dated 3.4.2002 (Annexure-R/4), stating that the case of the applicant is not similar to the case of the employees who had filed the OA No. 304/1993. It is stated in the Counter that the rejection order dated 3.4.2002 has not been challenged in this O.A. It is stated in the Counter that the applicants in O.A. No. 304/1993 were appointed as Tracer through a notification in 1973 when the applicant in the present O.A. was not in Railway service as a causal labour and hence, the applicant's case is not similar to the applicants in O.A. No. 304/1993. It is further stated that the applicant was a lien holder having regular status in open line and cannot claim ad-hoc promotion in the construction department as a matter of right and he was considered for ad-hoc promotion strictly on local arrangement, which did not confer any right to him for regularization as claimed by him. It is further stated in the Counter that the applicant was given

the benefits under the MACP Scheme and retired from service on superannuation on 30.6.2011.

7. We heard this OA together with the OA No. 231/2011. Mr. Rao, learned counsel for the applicant argued 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 was had his lien in open line, where he has availed the benefits like MACP before retirement. He submitted that the OA filed is barred by limitation as the applicant was reverted from ESM-II to ESM-III vide the order dated 4.1.2002 as stated in the Counter and the said order is not challenged in the O.A. He cited the judgment of Hon'ble Supreme Court in the case of Chairman, UP Jalnigam 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 was also submitted that the cases cited by the applicant's counsel, particularly the order in O.A. No. 304/1993 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 O.A. is whether the applicant is entitled to the reliefs sought for in the O.A. on the basis of the order of the Tribunal in the O.A.No.304/1993 and judgment dated 8.3.2006 of Hon'ble High Court for the employees under similar circumstances, as submitted by

the applicant's counsel at the time of hearing of the O.A. The respondents in their Counter have averred that the employees who were regularized as per the order in O.A. No. 304/1993 were initially appointed directly as Tracer in 1973 where as the applicant was appointed initially as casual Khalasi in 1974 and hence, they are not similarly placed as the applicant in the present O.A. it is further mentioned in the Counter that such claim of the applicant for regularization at par with the O.A. No. 304/1993 which was disposed of by the Tribunal vide order dated 5.9.2000 (Annexure-7) was rejected by the respondents vide order dated 3.4.2002 (Annexure-R/4) and this averment has not been contradicted by the applicant in his pleadings.

11. It is seen from the order dated 3.4.2002 (R/4) that the applicant had filed the OA No. 1268/2001 at Calcutta Bench of the Tribunal which was disposed of by the order dated 6.12.2001 directing the respondents to consider the representation of the applicant about regularization at par with the OA No. 304/1993. The representation dated 17.3.2001 of the applicant in this regard was rejected vide order dated 3.4.2002 (R/4) on the ground that the applicant's case is not covered by the order dated 5.9.2000 passed by the Tribunal in OA No. 304/1993. Nothing has been mentioned in the pleadings of the applicant about the order dated 3.4.2002, although in para 4.13 of the OA, the OA No. 1268/2001 has been mentioned and in para 4.14 the order dated 6.12.2001 has been extracted directing the respondents to dispose of the representation of the applicant in 3 months time. The applicant has not mentioned anything in the OA about compliance of the order dated 6.12.2001 regarding regularization. It is mentioned that since the MA No. 778/2001 filed by him was dismissed vide order dated 6.12.2001 with liberty to the applicant to file fresh OA to challenge reversion and accordingly he filed 1443/2001 in Calcutta Bench which was dismissed on the ground of jurisdiction. Then he filed OA No. 147/2009 to challenge the reversion from the post of ESM-II to ESM-III. But steps taken for compliance of the order dated 6.12.2001 in respect of his claim for regularization have not been explained in the OA and nothing has been mentioned about the order dated 3.4.2002 passed by the respondents rejecting his representation even after it was pointed out in the Counter. If the order dated 3.4.2002 was not received by the applicant, then he should have initiated appropriate legal steps in time or challenged in this OA with an application for condoning delay.

12. In view of the facts discussed in paragraphs 10 and 11 above, we are of the view that the applicant's claim for regularization at par with the applicants in OA No. 304/1993 has not been raised within the time stipulated in section 21 of the Administrative Tribunals Act, 1985 and hence, it is barred by limitation. On merit also, the averment of the respondents in the Counter that

the applicants in OA No. 304/1993 were not similarly placed as the applicant in the present OA has not been denied or countered by the applicant and no evidence was produced by the applicant to show that his case is similar to the applicants in the OA No. 304/1993. **We are therefore, not able to accept the contentions of the applicant that he is entitled for the same benefit as extended as per the order of the Tribunal in OA no. 304/1993.**

13. Regarding the other relief sought by the applicant to challenge the order of his reversion vide order dated 29.11.2001 and 13.11.2001 (Annexure-9), the applicant immediately filed the MA which was dismissed with liberty to the applicant to file fresh OA. Accordingly, the OA No. 1443/2001 was filed which was dismissed with liberty to file the OA in appropriate Bench. Then the OA No. 147/2009 was filed and as per the direction of the Tribunal in the said OA, the representation of the applicant against reversion order was rejected vide order dated 16.9.2009/30.9.2009 (Annexure-4) which has been impugned in this OA.

14. The following grounds have been mentioned in the impugned order dated 16.9.2009/30.9.2009 for upholding the reversion of the applicant:-

"In terms of Railway Board's letter No. E(NG)1-85 PM 5-3 dated 28.8.1985, it has been reiterated that all possible steps should be taken to discourage ad hoc promotion and further No. 2nd ad hoc promotion should be allowed.

In terms of Railway Board's letter No. E(NG)1-88 TR 28 dated 24.5.1988 that persons drafted from Zonal Railway/Open Line Divisions to KRPU-RGDA B.G. New Line Construction can at the most be granted one grade ad hoc above the post held by them on a regular basis in their parent cadre and in no cases should any double ad hoc promotion be allowed.

Violating the above rules, double ad hoc promotions purely on local stop gap measure were given to the applicant while he was working in S&T Construction organisation at VSKP."

Hence, as stated in the order above, as per the Railway Board letter dated 24.5.1988 that persons deputed for KRPU-RGDA B.G. new line construction, the staffs deployed can at the most be granted one grade above the post held by them on regular basis in their parent cadre and in no case double ad-hoc promotion will be allowed. As stated in the impugned order, the applicant was promoted on ad-hoc basis to the grade ESM-II w.e.f. 17.11.1990 on a purely temporary arrangement in construction wing where the applicant was deployed for construction of new line under Waltair division. These contentions of the respondents in the impugned order at Annexure-4 have not been denied or disputed by the applicant.

15. Learned counsel for the applicant has cited the judgment dated 8.3.2006 of Hon'ble High Court

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 adhocism 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 seen that there was a Railway Board circular dated 24.5.1988 (as stated in the impugned order dated 16.9.2009) prohibiting second or higher ad-hoc promotions of the staff of deployed for construction of new line Koraput-Rayagada, which has not been contradicted by the applicant and this circular dated 24.5.1988 will be applicable for ad-hoc promotions made after 24.5.1988 for the staff deployed for Koraput-Rayagada new line are prohibited by the circular dated 24.5.1988. There is nothing on record to disprove the averment of the respondents that the applicant was deployed for construction of Koraput-Rayagada new line. Since the applicant was allowed second ad-hoc promotion to the grade of ESM-II vide order dated 16.11.1990 as stated in para 4 of the impugned order dated 16.9.2009, it is clear that the second ad-hoc promotion was not tenable in view of the Railway Board instructions dated 24.5.1988 according to which, the second and higher ad hoc promotion is not permissible for staffs deputed for Koraput-Rayagada new railway line. In view of the availability of the specific circular dated 24.5.1998 for Koraput-Rayagada new railway line, which has not been contradicted by the applicant, the Hon'ble High Court judgment dated 8.3.2006 will not apply as the present OA is factually distinguishable.

13. Other cases where the judgments/orders have been cited by learned counsel for the applicant, will not be helpful since in the present OA filed by the applicant, there was a Railway Board instruction dated 24.5.1988 prohibiting the second and higher ad-hoc promotions and for the applicant deputed to Koraput-Rayagada new line, second ad-hoc promotion was allowed by the respondents vide order dated 16.11.1990 which was after receipt of the Railway Board instruction dated 24.5.1988 was illegal as the said ad hoc promotion violated the circular dated 24.5.1998. In both the cited cases, the

instructions of Railway Board prohibiting second and higher ad-hoc promotions were received after effecting the second and higher ad-hoc promotions, for which the cited judgments will not apply to the present OA.

14. In this case, the applicant has approached the Tribunal (Calcutta Bench) immediately after issue of his reversion order to challenge the said reversion. Thereafter, the Tribunal dismissed the OA on the ground of territorial jurisdiction with liberty to the applicant to file fresh OA and accordingly the applicant had filed 147/2009 immediately after order in OA No. 1443/2001 and the order dated 16.9.2009 passed by the respondents in compliance of the Tribunal's order in OA No. 147/2009. Hence, there is no delay in approaching the Tribunal to agitate on the grievance of reversion. But on the ground of merit, the challenge of the applicant to the order of reversion dated 16.9.2009 does not succeed in view of the reasons discussed in the preceding paragraphs of this order.

15. In the facts and circumstances as discussed above, we are unable to agree with the case made out by the applicant in favour of the OA, which lacks merit and hence, it is liable to be dismissed. Accordingly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

I.Nath