

ORISSA HIGH COURT CUTTACK

O.J.C. NO. 5477 OF 2002

AND

O.J.C. NO. 5459 OF 2002

In the matter of applications under Articles 226 and 227 of the Constitution of India.

Union of India & others (in both the cases) Petitioners

Versus

Central Administrative Tribunal,
Cuttack Bench and others (in both the cases) Opp.Parties

For Petitioners – M/s B.Pal, A.Pal and
B.P.Mohapatra.

For Opp.Parties – M/s C.A. Rao, S.K. Behera
and A. Tripathy

P R E S E N T:

**THE HONOURABLE MR. JUSTICE I. M. QUDDUSI
AND
THE HONOURABLE MR. JUSTICE PRADIP MOHANTY**

Date of hearing and judgment : 07.03.2006

I. M. QUDDUSI, J. These two writ petitions have been filed by the Union of India represented through the General Manager, South Eastern Railway and others against the judgment and order dated 21.03.2002 passed by the Central Administrative Tribunal, Cuttack Bench, in two Original Applications filed by opposite parties 2 to 9, namely, Chintamani Mohanty and others. In fact, some other O.As. were also disposed of by the Tribunal by the aforesaid impugned common judgment, but in the instant writ petitions, we are concerned with O.A. Nos.509 and 603 of 2001 only.

2. The brief facts of the case are that opposite parties 2 to 9, who had filed the O.As. before the Tribunal, were engaged as temporary hands in Construction Organization. But, subsequently, they were taken to Open Line (Permanent) Establishment of South Eastern Railway from the Construction Wing. In the year 1969-70 they were initially engaged as Casual Labourers in the Construction Organization. Thereafter, in the year 1978-79 they were regularized in Group 'D' post under Khurda Road Division (Open Line), but they were reposted in different Construction Organizations. In the year 1980, they were promoted as Store Issuers. On 05.02.1985, they were further given ad hoc promotion to the post of Junior Clerk. For the purpose of their regularization, they appeared in the suitability test for the post of Store Issuer and were declared suitable on 21.12.1987 while working as Ad hoc Junior Clerks. Thereafter, they participated in the selection for promotion to the post of Junior Clerk/Typist against the limited Departmental quota which was to be filled up by promotion from amongst suitable persons holding Class-IV posts, Store Issuers and Record Sorters, who had completed three years of service in the S.E. Railway zone. They appeared in the written examination in which they succeeded and thereafter also attended the viva-voce test. Their names were empanelled as Junior Clerk/Junior Typist on 26.04.1990. On 07.06.1990 the panel of selected candidates was published as per the recommendation of the Selection Board with the approval of the competent authority in respect of both the Construction and Open Line Organizations.

3. Thereafter, they were given officiating promotion as Senior Clerks on ad hoc basis against the existing vacancies on 06.02.1992. On 29.05.1997, their names and names of other persons who had completed five years of service and were efficient and sincere, were recommended for further ad hoc promotion. Consequently, they were given promotion to the next

higher post, i.e., Head Clerk on ad hoc basis, which was approved by CPM(C)/BBSR and CAD/BBSR vide order dated 02.06.1997. Their actual ad hoc promotion was made with effect from 06.02.1997 in the post of Head Clerk.

4. Thereafter, a circular was issued on 13.12.1999 by the Chief Personnel Officer, South Eastern Railway, Garden Reach in which it was directed that more than one ad hoc promotion may not be made and whenever ad hoc promotions are found inescapable in the exigency of service, the same shall be ordered only for short duration up to four months from amongst the senior-most eligible staff strictly in accordance with the existing guidelines under the Indian Railway Establishment Manual.

5. It appears that the directions of the Railway Board dated 13.12.1999 were not followed and the concerned authorities used to make double ad hoc promotions. On 13.11.2001 the Deputy Chief Personnel Officer (Con.), S.E. Railway, Bhubaneswar issued a letter, in which reference to the earlier direction was made and it was directed that all second or more ad hoc promotion granted to the staff in violation of Railway Board's extant instructions on ad hoc promotion should be terminated from 01.12.2001. Consequently, vide the impugned order dated 15.10.2001 passed by the Deputy Chief Personnel Officer (Con.), Bhubaneswar, the opposite parties 2 to 9 were reverted from the post of ad hoc Head Clerks to the post of Senior Clerks which was challenged by them before the Tribunal. The Tribunal set aside the impugned order of reversion. However, it denied for granting relief in respect of regularization in the promoted post, i.e., on the post of Head Clerks. The petitioners have filed the instant writ petitions being aggrieved by that part of the impugned order of the Tribunal by which orders of reversion of opposite parties 2 to 9 dated 15.10.2001 were set aside.

6. We have perused the reply of the petitioners submitted before the Tribunal. In paragraph 4(7)(b) thereof it was mentioned that the Railway Board issued a direction vide letter dated 13.12.1999 issued in Chief Personnel Officer, South Eastern Railway, Garden Reach's Establishment Serial No.11 of 2000 to the effect that whenever ad hoc promotions are found inescapable in the exigency of service, the same are to be ordered only for

short duration up to four months from amongst the senior-most eligible staff strictly in accordance with the existing guidelines under Para-216(A)(1) of the Indian Railway Establishment Manual Volume-II (1989 Edition). In the said letter, the Board have also instructed that in no case, second ad hoc promotion is to be allowed.

7. A perusal of the Railway Board's circular dated 13.11.2001 shows that it was directed therein that all second or more ad hoc promotions granted to the staff in violation of its instructions should be terminated with effect from 01.12.2001. As it appears from the record, for the first time the Board issued instructions not to make second ad hoc promotion in the year 1999. But opposite parties 2 to 9 were already given promotion in the year 1997 prior to issuance of the said direction of the Railway Board. The Board has not directed that the second ad hoc promotion given prior to the instructions issued by it for the first time should also be terminated. The instructions were only to the extent that those second or more ad hoc promotions which were given contrary to the instructions of the Railway Board, meaning thereby that after issuance of such direction if any second or more ad hoc promotion has been made, the same shall be terminated. The direction was issued in the year 1999 without any retrospective effect. Therefore, in view of this, opposite parties 2 to 9 do not come within the ambit of the said direction of the Railway Board. That apart, opposite parties 2 to 9 had already completed more than two years of service as Head Clerks on ad hoc basis when the said direction of the Railway Board was issued. It is also noticeable that there was no occasion for the petitioners to promote the opposite parties 2 to 9 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 promotion. But still they have been given 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. It is also a matter of consideration that by making reversion of the opposite parties 2 to 9, there would be a huge loss in their salaries, which they have been getting from 1992 and 1997.

8. In view of the aforementioned facts and circumstances, we see no ground to interfere with the impugned judgment and order passed by the Tribunal. Therefore, the writ applications have no merit and are accordingly dismissed.

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I.M.QUDDUSI,J.

PRADIP MOHANTY,J. I agree.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack
 March 7, 2006 / **Routray.**