

ORISSA HIGH COURT CUTTACK

W.P.(C) NO. 3198 OF 2002,

W.P.(C) NO. 3199 OF 2002

W.P.(C) NO. 3451 OF 2002

AND

W.P.(C) NO. 4149 OF 2002,

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

S.Govinda Rao	(WP(C) 3198/2002)		
B.K. Mohanta	(WP(C) 3199/2002)		
B.Suryanarayana	(WP(C) 3451/2002)		
M. Ganapati Rao	(WP(C) 4149/2002)	Petitioners

Versus

Union of India & others	Opp.Parties
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For Petitioners – M/s C.A. Rao & A. Ratha
(In all cases)

For Opp.Parties – Mr. B. Pal, Sr. Standing Counsel
for Railways, assisted by
Mr. A.K.Mishra (In WPC 4149-02)

Mr. A.K.Mishra (In other cases)

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 : 08.03.2006

I. M. QUDDUSI, J. These writ petitions have been filed against the common judgment and order dated 21.03.2002 passed by the Central Administrative Tribunal, Cuttack Bench in the Original Applications filed by the petitioners.

S. Govinda Rao, petitioner in W.P.(C) No.3198 of 2002, had filed O.A. No. 569 of 2001, B.K. Mohanta, petitioner in W.P.(C) No.3199 of 2002, had filed O.A. No. 561 of 2001, B. Suryanarayan, petitioner in W.P.(C) No.3451 of 2002, had filed O.A. No.573 of 2001, and M. Ganapati Rao, petitioner in W.P.(C) No.4149 of 2002, had filed O.A. No.596 of 2001. These Original Applications were disposed of along with other Original Applications in batch by a common judgment. The Original Applications filed by these petitioners were disposed of in a different manner than the Original Applications filed by other persons, particulars of which are given below :

2. B. Suryanarayan, petitioner in W.P. (C) No. 3451 of 2002, belongs to ministerial staff and the other petitioners belong to the cadre of driver. Therefore, the case of B. Suryanarayan is being discussed separately. He was initially engaged as Gangman, Khalasi on 06.01.1972 and continued as such till 24.12.1982. With effect from 25.12.1982 he has worked as Store Man also. On 03.05.1986, he was empanelled in Class-IV category in Open Line under Mancheswar Workshop in regular cadre. On 19.03.1991, on his own request, he was transferred from C.R.W. / MCS to the office of the Deputy C.E.E. (C), Cuttack as Khalasi in the same scale and capacity against T.L.R. post. On 24.05.1991, he was given promotion as Record Shorter on ad hoc basis. This was done after judging his performance on the recommendation of the Deputy Chief Electrical Engineer (C), Cuttack and after getting approval of the competent authority. Thereafter, he was again promoted in the same manner to the post of Junior Clerk on 16.04.1992, that too on ad hoc basis. His third ad hoc promotion was made on 02.06.1997 from Junior Clerk to Senior Clerk. Thereafter, the Railway Board issued circular on 13.12.1999 for the first time, which is discussed below, restraining second ad hoc promotion, as a result of which he was ordered to be reverted to the post of Junior Clerk vide order dated 30.11.2001.

Being aggrieved, he filed the O.A., which was disposed of along with a batch of other O.As., with direction in so far as it relates to this petitioner to the effect that the authorities would consider his case on his submitting a representation.

3. Now, let us advert to the cases of S. Govinda Rao, B. K. Mohanta and M. Ganapati Rao, petitioners in WP (C) No.3198 of 2002, WP (C) No. 3199 of 2002 and WP (C) No. 4149 of 2002 respectively. It has come on record that Ganapati Rao, petitioner in W.P.(C) No. 4149 of 2002, was initially appointed as Casual Khalasi. After being successful in trade test held on 2/5.7.1983, he was appointed as Helper on 01.08.1985 and was promoted as Driver Grade-III on ad hoc basis on 05.10.1985. On 01.12.1988, he was promoted to the next higher grade of Driver on ad hoc basis. Similarly, S.Govinda Rao, petitioner in W.P.(C) No.3198 of 2002, was initially engaged as a Khalasi. In 1992, he was promoted to the post of Driver Grade-III on ad hoc basis. On 24.08.1995, he was promoted to the next higher grade of Driver on ad hoc basis. In case of B.K.Mohanta, petitioner in W.P.(C) No.3199 of 2002, he was appointed as Vehicle Helper in 1988 and was promoted as Driver Grade- III on 22.05.1989. He was promoted as Driver Grade-II on ad hoc basis on 24.06.1991. Thus, from the perusal of records, it appears that the petitioner-Ganapati Rao got second ad hoc promotion on the post of higher grade of driver (Grade-II) on 01.12.1988, petitioner B.K.Mohanta got second ad hoc promotion on that post on 24.06.1991 and petitioner-S.Govinda Rao got his second ad hoc promotion on that post on 24.08.1995.

6. We may also notice that while disposing of the batch of Original Applications vide the impugned order, the Tribunal has set aside the orders of reversion of applicants in O.A. Nos. 509 and 603 of 2001, namely, Chintamani Mohanty and others, who were also promoted on ad hoc basis from the post of Senior Clerk to the post of Head Clerk. Such promotions were second ad hoc promotions, and in similar circumstances, orders for their reversion to the posts of Senior Clerk were issued. Against that order

of the Tribunal, the Union of India through the South Eastern Railway had filed two writ petitions, i.e., OJC Nos.5477 and 5459 of 2002, which have been dismissed by us on 07.03.2006.

7. The Tribunal, while setting aside the reversion orders of the applicants in two Original Applications, who are similarly placed with the instant petitioners, has directed to consider the cases of the present petitioners, which, in our opinion, amounts to discrimination. The reversion orders were passed on the ground disclosed in the counter affidavits before the Tribunal, the relevant paragraph of which is quoted as under :

“4(b). That also as per Railway Board’s letter dt. 13.12.1999 issued in Chief Personnel Officer/South Eastern Railway/Garden Reach’s Establishment Serial No.11/2000, whenever ad hoc promotions are found inescapable in the exigency of service, the same are to be ordered only for short duration up to 4 months from amongst the senior most eligible staff strictly in accordance with the existing guidelines under para-216(A)(1) of Indian Railway Establishment Manual, Volume-II (1989 Edition). In the same letter Board have also instructed that in no case, second ad hoc promotion is to be allowed under any circumstances.”

In all cases, this common stand was taken in the counter affidavit.

9. A perusal of the above quoted paragraph shows that the Railway Board had issued a circular on 13.12.1999 under the authority of Indian Railway Establishment Manual restraining the second ad hoc promotion. Here, we may notice that the petitioner B. Suryanarayan’s promotion was third ad hoc promotion, which was given in year 1997. In case of other petitioners, their promotion to the post of Driver Grade-II was second ad hoc promotion given in years 1988, 1991 and 1995 as already mentioned above. All these petitioners were given ad hoc promotion only after their names found place in the merit list after qualifying the competitive test successfully.

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 promotion. 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 of 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 O.A. 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. In the result, the writ petitions are allowed in part. The impugned judgment and order passed by the Tribunal in so far as it relates to the instant petitioners is quashed. The orders of reversion of the instant

petitioners dated 30.11.2001 are also quashed. Consequently, the petitioners shall be reinstated with the same terms and conditions, which were fixed by the opposite parties at the time of their ad hoc promotion. It goes without saying that on reinstatement, the petitioners' services shall be treated as continuing on ad hoc basis on the respective posts held by them. They shall be given consequential benefits accordingly. However, it will be open for the opposite parties to consider the regular promotion of the petitioners and other eligible persons in accordance with the existing guidelines. Till the regular promotion is considered and the regular candidates become available, the petitioners shall be allowed to continue on ad hoc basis.

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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 8, 2006 / **Samal.**