

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P (C) No. 4666 of 2014**

***P. Vaidyanath***

.....

***Petitioner***

*Mr. C.A. Rao, Sr. Counsel along with  
Mr. S.K. Behera, Adv.*

Vs.

***Union of India and others***

.....

***Opposite Parties***

*Mr. P.K. Parhi, ASGI along with  
Mr. Gochhayat, CGC*

**CORAM:**

**DR. JUSTICE B.R. SARANGI**

**MISS JUSTICE SAVITRI RATHO**

**ORDER**

**11.04.2022**

**Order No.**

04.

This matter is taken up through hybrid mode.

2. Heard Mr. C.A. Rao, learned Senior Counsel appearing along with Mr. S.K. Behera, learned counsel for the petitioner and Mr. P.K. Parhi, learned Asst. Solicitor General of India along with Mr. Gochhayat, learned Central Government Counsel.

3. The petitioner has filed this writ petition seeking direction to the opposite parties to extend the similar benefit, as has been granted in favour of S. Govinda Rao, B.K. Mohanta and M. Ganapati Rao in W.P.(C) Nos. 3198, 3199 and 4149 of 2002 vide Annexure-4, and one M. Suryanarayan, who is also similarly placed like the petitioner, vide Annexure-5 and A. Mohana Rao and three others in W.P.(C) No.9789 of 2010 vide Annexure-6, and further seeks direction to the opposite parties to take decision in the light of the above decisions within a stipulated time.

4. Mr. C.A. Rao, learned Senior Counsel appearing along with Mr. S.K. Behera, learned counsel for the petitioner contended that the petitioner, as applicant, filed O.A. No.570 of 2001 before the Central Administrative Tribunal, Cuttack, seeking regularization

of his service in the construction organization, as he was engaged in the construction organization of South Eastern Railway. After hearing the parties, vide order dated 21.03.2002, the tribunal rejected the claim of the petitioner with regard to regularization of service in construction organization or in the promotional post thereof and dismissed the said original application along with other connected original applications. Challenging the said order, some of the applicants, namely, S. Govinda Rao, B.K. Mohanta, B. Suryanarayana and M. Ganapati Rao approached this Court by filing W.P.(C) Nos. 3198, 3199, 3451 and 4149 of 2002 and this Court by judgment dated 08.03.2006 allowed the writ petitions by extending the benefit, as has been prayed by the applicants, and directed the opposite parties to regularize the services of the applicants. The opposite parties have also approached this Court by filing writ petition challenging the said order passed by the tribunal directing regularization of services and, as such, the same was also dismissed. It is further contended that challenging the order passed by this Court, the opposite parties preferred SLP before the apex Court which was also dismissed. Thus, it is contended that the petitioner, having stood in the same footing and being one of the applicants in the connected matters disposed of vide Annexure-3, the benefit should have been extended to him at par with the benefit given to those who have been extended with the benefits by this Court. The same having not been extended to him, the petitioner has approached this Court by filing the present writ petition.

5. Mr. P.K. Parhi, learned Asst. Solicitor General of India appearing along with Mr. Gochhayat, learned Central Government

Counsel contended that if O.A. No. 570 of 2001 filed by the petitioner before the tribunal was dismissed and thereafter he could not approach this Court, for some reason or other, but similarly situated persons, whose original applications were dismissed, had approached this Court and the benefit was extended in their favour, there is no valid and justifiable reason not to extend the benefit in favour of the petitioner. In any case, it is contended that since similarly situated persons have already been extended with the benefits, this writ petition may be disposed of directing the authorities to consider the case of the petitioner in the light of the aforesaid order.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was engaged as temporary hands in construction organization from very beginning and later he was taken to open-line (permanent) establishment of South Eastern Railways from the construction wing, which fact has not been disputed by the opposite parties. After continuing for some period in the open line (permanent) establishment of the Railways, the petitioner was brought over to the construction organization, where he had to face a departmental test and received several stage of promotions to different grades/higher posts, where he was continuing for years together without being regularized. For the reason of a decision taken at a very higher level of the Railways to un-do the ad hoc promotions given for more than two ad hoc stages (later modified to an ad hoc stage), the petitioner has faced reversion at his respective division. The grievance of the petitioner at the time of hearing before the tribunal was that because he was in open line (permanent)

establishment, for some time or other, his regular promotion was arbitrarily branded as ad hoc and that before reverting him from his so called ad hoc promotion post, he was not given any notice to have his say in the matter and, therefore, the reversion order should be quashed, as the same was issued in gross violation of principles of natural justice, as well the provisions contained under Article 14 of the Constitution of India. His further grievance was that, had opportunity been given to him before reverting him from the promotional post, he would have pointed out that the construction organization (which takes-up various projects from time to time and create posts, including promotional posts, for such project work) to grant promotions for the period to run co-extenso with the project work and that the promotees should not face demotions before closure of the project nor for the reasons as has been given out by the higher authorities. As a consequence thereof, 21 applicants had approached the tribunal by filing various original applications and, as such, the petitioner had also filed O.A. No.570 of 2001 challenging the order of reversion with a prayer to regularize his service. But, vide order dated 21.03.2002, without any application of mind, the tribunal dismissed the said original application. Out of 21 applicants, who have approached the tribunal by filing various original applications, four applicants approached this Court by filing W.P.(C) Nos. 3198, 3199, 3451 and 4149 of 2002 seeking to quash the order passed by the tribunal and, as such, due to some difficulties, the petitioner could not approach this Court. This Court, after hearing both the parties, vide judgment dated 08.03.2006, disposed of the writ petitions by observing in

paragraph-10, 11 and 12 in the said judgment to the following effect:-

*“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 they are qualifying test was taken with other candidates at every stage before recommendation for their promottee. But still they have been given two or three consecutive ad hoc promotions, as mentioned above. The posts were lying vacant and the intention of the opposite parties to fill up the post 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 two or three 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 adhocsim instead of making regular appointment. However such a situation is not encouragable. But there appeared to be no huddle to make promotion on regular basis. If the services on the post in question are still required, the justice demands that regular promotion 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 post 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 tests if the same is held, in case it is no 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 petitioner's 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 is 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."*

7. A perusal of the above would go to show that this Court had observed that the petitioners therein are entitled to the same benefit 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, as such, the tribunal has committed manifest error of law in not providing the same to the petitioners. The aforesaid judgment of this Court was assailed by the Railway authorities before the apex Court in SLP (C) No. 13554-13557 of 2007, which was also dismissed vide order dated 15.01.2008.

8. In such view of the matter, this Court is of the considered view that since the petitioner had filed O.A. No. 570 of 2001 and his application was heard along with connected matters, out of which four applicants had approached this Court by filing writ petitions and they were extended with the benefits, there is no valid and justifiable reasons not to extend such benefits to the petitioner. As such, referring to the observations made by this Court in paragraphs-10, 11 and 12 of the judgment passed in **S. Govinda Rao and others v. Union of India**, 2006 (Supp.-I) OLR 453, the benefit should have been extended to the petitioner in terms of the aforesaid order. Accordingly, the order dated 21.03.2002 passed by the tribunal in O.A. No. 570 of 2001, so far

it relates to the petitioner under Annexure-1, is hereby quashed. The opposite parties are directed to extend the benefits to the petitioner in terms of the judgment of this Court in the case of **S. Govinda Rao** (supra), as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order.

9. The writ petition is accordingly disposed of.

Issue urgent certified copy as per rules.

**(DR. B.R. SARANGI)**  
**JUDGE**

*Ashok/Puspa*

**(SAVITRI RATHO)**  
**JUDGE**

