

IN THE HIGH COURT OF ORISSA AT CUTTACK

Writ Petition (Civil) No.28709 of 2013

Rabinarayan Mohanty

....

Petitioner

-versus-

Union of India and others

....

Opposite Parties

Appeared in this case:

For Petitioner

:

Mr. Agasti Kanungo, Advocate

For Opposite Parties

:

Mr. Ramesh Chandra Praharaj,
Advocate for Opposite Parties
Nos.1 to 5-Railway

CORAM:

THE CHIEF JUSTICE

JUSTICE A. K. MOHAPATRA

JUDGMENT

4th January, 2022

Dr. S. Muralidhar, CJ.

1. The challenge in the present petition is to an order dated 10th August, 2013 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack (CAT) in OA. No.870 of 2010. By the impugned order, the learned CAT dismissed the Petitioner's application in which he had prayed for a direction to the Opposite Party-East Coast Railway, Bhubaneswar (ECR) to declare him as PCR Junior Clerk with effect from 7th June, 1990 and restore his

services in the post of Head Clerk in the scale of Rs.5000-Rs.8000/- with effect from the date that he was reverted to the post of Junior Clerk.

2. The background facts are that in 1970, the Petitioner joined as casual worker in Construction Organization of the ECR. In 1979, he was brought to the 'Open Line' and regularized as Group-D in the Khurda Division of the erstwhile South Eastern Railway (SE Railway). In 1980, he was posted as Store Issuer (upgraded post). He was promoted as Junior Clerk on *ad hoc* basis on 1st February, 1985. On 23rd October, 1987, he was promoted as *ad hoc* Senior Clerk.

3. While continuing as Senior Clerk on *ad hoc* basis, the Petitioner appeared in the written examination followed by viva-voce test against the Limited Departmental Promotional Quota for regular vacancies of Junior Clerks/Typists in the Construction Organization. He was successful in this examination and in the memorandum dated 7th June, 1990 of the Chief Engineer (Construction), his name figured in the provisional panel of the selected candidates at Serial No.35.

4. In the meanwhile, by letter dated 22nd April, 1997, a proposal was sent for granting *ad hoc* double promotions in respect of Ministerial/Technical staff working in the Electrical Construction under the Deputy Chief Executive Engineer (C) BRS. By order

dated 17th February 1998, the Petitioner was promoted as Head Clerk on *ad hoc* basis and was continuing as such.

5. On 26th May, 2000, the CAO (Construction) issued a circular terminating the services of all employees having more than two *ad hoc* promotions on the basis of the Railway Board Circular dated 13th December, 1999. Pursuant thereto, by an order dated 14th June, 2001, the Petitioner was reverted from the post of Head Clerk to that of Senior Clerk.

6. In the above circumstances, the Petitioner filed OA No.242 of 2001 in the CAT praying that the reversion order be quashed and that he be regularized in the PCR vacancies of Construction in the same grade and same scale of pay.

7. While admitting OA. No.242 of 2001 on 22nd June, 2001, an interim order was passed by the CAT staying the Petitioner's reversion.

8. The Petitioner thereafter filed an application seeking amendment to the OA whereby he sought an additional alternative prayer "for fitment in Open Line" in the event of reversion by application of the "Next Below Rule." However, by an order dated 1st October, 2001, the CAT rejected the amendment application.

9. The above order dated 1st October, 2001 was challenged by the Petitioner in this Court by filing OJC No.13639 of 2001. This

Court by an order dated 16th October, 2001, while issuing notice in the petition, stayed further proceedings in OA No.242 of 2001.

10. Meanwhile, the CAT, by an order dated 21st March, 2002, disposed of several OAs challenging similar reversion orders. A common factor in all these applications was that the applicants had appeared in the Central Selection Board and were in the panel by an order dated 7th June, 1990 of the CE (Construction). In fact, the Petitioner's name appeared at Serial No. 35 of the panel prepared on 7th June, 1990. Union of India filed OJC Nos.5477 of 2002 and 5459 of 2002 in this Court against the order of the CAT dated 21st March, 2002.

11. While the above proceedings were pending, by an order dated 19th February, 2004, the Petitioner was reverted for the second time from Head Clerk to Junior Clerk. Challenging the aforementioned reversion, the Petitioner filed OA No.69 of 2004 in the CAT. The CAT stayed the above order dated 19th February, 2004.

12. On 21st September, 2004, OJC No.13639 of 2001 filed by the Petitioner was disposed of by this Court with the following observation:

"xxx. Since the right, if any, of the petitioner on such reversion is a matter of consideration either by the departmental authorities or by the judicial forum therefore, rights and liabilities of both the parties shall

be subject to such decision and shall not be affected by the impugned order.

The writ application is accordingly disposed of."

13. On 9th December, 2005, OA No.69 of 2004 was disposed of by the CAT as having become infructuous since the Petitioner already stood reverted by then.

14. The writ petitions filed by the Union of India in OJC Nos.5477 of 2002 and 5459 of 2002 against the order of the CAT dated 21st March, 2002 in OA Nos.509 and 603 of 2001 were disposed of by this Court on 7th March, 2006 upholding the order of the CAT in respect of similar situated employees. Pursuant to the above order of this Court, the said employees were treated as PCR Junior Clerk with effect from 7th June, 1990 i.e. from the date of their empanelment by the memorandum dated 7th June, 1990 of the CE. They were allowed one *ad hoc* promotion as Senior clerk. Subsequently, they were restored to the post of Head Clerk by the orders dated 26th /27th June, 2008.

15. The claim of the Petitioner was that he was similarly placed as the aforementioned Applicants in OA Nos.509 and 603 of 2001. He withdrew his OA No.242 of 2001 in the CAT with liberty to approach the CAT with a fresh OA to question his reversion.

16. The Petitioner then filed OA No.292 of 2009 before the CAT. It was disposed of on 21st August, 2009 with a direction to the

Opposite Parties to dispose of the Petitioner's representation dated 30th July, 2009.

17. By order dated 8th December, 2009, a Senior Personnel Officer of the ECR rejected the Petitioner's representation on the ground that the Petitioner was not a party to the order dated 21st March, 2002 passed by the CAT in OA Nos.509 and 603 of 2001. Aggrieved by the said order dated 8th December, 2009, the Petitioner filed OA No.870 of 2010. In the impugned order the CAT noted that the Petitioner's reversion by the order dated 14th June, 2001 was in terms of the policy decision dated 13th December, 1999 of the Railway Board. The Petitioner's promotion was much prior to the said policy decision which did not have retrospective effect. This was confirmed by this Court when it disposed of OJC Nos.5477 and 5459 of 2002 on 7th March, 2006. The CAT also noted that on 9th December, 2005, it had upheld the Petitioner's reversion by the order dated 16th February, 2004 noting that this had taken place on account of the policy decision of the ECR and that his reversion to the grade of Junior Clerk was in consonance with the policy decision. The CAT noted that the Petitioner did not challenge the above order dated 9th December, 2005 in any higher forum. He had not even filed a review petition before the CAT. OA No.242 of 2001 had been dismissed as withdrawn on 21st May, 2009.

18. The CAT also referred to the judgment in ***Workmen of Cochin Port Trust v. The Board of Trustees of the Cochin Port***

Trust AIR 1978 SC 1283 and applied the principles of constructive *res judicata*. It was also held that the OA was also hit by the principles of delay and laches.

19. This Court has heard the submissions of Mr. Agasti Kanungo, learned counsel for the Petitioner and Mr. Ramesh Chandra Praharaj, learned counsel for the Opposite Parties-ECR.

20. It was submitted by Mr. Kanungo that the question of constructive *res judicata* cannot apply since the earlier OA No.242 of 2001 was permitted by the CAT to be withdrawn with liberty to file a fresh application. However, the above submission overlooks the fact that the subsequent petition O.A. No.69 of 2004 filed by the present Petitioner was dismissed by the CAT on 9th December, 2005 and that order had become final. The Court is, therefore, unable to accept the plea of the Petitioner that the principles of constructive *res judicata* would not apply in the present case.

21. Mr. Kanungo submitted that the elements for constituting *res judicata* were not satisfied in the present case. According to the Petitioner, the policy decision was never under challenge in OA No.69 of 2004, whereas in OA No.242 of 2001 the Petitioner had not only challenged his reversion but also prayed for regularization.

22. Although it is contended that the issue involved in OA No.242 of 2001 was different from that in OA No.69 of 2004, the Court finds that the net effect of the prayers in both applications was to challenge the reversion of Petitioner from Head Clerk to Junior Clerk.

23. Although the Petitioner may have an arguable point in questioning the decision of the CAT in so far as it holds the application before it to be barred by laches, the Court finds that in effect the Petitioner was trying to revive his challenge to the reversion which he already did and failed in the earlier round. He could not have been permitted to have a second shot at questioning the reversion order.

24. The Court is unable to find any error having been committed by the CAT in rejecting the Petitioner's application. The writ petition is accordingly dismissed. There shall be no order as to costs.

(S. Muralidhar)
Chief Justice

(A. K. Mohapatra)
Judge

M.Panda