

GAHC010012682015



2026:GAU-AS:327

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2540/2015

THE UNION OF INDIA
REP. BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI.

VERSUS

ON THE DEATH OF SUBHASH BANIK HIS LEGAL HEIRS
MAYA BANIK, W/O LT. SUBHASH BANIK

1.1:SMT. MAYA BANIK
W/O LATE SUBHASH BANIK

1.2:MISS RIMA BANIK
D/O LATE SUBHASH BANIK

BOTH ARE RESIDING AT RAILWAY QUARTER NO. 31/B
T-II
ACCOUNTS COLONY
REST CAMP
PANDU
GUWAHATI-1

Advocate for the Petitioner : MS.R CHOUDHURY, MR H GUPTA,MS.R R BORAH,MSB
DEVI,MR.G GOSWAMI(Rly.Adv.)

Advocate for the Respondent : MR M K DAS, MR. B HUSSAIN(R-1(1),1(2)),MR. A K
HUSSAIN(R-1(I), 1(2)),,,

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT& ORDER (CAV)

Date : 06-01-2026

Heard Mr. G. Goswami, learned counsel appearing for the petitioner. Also heard Mr. A.K. Hussain, learned counsel representing the respondents.

2. At the outset it is to be noted that the present writ petition was so instituted with Subhash Banik as the sole respondent. During the pendency of the present proceeding, unfortunately the sole respondent passed away on 27-01-2020. Accordingly, his legal heirs, i.e. his wife and the daughter, were substituted as respondents in place of the original respondent Subhash Banik by this Court vide order dated 07-11-2022.

3. The petitioner in the present proceeding has presented a challenge to the award dated 20-03-2013 passed by the Central Government Industrial Tribunal-cum-Labour Court, Guwahati in reference case No. 12/2008.

4. The original sole respondent Subhash Banik being aggrieved by denial to him of his due promotion to the next higher grade of Senior Technician/ Master Craftsman, along with similarly situated persons had raised grievances before the N.F. Railway authorities, i.e. the petitioner herein. On not getting any response from the railway authorities, the matter came to be referred to the Labour Commissioner (Central), Guwahati for conciliation. The conciliation having failed because of non-appearance of the railway authorities, a reference came to be made in the matter vide order dated 30-09-2008 issued by the Ministry of Labour and Employment, Govt. of India. The schedule of reference being relevant is extracted herein-below:

The Schedule

“Whether the action of the management of N.F. Railway by denying promotion

to Sri Subhash Banik, Technician Gr.I (Turner) and five others as per annexure, is legal and justified? If not, what relief they are entitled to?"

5. The learned Tribunal upon consideration of the evidences coming on record, vide award dated 20-03-2013 proceeded to decide the reference against the management, i.e. the N.R. Railway authorities and directed for promotion of the original respondent, herein, to the post of Senior Technician/ Master Craftsman, w.e.f. 01-01-2006 with all consequential benefits of his pay and allowances including the pensionary benefits. Being aggrieved the management, i.e. the N.F. Railway authorities, as petitioner, has instituted the present proceeding.

6. Mr. Goswami, learned counsel for the petitioner submitted that the petitioner, herein, who was initially appointed as a 'Khalasi' on 12-12-1965, riding the ladder of promotion came to be promoted as Turner Grade-I on 28-10-1997 under the Chief Mechanical Engineer, N.R. Railway, Maligaon and was deployed at Wagon Repairing Shop at Pandu. He submits that the Wagon Repairing Shop was closed down in the year 2004 and the original sole respondent along with other staff deployed in the said Wagon Repairing Shop were deployed in the Carriage Wagon Department of the N.R. Railway authorities by creating supernumerary posts and the establishment of these staff were maintained in the Mechanical Section of the Chief Personnel Officer, N.F. Railway. Mr. Goswami submits that the grievance of the original sole respondent was to the effect that he was due for promotion to the post of Senior Technician/ Master Craftsman in the scale of pay of Rs. 5000/- - Rs. 8000/- against a post projected to be lying vacant since December, 2005 under the Sr. CDO, Guwahati on superannuation of one S.N. Das, Senior Technician, w.e.f. 31-12-2005. Mr. Goswami submits that basing on the policy in place, eligible candidates from Machinist Grade-I and Tuner Grade-I (Technical

Grade) authorised the same scale of pay, i.e. Rs. 4500/- - Rs. 7000/-, were amalgamated and basing on the seniority of the incumbents in the amalgamated seniority list, promotions were effected to the post of Senior Technician/ Master Craftsman in the scale of pay of Rs. 5000/- - Rs. 8000/-. He submits that H.G. Rabha who was promoted as Machinist Grade-I on 20-12-1993 was senior to the sole respondent, who was promoted to the said grade only, w.e.f. 01-10-1997. The combined seniority list being prepared of the two categories, i.e. Machinist Grade-I and Turner Grade-I, H.G. Rabha being senior-most, the post of Senior Technician was filled up by Sri H.G. Rabha, w.e.f. 01-09-2006. He submits that the learned Tribunal had not interfered with the promotion effected in respect of said H.G. Rabha. By referring to the award dated 20-03-2013, he submits that the learned Tribunal has misread the railway circulars applicable in the matter with regard to restructuring of the Group-C and Group-D cadres. He submits that the initial circular for such restructuring was so issued on 27-01-1993 and at the relevant point of time, the sole respondent was not working as a Turner Grade-I, but was so holding a post in the cadre of Turner Grade-II. Accordingly, the non-restructuring of the post of Master Craftsman would be of no consequence, inasmuch as, he was not figuring in the feeder cadre.

7. Mr. Goswami by referring to the circular of the railways dated 09-10-2003 submits that the same having also provided for the restructuring of the Group-C and Group-D cadres in the railways, the circular dated 09-10-2003 was only applicable to regular cadres and surplus and supernumerary post created from time to time were excluded from the purview of the said circular dated 09-10-2003. He submits that the petitioner after 2004 having held a supernumerary post, his case would not be covered under the provision of the circular dated 09-10-2003 and accordingly, the directions passed by the learned Tribunal for promotion of

the sole respondent to the cadre of Master Craftsman by holding that in terms of the circular dated 09-10-2003 a further post of Senior Technician/ Master Craftsman stood created for the Turner cadre is clearly perverse. In the above premises, Mr. Goswami submits that the award dated 20-03-2013 would mandate interference by this Court.

8. Per contra, Mr. A.K. Hussain, learned counsel for the respondents submits that the original sole respondent was denied his due promotion on a wrong appreciation of the circular holding the field and by amalgamation of the cadre of Machinist Grade-I with that of Turner Grade-I. He submits that it is only on account of the said misreading of the circular that H.G. Rabha who was a Machinist Grade-I came to be promoted as Master Craftsman against a post which was to be filled up by incumbents in the Turner grade. He submits that the post of Senior Technician was held by Sri S.N. Das who superannuated w.e.f. 31-12-2005. Accordingly, the said post was to be so filled up from amongst incumbents in the cadre of Turner Grade-I and not from Machinist Grade-I. In the above premises, Mr. Hussain submits that the learned Tribunal after having taken into account of all relevant factors had proceed to pass the award dated 20-03-2013 and directed for promotion of the original sole respondent, w.e.f. 01-01-2006 as Senior Technician/ Master Craftsman with all consequential benefits. He submits that the award dated 20-03-2013 is well reasoned one and accordingly, would not mandate interference from this Court.

9. I have heard the learned counsel for the parties and also perused the materials available on record.

10. The terms of reference have been noticed hereinabove. The terms of the reference required the Tribunal to examine as to whether the action on the part of the N.F. Railway

authorities in denying promotion to the original sole respondent and five others was legal and justified, if not as to what relief they were entitled to. The sole respondent Subhash Banik was initially recruited as a 'Khalasi' in the N.F. Railways w.e.f. 12-12-1965. He was thereafter promoted to Turner Grade-III and thereafter to Turner Grade-II w.e.f. 19-07-1982. The original sole respondent was, thereafter, promoted as Turner Grade-I, w.e.f. 28-10-1997 in the Machine Trade. While working as Turner Grade-I in the Wagon Repairing Shop at Pandu, Guwahati the original sole respondent was re-deployed in the Carriage Wagon Department on account of closure of the Wagon Repairing Shop. The lien of the sole respondent and other re-deployed personnel were maintained by creation of supernumerary post. The next avenue for promotion of an incumbent working as a Turner Grade-I is the post of Senior Technician/ Master Craftsman. After the 5th Pay Commission, the post of Senior Technician/ Master Craftsman was placed in the scale of pay of Rs. 5000/- - Rs. 8000/-, while the post of Turner Grade-I was placed in the scale of pay of Rs. 4500/- - Rs. 7000/-. The materials brought on record before the Tribunal reveals that promotion to the cadre of Master Craftsman, was mandated to be carried out from a combined seniority list of Turner/ Machinist Grade-I. The post of Senior Technician/ Master Craftsman becoming available, the railway authorities proceeded to effect promotion to the said post by considering the seniority of the incumbents in the grade of Machinist Grade-I as well as Turner Grade-I. Sri H.G. Rabha being admittedly senior to the original sole respondent Sri H.G. Rabha, Machinist Grade-I came to be promoted w.e.f. 01-09-2006 as Senior Technician/ Master Craftsman and placed in the scale of pay of Rs. 5000/- - Rs. 8000/-. The railway circulars mandating that the post of Senior Technician/ Master Craftsman be filled up by promotion amongst the incumbents in the amalgamated seniority list of the grade of Machinist Grade-I and Turner Grade-I, Sri H.G.

Rabha having been promoted to Grade-I much prior to the original sole respondent, herein, this Court does not find any error in the promotion of said H.R. Rabha to the cadre of Master Craftsman w.e.f. 01-09-2006. This Court also notices that in the proceeding before the learned Tribunal in reference case No. 12/2008, H.G. Rabha was not arrayed as a party respondent and accordingly, no order adverse to said H.G. Rabha would be permissible to be passed by this Court in the present proceeding also in absence of Sri H.G. Rabha as party respondent, herein.

11. Having drawn the above conclusions, this Court would now examine the directions passed by the learned Tribunal which primarily is based on the necessity of restructuring of Group-C and Group-D post including the grade of Turner and for creation of a post of Master Craftsman for the Turner Trade and thereafter, to promote the original sole respondent against the said post w.e.f. 01-01-2006. The learned Tribunal in this connection had noticed the Railway Board's circular dated 09-10-2003 and by noticing the said circular had drawn a conclusion to the effect that authorities had ignored to implement the circular dated 09-10-2003 and failed to create additional post of Master Craftsman for the Turner Trade. The relevant conclusions drawn by the learned Tribunal in this connection is extracted here-in-below:

“12.Further the learned Advocate for the workman relied upon Railway Board's Circular No.PC.III/2003/CRC/6dated 9.10.2003 (Annexure-III) wherein the revised percentage of post of Artisan Cadre were prescribed and the restructuring of Group C & Group D staff common to all engineering department including the workshop which is shown below:

<i>Category</i>	<i>Grade</i>	<i>Existing %age</i>	<i>Revised %age</i>
<i>Artisan Staff</i>	<i>5000-8,000/-</i>	<i>5</i>	<i>8</i>
	<i>4,500-7,000/-</i>	<i>35</i>	<i>41</i>

4,000-6,000/-	30	26
3,050-4,590	30	25

13 Consequent upon the restructuring of the two posts Master Crafts Man in Turner Trade as it appears from the evidence of both the sides, one Post was already in existence and the incumbent Sri S. N Das was Master Crafts Man as on 1.11.03 but the Management has ignored to implement the said Circular dated 9.10.03 without creating the Addl. Posts of Master Crafts Man for the Turner Trade. From the provisional seniority list of Turner Grade-II. (Annexure-IV) and the promotion order No. 9/1997 vide Memo No. E/210/III/1/pt.II dated 28.10.1997 (Annexure-V) issued by the Management it appears that the workman was promoted to Turner Grade-II on 16.5.88 and from Turner Grade-II to Turner Grade-1 with effect from 1.10.1997. The seniority list (Annexure-IV) in respect of Turner Grade-II, shows that N.G. Mitra was immediate senior to the workman and subsequently Sri N G. Mitra Turner Grade-I was promoted and became the senior most Turner-I and as per the restructuring formally Sri N.G. Mitra Turner-I, would have got the promotion to the Post of Master Crafts Man (Turner), but in the mean time Sri N.G.Mitra, Turner Grade-I retired on 30.11.05. Similarly after retirement of Sri S. N. Das, the Master Crafts Man (Turner) je on 31.12.06 the Management did not implement the principles of restructuring of the post.

14. The Railway Board in their Circular dated 9.10.2003 (Annexure-III) in para-2 made it fear that the said order is applicable to regular cadres (excluding surplus and supernumerary post of the open line including Workshops and productions and as such, the supernumerary post of Turner is also covered by this Circular. The Board also vide their Circular No.PC.111/2004/CRC/13 dated 17.6 2004 (Annexure-VI) clarified that all supernumerary posts should be set off first before effecting in promotions from the lower grades to higher grade and the required matching circular, post on the existing number of posts should be worked out and the circular affected in such manner that the final cadre of post results in the specified percentage discrimination between the grades

15. Thus it is clear from the above discussion that the management has not implemented the procedure for restructuring in maintaining the seniority as well as promotion to the higher grades of the Turner (Artisan) in the light of Board's Circular No. PC.III/2003/CRC/6 dated 9.10.03, No. PC.III/91/CPC/1 dated 27.1.93 and No. PC.III/82/PS-3/10 dated 14.2.86 in respect of the workmen including the present workman Subhash Banik. As such, I find no reason to entertain the argument raised by learned Advocate for the Management. Learned Advocate for the Management put forward another argument that at the relevant time there was only one post of Master Crafts Man (senior Technician) and as Sri H.G. Rabha belongs to Schedule Tribe category as well as senior most Machinist Grade-1 and by promoting Sti H.G. Rabha, Master Crafts Man in no way affected the legal right of the workman Subhash Banik Since the restructuring formula has not been applied by the Management and also there is no provision for reservation in case of single post as revealed in the Railway Board's Letter No. 95-E(SCT)1/49/5(1) dated 21.8.97 (Annexure-VII) regarding model

roster for cadre strength of direct recruitment and reservation roster of Group-C & Group-D post of promotion category, this argument is also found not relevant in the instant case."

12. A perusal of the said conclusions drawn by the learned Tribunal with regard to the provisions of Railway Board's circular dated 09-10-2003 would reveal that the learned Trial Court had clearly erred with regard to the applicability of the said circular dated 09-10-2003 in respect of the services rendered by the original sole respondent. The Railway Board's circular dated 09-10-2003 in paragraph 12 with regard to its applicability mandates as follows:

"12. These orders will be applicable on the regular cadres (excluding surplus and supernumerary post) of the open line establishments including workshops and production units. These orders will, however, not be applicable to the staff of RDSO for which separate orders will be issued"

13. It is an admitted position that the petitioners and others who were initially deployed in the Wagon Repairing Shop were, thereafter, deployed on its closure, against supernumerary post created for the said purpose. The original sole respondent and others in the Turner Trade who were re-deployed upon closure of the said Wagon Repairing Shop being holders of supernumerary post, there would arise no occasion of restructuring of the Turner cadre in terms of the Railway Board's circular dated 09-10-2003. In view of the said position, the Railway Board's circular dated 09-10-2003 being not applicable in the facts and circumstances of the present case, the direction for restructuring of the Turner cadre involving the original sole respondent, would be not sustainable as well as the consequential direction for promotion of the original sole respondent Subhash Banik to the cadre of Senior Technician/ Master Craftsman w.e.f. 01-01-2006 would also not be sustainable.

11. Accordingly, for the reasons as cited, hereinabove, the award dated 20-03-2013 stands set aside. The present writ petition accordingly stands allowed.

JUDGE

Comparing Assistant