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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 155 of 1987.

Date of decision: **21st** June, 1990

R. N. Ojha, S/o D.D. Ojha
Grade-I Hindi Asst., Hindi Section,
D.R.M. Office, S.E. Railway
At-Khurda Road, P.O. Jatni, Dist. Puri.

.... APPLICANT

-Versus-

1. Union of India, through the General Manager, S.E. Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager, S.E. Railway At-Khurda Road, P.O. Jatni, Dist. Puri
3. Chief Personnel Officer, S.E. Railway Garden Reach, Calcutta-43.
4. O.M. PraKash, Grade-I Hindi Asst. Hindi Section, Office of the Div. Personnel Officer, S.E. Railway, At-Khurda Road, P.O. Jatni, Dist. Puri

.... RESPONDENTS

For the Applicant Mr. G. A. R. Dora, Advocate
For the Respondents M/s. Bijay Pal and
L. Mohapatra,
(Respondent No. 1 to 3)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN
A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgement ? Yes.
2. To referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes.

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JUDGEMENT :-

N. SENGUPTA, MEMBER (J)

The case of the applicant, put in brief,

is that he is a graduate with Hindi as one of the subjects of Examination, he joined in service under the South Eastern Railway in 1967 as a Diesel Cleaner and subsequently he occupied another post but he was retrenched. After that on 12.12.72 he was appointed as a Diesel Fitter and after qualifying himself in a test, he got an appointment as Hindi Typist in Khurda Road Division. He was appointed as a Junior Translator, which was redesignated as Hindi Assistant Grade-III, on 20.2.77 on an adhoc-basis. On 16.7.79 he was promoted as Hindi Asst. Grade-II. Later there was merger of Grades-I and II of Hindi Assistants with effect from 17.12.83 vide Annexure-A/1. While working as Hindi Assistant in the different grades, his work was commended by his Superiors. On 18.6.87 an order of posting Opposite Party No. 4 as Hindi Assistant Grade-I at Khurda Road was passed, thereby he was to be displaced from the post he was occupying. Opposite Party No. 4 belongs to a Scheduled Caste and his appointment to the post has been purported to have been made against a Scheduled Caste quota and by direct recruitment though the post of Hindi Assistant Grade is a promotional post and there being only one post of Hindi Assistant Grade-I at Khurda Road, the same could not be treated as reserved as it would amount to cent percent reservation. The case of the applicant further is that he

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having officiated in the post of Hindi Assistant Grade-I for about 3 years he is entitled to protection against reversion under Rule of 18 months and he is entitled to regularisation. Making these allegations, the applicant has prayed for quashing the order of appointment of Opposite party No.4 as Hindi Assistant Grade-I, Khurda Road (Vide Annexure A/7) and for a direction to regularise his (applicants) promotion as Grade-I Hindi Assistant.

2. Opposite parties No.1 to 3 are really one i.e. the Railway Administration. The case of the Railway Administration is that there is a Hindi Organisation for the whole of the South Eastern Railways and the Hindi Assistants of that Organisation comprise a single cadre and accordingly, a seniority list has been prepared. According to the requirements at different places and divisions, the posts of Hindi Assistants are distributed. The plea of the applicant that no reservation of the post of Hindi Assistant at Khurda Road could be made is untenable since reservation has to be made according to the roster point taking the whole cadre strength into account. The Railway Administration has raised the plea that the rule of 18 months officiation does not apply and they have questioned the correctness of a decision of this Bench of the Tribunal and have referred to some decisions of other High Courts and other Benches of the Tribunal which need not be stated here, they would be referred to while discussing the arguments advanced by the learned Counsels. It is the plea of the Railway Administration that the appointment of the applicant as Grade-I Hindi Assistant

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was purely on adhoc basis and it was made clear to him that by such appointment on adhoc basis he acquired no right to continue in the post. According to the requirements Rules, 33.3 percent of Grade-III Hindi Assistants and the same percentage of Hindi Assistant Grade-I were to be filled up by direct recruitment, therefore, the applicants contention that Hindi Assistant Grade-I is purely a promotional post can not be accepted. As the vacancy at Khurda Road fell at a point where scheduled caste candidate was to be appointed, Respondent No.4 who is a scheduled caste man, being empanelled by the Head Office has been appointed which appointment the applicant can not question. Railway Administration has also pleaded that assuming that the post of Hindi Assistant Grade-I at Khurda Road is a promotional post, the applicant being junior to others in the cadre could not claim to be promoted or continued to hold the post of Hindi Assistant Grade-I. To the counter filed by the Railway Administration, some annexures have been made and to them reference would made a little later.

3. We have heard Mr. G.A.R.Dora, for the applicant and Mr. L.Mohapatra for the Respondent Nos.1 to 3 and there has been no appearance on behalf of the Respondent No.4. From the statement of facts made above it will be clear that the contesting Respondents do not dispute the dates when the applicant was first appointed as Hindi Assistant Grade-III or when he came to hold the post of Hindi Assistant Grade-I at Khurda Road, but their case is that the terms of the appointment of the applicant as Hindi Assistant Grade-I are clear enough

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to show that by that appointment no right to hold the post beyond the time when a regular appointment was to be made was there. Mr. Mohapatra has drawn our attention to Annexure-1 to the application particularly to the part which states that the temporary promotion of the applicant was ordered purely on adhoc measure till the regular arrangement was made from Headquarters and did not confer any title or claim for his regularisation or confirmation. Mr. Dora on the other hand has very strenuously contended that a person who was allowed to officiate and hold the post of Hindi Assistant grade-I and got commendation for his work, could not be unceremoniously and summarily reverted. Mr. Dora leaned heavily on the decision of the Orissa High Court in S.K. Mohanty's case and the fact that the S.L.P. filed by the Railway Administration in the Supreme Court for an appeal against the decision in that case was dismissed. It is true that if there be a decision of the Supreme Court upholding the view that any person who officiated in a promotional post for more than 18 months cannot be reverted without a disciplinary proceeding, the applicant would be on firm ground. In S.K. Mohanty's case the Orissa High Court held that even if the appointment by promotion might initially have been on adhoc basis, if the person continued for more than 18 months at a stretch unless he is found un-fit and proceeded against for such inefficiency, he acquires a right to hold the post. The S.L.P. was rejected at thresh-hold i.e. at the time of admission. Of course words "on merits" were added. This Tribunal had the occasion in an earlier case to go into the question as to whether that order of the Supreme Court can be

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called law declared by it under Article 141 of the Constitution of India and the question was answered in negative, to that decision one of us was a party. In later decision of the Supreme Court reported in A.I.R.1990 S.C.334, S.P.Jain and another -vs-Union of India and another it was observed that a non-speaking order of rejection of S.L.P. does not mean that the Supreme Court accepted the view of the High Court. Further discussion on the question appears to be un-necessary in view of a Full Bench decision of this Tribunal in the case of Jetha Nand and others-vs-Union of India and others reported in 1989(2)SLJ 657(C.A.T.); in the Full Bench Case the circular dated 9.6.65 commonly known as 18 months circular was a matter for consideration. In that case after a review of a number of decisions including some decisions of the Supreme Court, the Full Bench held that if a person was appointed in a stop gap arrangement he could be reverted at any time. A reference has already been made to the order of promotion of applicant, in that order it was expressly stated that the appointment of the applicant was purely temporary and it was to continue till a regular appointment was made and it was further made clear that the promotion did not confer any right to claim regularisation. It is true that by a mere statement, the Administration can not deprive an employee of his legitimate right to continue in any post, as has been repeatedly held that when the appointment is fortuitous and to enure till the happening of a particular contingency, the appointment is in essence adhoc and adhoc officiation confers no right on the incumbent.

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4. The next question that needs an answer is whether can an appointment by direct recruitment be made to the post of Hindi Assistant Grade-I. In this regard a ~~xxix~~ reference may be made to the Railway Board's instructions to the General Managers of all the Indian Railways and other subordinate Officers in its letter No.E.C. (Engg) II-81/RC 1/47 dated 29.5.82. There can be no doubt about the competency of the Railway Board ^{- to -} ~~the~~ frame rules relating to the recruitment to the different categories of Railway servants. From Annexure-B to the Counter of Respondent Nos.1 to 3 it would be found that 33.3 percent of the total number of posts of Hindi Assistants Grade-I were to be filled up by direct recruitment and the Educational qualification for appointment were also stated in that letter. Admittedly the appointment of the applicant as Grade-I Assistants was after issue of Annexure-B therefore, his appointment was governed by the provisions contained therein. In the face of this circular of the Railway Board, there appears to be no substance in the contention of the applicant that a post of Hindi Assistant Grade-I could be filled only by promotion and not otherwise. The Respondent Nos.1 to 3 have filed a copy of the combined seniority list of the Hindi Assistant of the Hindi Organisation where the name of the applicant is at Sl.No.37. The contesting Respondent in para-22 of the Counter stated that they are seniors to the applicant in the cadre who have not yet been promoted to Grade-I. They have also given the name of one

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Premalata Verma who was reverted from Grade-I to II after the joining of a regular incumbent and this Premalata Verma is at Sl.29 of the seniority list. Therefore, the contention of Respondent Nos.1 to 3 that even if the post can be said to be purely a promotional post, the applicant can not have any claim as many of his seniors have still not - *has to be accepted* - been promoted to Grade-I. With regard to the question whether there can be a reservation or not, we need to go deep into the matter for what has been stated above but, however, from Annexure A/5 to the application it would be apparent that there is a combined cadre of Hindi Assistants to be posted at different places in South Eastern Railways and as such the plea of the applicant that the appointment of Scheduled castes candidates as Grade-I Hindi Assistant at Khurda Road would amount to cent percent reservation can not be accepted.

5. For all that has been stated above, we do not find any merit in the application and accordingly it is rejected, but, in the circumstances of the case, without costs.

B.M.H.
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VICE-CHAIRMAN

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MEMBER (JUDICIAL)

