

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 178 of 1988.

Date of decision : September 8, 1989.

1. N.S. Mohanty, son of late L.N. Mohanty
2. Jogeswar Mohanty, son of J.N. Mohanty
3. B.D. Nayak, son of late Radhu Nayak.

All are Head Clerks, Carriage Repair Workshop, S.E. Railway, At/P.O. Mancheswar, Bhubaneswar-5, District -Puri.

...

Applicants.

Versus

1. Union of India, through the General Manager, S.E. Railway, Garden Reach, Calcutta-43.
2. Chief Workshop Manager, S.E. Railway, At/P.O. Mancheswar, Bhubaneswar-5. Dist. Puri.
3. Sudhansu Kumar Das, son of Dhirendranath Das
4. Rabinarayan Mohanty, son of Sadhucharan Mohanty
5. Rasbehari Jena, son of Pitambar Jena
6. Bankanidhi Moharana, son of Jogendra Moharana
7. Gayadhar Puan, son of Nabakishore Puan
8. Ramesh Ch. Swain, son of Hatakishore Swain
9. Raghunath Mohapatra, son of S.P. Mohapatra.

Sl. Nos. 3 to 9 are working as Sr. Clerks, in the Carriage Repair Workshop, Mancheswar, At/P.O. Mancheswar, District-Puri.

10. Nityananda Behera, son of Harekrushna Behera.
11. Dhirendranath Nayak, son of Dwarikanath Nayak,
Sl. Nos. 10 and 11 are working as Jr. Clerks Carriage Repair Workshop, Mancheswar, At/P.O. Mancheswar, (S.E. Railway), Dist. Puri.

... Respondents.

For the applicants ;;; Mr. G.A.R. Dora, Advocate.

For the respondents 1 & 2 : Mr. R.C. Ratha,
Standing Counsel (Railways)

For the respondents 3 till : M/s. J. Das, B.S. Tripathy,
B.K. Sahoo, S.M. Misra, Advocates.

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

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)

J U D G M E N T

N.SENGUPTA, MEMBER (J) Three applicants working in the Carriage Repair Workshop, South Eastern Railway, at Mancheswar have sought the reliefs of quashing the seniority list at Annexure-A/12 and also of the notice of cancellation of trade test (Annexure-A/16) and other reliefs.

2. In order to understand the contentions advanced by the counsels for the parties, the facts have to be stated in a little detail. A new workshop at Mancheswar being Carriage Repair Workshop was started. For manning the organisation employees from different divisions under the South Eastern Railway were asked to give their options to join at Mancheswar. The three applicants were initially appointed in Class IV services, according to their case, applicant No.1 was first appointed on 17.2.1972, applicant No.2 on 23.10.1973 and applicant No.3 on 14.6.1971. Later, the applicants 1 and 3 were promoted to the next higher rank\$ i.e. Material Checkers in 1975 and applicant No.2 in 1979. It is averred by the

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applicants that applicants 1, 2 and 3 were promoted on ad hoc basis to the rank of Junior Clerks at Kharagpur on 11.2.1980, 5.10.1982 and 26.7.1982 respectively. After opening of Mancheswar Workshop, the applicants were deputed to join as Junior Clerks at Macheswar. The applicants 1 and 3 were transferred on 6.10.1982 (copy of that order of transfer is Annexure-A/1) and applicant No. 2 was transferred on 23.4.1983 (copy of that order is Annexure -A/2). As these three applicants were working as Junior Clerks on ad hoc basis, after coming to Mancheswar for regular appointments, they were asked in 1985 to appear at a test and they appeared at the test at Kharagpur whereafter the appointments as Junior Clerks were regularised retrospectively with effect from 2.2.1984. After that, they were promoted as Senior Clerks on 1.3.1984 and in January, 1985 vide Annexure-A/4, their promotion to the rank of Senior Clerks was regularised but once again retrospectively with effect from 1.3.1984. A second promotion to the rank of Head Clerks was given to the applicants 1 and 2 in September, 1985 but this was on ad hoc basis (vide Annexure-A/5). Another order was passed on 18.4.1986 allowing the applicant No. 2 to continue as Head Clerk and Applicant No. 3 on that date was promoted to the rank of Head Clerks, these two promotions were also on ad hoc basis. It is also averred in the petition that by Annexure A/11 applications were invited for the formation of cadre of Junior Clerks, Time Keepers,

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Materials ^{but} checkers / as applicants had been regularised prior to issuance of that notice, they were not required to appear at the test. On 31.3.88 a seniority list (copy at Annexure-A/12) was circulated and the persons likely to be affected thereby were called upon to make representation within one month from the date of publication of the seniority list. By that notice persons were also asked to submit their options within a period of 30 days from the date of publication of that list whether they desired to revert to their parent departments. In that seniority list, of course provisional, the applicants were shown as Materials Checkers. After the publication of that seniority list the applicants made representations. They objected by saying that by the time of publication of the seniority list they had already been promoted twice and in their promotional posts they had obtained seniority. One such representation was made on 13.5.1988 by Applicant No.2. Subsequently, a notice was issued on 19/27.4.1988 whereby the Assistant Personnel Officer cancelled all the suitability test/trade test/selection conducted at the workshop at Mancheswar and this is one of the impugned orders.

3. The Railway Administration through Respondents 1 and 2 have taken the grounds that ad hoc arrangements for the deployment of the staff had to be made for filling up of vacancies at Mancheswar Workeshop and for that reasons some persons were given ad hoc appointments and the three applicants were ad hoc junior Clerks. They have denied of

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holding of any test for the regularisation of the appointment of the petitioners as Junior Clerks. However, they admitted holding of a test of the available clerical staff at the Station for restructuring in the cadre and it was really not meant to be a regular test for the appointment of Junior Clerks. Since some posts of Senior Clerks were to be manned, the three applicants were promoted as Senior Clerks on an ad hoc basis and similar was the case with the promotion to the rank of Head Clerks. Their case further is that the applicants did not apply to sit in the suitability test held at Kharagpur workshop. Therefore, there was no question of regularising their appointments as Junior Clerks, Senior Clerks or Head Clerks. So in the seniority list they were shown in their substantive ranks. They have urged that the application is premature. That, in substance, represents the stand taken by the Railway Administration.

4. During the pendency of this case in the Tribunal, 9 persons applied to be brought on record as intervenors and their application was allowed. The contentions advanced on behalf of the intervenors are with regard to appointments to be made in the establishment of Carriage Repair Workshop at Mancheswar, the Chief Personnel officer, South Eastern Railway, Garden Reach, Calcutta and the Chief Mechanical Engineer formulated certain policies and the same was forwarded to different authorities under Chief Personnel Officer's letter dated 22.12.1988. It is urged on behalf of these intervenors that the tests cannot be held by any person other than the Chief Personnel Officer or the Chief Mechanical Engineer and

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as the so called tests alleged by the **applicants** were not held by any of the two, the tests were invalid and even if there was any test, the results thereof did not avail the applicants anything. It is also urged that all the dates mentioned in the application of the applicants are prior to 1.1.1988, the date from which the Mancheswar Workshop cadre was established and as such, those posts or other orders of appointment were of no assistance to the applicants. In fine, it is urged on behalf of the intervenors ^{that} the so called tests alleged by the applicants not having been conducted properly or by the competent authority, were invalid and as such were to be cancelled and the applicants cannot make any grievance against that. They have also urged that all the appointments or promotions of the applicants at Mancheswar were fortuitous and on ad hoc basis conferring on them no substantive rights.

5. As has been indicated above, the respondents have taken a ground that the application is premature inasmuch as the representations were made in May, 1988 and the present application was filed in June, 1988. This ground is really based on Section 20 of the Administrative Tribunals Act, 1985. On a reading of this section it would be found that there is really no absolute bar on the part of the Tribunal to entertain an application before the applicant has exhausted all the remedies or before the lapse of six months after making of any representation, but what it really prescribes is that ordinarily an application

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before exhausting departmental remedies or before lapse of six months from the date of representation should not be entertained. In the instant case, the applicants asked for an interim order not to disturb their positions and this Tribunal granted that prayer. If an applicant bonafide believes that his rights may be in jeopardy if he waits, there would be a cause to approach the Administrative Tribunal for relief. In that view of the matter, we are not inclined to accept this ~~contention~~ of learned Counsel for the Respondents.

6. It has been urged that the present applicants were appointed in the class IV services and they held substantive posts in that service and as such the seniority list, which, of necessity, has to be confined to substantive appointments, shows them as Material Checkers. It has been urged by Mr. Dora, learned Counsel for the applicants, that as would be evident from Annexure-A/1, the applicants 1 and 3 had been transferred to the Carriage Repair Workshop at Mancheswar with their posts and in that Annexure both the applicants were shown as Junior Clerks. From Annexure-A/2 it would be found that the applicant No. 2 was transferred in Office order dated 23.4.1983 and posted in his existing capacity and scale of pay, in that Annexure the applicant No. 2 is shown as Junior Clerk. From Annexure-A/3 it can be found that the Additional Chief Mechanical Engineer of Carriage Repair workshop, Mancheswar informed that the appointments of the three applicants as Junior Clerks were regularised with effect from 2.2.1984 and that the same had the approval of the competent authority. There can be no

M. S. Dora
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dispute that the order emanated from an authority of the Railways and further that the competent authority had given his approval. Therefore, so far as the three applicants being junior clerks is concerned, there can be no doubt, as admittedly in the seniority list vide Annexure-A/12 the three applicants have been shown only as Material Checkers there is little difficulty in saying that showing them as Material Checkers in Annexure-A/12 cannot be supported.

7. It has been contended on behalf of the Railway Administration and the intervenors that the appointments of the applicants as Senior Clerks was really on ad hoc basis. It is not borne out by the records. From Annexure-A/4 it would be found that the promotion of the three applicants as Senior Clerks was regularised with effect from 1.3.1984. Only in Annexure-A/5 it is to be found that the promotion of Applicants 1 and 2 as Head Clerks was on ad hoc basis and it was made clear that the promotion to that rank would not confer any right and persons found to be senior to them in future may be placed above them and on that eventuality they would be reverted. In Annexure-A/6 an order similar to the one in Annexure-A/5 was passed with respect to applicants 2 and 3, the applicant No. 2's case was again taken up as he had to be transferred to another section from where he had been working then. In the face of these materials it is difficult to countenance the contentions advanced by the respondents that in the seniority list the applicants would be continued to be shown as Material Checkers. To this extent, we have no difficulty in saying that the seniority list, copy of which is Annexure-A/12 is unsupportable. But we would

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go no further because there is no knowing if all the persons affected by the seniority list have been made parties. All that we can say is that the Railway Administration would consider the cases of the applicants along with the other eligible persons for being retained in the promotional posts after giving opportunity to all concerned to have their say.

8. As about the order cancelling the tests held at Mancheswar Workshop it has been contended on behalf of the Respondents that the persons who conducted the test had no authority and as such the tests cannot avail the applicants of anything. In this connection, Mr. Dora, learned Counsel for the applicants has filed during the course of hearing a Xerox copy of the delegation of powers. But, this being an important document and the Respondents not having any time to file their counter with respect to this document, it is not possible to consider this in spite of the contentions of Mr. Dora that the person who conducted the tests had full powers. That apart, in that document a reference has been made to General Managers, Divisional General Managers as Heads of Department and Additional Heads of Departments. No material has been placed to show who are the Heads of Department or Additional Heads of Department. Therefore, it is not possible to utilise that document to come to a conclusion about the competence of the Addl. Chief Mechanical Engineer to hold the tests of suitability or to issue the orders of regularisation. It is not denied that in fact some suitability tests were held and in those tests the applicants appeared and came out successful for which reasons their services as Junior Clerks and Senior Clerks were regularised. It has already been stated above that from Annexure-A/3^{as A/5}, it would be found that the applicants were given to understand that regularisation of their service as Junior ^{Senior} Clerks had the approval of the competent authority. Therefore,

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the direction, copy of which is Annexure-A/16 to the petition is unsupportable and it would be unequitable to cancel the test in which the applicants sat and succeed and was acted upon by the Department.

9. In the result, the cancellation notice at Annexure-A/16 is quashed and with regard to the other prayers relating to seniority list, direction is given to the Department to draw up a seniority list taking into account the continuous officiation of the applicant and after considering the case of others who may be affected.

10. The application substantially succeeds.

B.R.PATEL, VICE-CHAIRMAN

9 agree.



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MEMBER (JUDICIAL) 8.9.89

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VICE-CHAIRMAN 8.9.89

Central Administrative Tribunal
Cuttack Bench, Cuttack
The 8th Sept, 1989/Sarang