

(V)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

Original Application No.179 of 1988

Date of decision : September 8 ,1989.

1. P.K.Swain , son of Laye Uchavanand Swain
2. S.Biswal, son of late Kulamani Biswal
3. S.K.Sarangi, son of Jadumani Sarangi
4. D.K.Behura, son of late Prahalad Behura
5. P.K.Sahoo, son of Jogi Sahoo
6. R.K.Mohanta, son of Surendranath Mohanta

All are Sr.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,
District-Puri.
3. Sudhansu Kumar Das, son of Dhirendranath Das
4. Rabinarayan Mohantyson of
Sadhucharan Mohanty.
5. Rasbehari Jena, son of Pitambar Jena.
6. Bankanidhi Moharana, son of Jogendra Moharana
7. Gayadhar Puan, son of Naba Kishore 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 Dwarikananth Nayak.

Sl.Nos.10 and 11 are working as
Jr.Clerks, Carriage Repair Workshop,
Mancheswar, At/P.O.Mancheswar,
(S.E.Railway), District-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 to 12. M/s.Jayanta 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)

6 (six) persons working in the Carriage Repair Workshop at Mancheswar are the applicants. The reliefs that they seek are to quash the seniority list at Annexure-A/3, notice of cancellation of examination/tests etc. held (vide Annexure-A/5) and for a direction to the respondents (non-intervenors) to treat the applicants as regular Senior Clerks and officiating Head Clerks of that workshop.

2. The case of the applicants, as in the application, is that the applicant No.1 i.e. Shri P.K.Swain joined as

a Khalasi at Kharagpur on 3.7.1973 but he was promoted to the rank of Junior Clerk on 20.5.1980 which appointment was regularised with effect from 16.12.1980. The applicant No.2, Shri S.Biswal was appointed as a Junior Clerk at Jamalpur on 25.10.1979, applicant No.3 as a Junior Clerk at Garden Reach on 26.3.1982, Applicant No.4 as a Junior Clerk at Kharagpur on 2.2.1980, and applicant Nos.5 & 6 as Junior Clerks at Adra on 22.10.1981 and 29.2.1982 respectively. After it was decided to have a Carriage Repair Workshop at Mancheswar persons already in service were asked to signify their options to serve in that workshop and the authorities effected transfers of persons from different places under the South Eastern Railway to man the posts at Mancheswar Workshop. It is stated that the applicant Nos.1 to 6 joined at Mancheswar on 20.3.1982, 10.9.1983, 9.5.1983, 1.8.1984, 12.11.1984 and 14.11.1984 respectively. As some of the appointments were on ad hoc basis suitability tests were held for regular appointment and subsequently these applicants being promoted on ad hoc basis to the rank of Senior Clerks were asked to appear at a suitability test for that grade in which they came out successful and accordingly their appointments were made on regular basis. This, it is stated, could be found from Annexure-A/1.

3. The respondents 1 and 2 in their counter have averred that promotion to the rank of Senior Clerks was only on ad hoc basis and the test that was made was not meant to be a test for regular promotion. Annexure-A/3 really

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reflects the seniority of the persons in their parent cadres. They have also taken the plea that the application is premature inasmuch as the applicants have not waited till the disposal of their representations to the Department.

4. The case of the intervenors is that on 22.12.1980 the Chief Personnel Officer, issued a letter cum circular, paragraph 4(2) of which directed the determination of seniority in terms of paragraphs 311 and 321 of the Railway Establishment Manual. It is their further case that by the time the applicants have alled^{ge} to have come over to Mancheswar Carriage Repair Workshop or to have been promoted, there was no cadre in Mancheswar Workshop and as such, their appointments or promotions could not relate to Mancheswar cadre and as of necessity ~~certain criteria must be met~~ ^{The Seniority list was prepared} according to their position in their respective parent cadres. They have referred to the letter dated 3.7.1984 which is Annexure-R1/2 and have contended that it was decided that regularisation of the services could not be made as Mancheswar cadre had not been established by then and they have also referred to Annexure-R-1/3 i.e. the letter of the Chief Personnel Officer dated 25/28.9.1984 to the Additional Chief Mechanical Officer, South Eastern Railway, Carriage Repair Workshop, Mancheswar where it was mentioned that the regularisation along with other eligible candidates would be considered after the cadre was stabilised.

5. Mr.G.A.R.Dora, learned counsel for the applicants has relied on 18 months Rule to contend that since all the applicants had been working at Mancheswar in the clerical grades for much more than 18 months, there was no justification

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for the administration to show any of the applicants as belonging to Group 'D' of Class IV services. This contention of Mr. Dora definitely carries much weight. Mr. R.C. Ratha, learned Standing Counsel for the Railway Administration has reiterated the contentions made in the counter filed by the Respondents 1 and 2 and has contended that since there was no counter, none of the applicants could possibly have been appointed against any post and as such the rule of 18 months cannot apply. For appreciating this contention of Mr. Rath, it is necessary to refer to some of the annexures filed by the applicant as also by the respondents including the intervenors. From Annexure-R1/1, the letter dated 22.12.1980 it would be found that the policy for filling of posts in Mancheswar Carriage Repair Workshop (Mechanical Department-Non-Gazetted workshop cadre) was formulated and this was a joint formulation by the Chief Personnel Officer and the Chief Mechanical Engineer. It has already been stated above that the applicants joined on different dates between 20.3.1982 and 14.11.1984 and prior to that, except Applicant No.1, all others had been appointed as Junior Clerks at different stations or divisions of South Eastern Railway and applicant No.1 was promoted as Junior Clerk on 20.5.1980 and his such appointment was regularised on 16.12.1980. There is no denial in the counter of the respondents about these facts except of course with regard to the regularisation of the appointment of applicant No.1 as Junior Clerk. From Annexure-A/1 to the petition it would be found that on 6.3.1985 an office order was issued from the Office of the Additional Chief Mechanical Engineer (works), Mancheswar and that Office order states that it had the

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approval of the competent authority. A few days thereafter i.e. on 15.3.1985 a supplementary office order in continuation of the office order dated 6.3.1985 was also issued by the same office which also recited that that order had the approval of the competent authority. From Annexure-A/1 it would be found that the applicants 1 to 6 after passing the suitability tests were appointed on regular basis in different capacities with effect from the dates noted against their respective names, applicant No.1 as T.K. with effect from 2.2.1984, applicants 2 & 3 as Senior Clerks with effect from 2.2.1984, applicant No.4 as Junior Clerk with effect from 1.8.1984, applicant No.5 with effect from 12.11.1984 and applicant No.6 as Junior Clerk with effect from 14.11.1984. It would also be found from that annexure that they were posted against the available vacancies in the Mancheswar cadre. In this regard ^{reliance} ~~reference~~ has been placed by the intervenors on a letter dated 3.7.1984 which is annexure R1/2 to their counter and another letter dated 25/28.7.1984 which is Annexure-R-1/3. These two letters deal with the policy for filling up vacancies in the Carriage Repair Workshop at Mancheswar and the options exercised for transfers and liquidation of officiating promotion in Ministerial category against departmental quota. Annexure-R-1/3 stated that by then i.e. by 28.9.1984, the cadre at Mancheswar had not been stabilised and as such the question of regularisation of the officiating promotion of three junior Clerks could not arise and this regularisation was to be deferred to be considered along with other eligible staff after stabilisation of the cadre. In Annexure-R-1/4 it had been stated that Mancheswar cadre will come into existence with

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effect from 1.1.1988, consisting of all non-gazetted posts which would be in operation on the crucial date and since then it would be an independent unit for all Group 'D' and Group 'C' posts. In paragraph 4 of Annexure-R-1/4 a reference has been made as to how Mancheswar Workshop was being operated and two categories of staff were covered by that paragraph namely staff who opted to come on transfer from other Divisions or workshops and other Railways and were maintaining their lien in the parent cadre and staff recruited locally under various provisions like skilled casual labour and on compassionate ground appointments etc. It was stated that persons belonging to the first category i.e. who came on transfer, unless they express their willingness in writing to **revert** back to the parent units, with effect from 1.1.1988 their lien in the parent cadre would automatically cease. This letter would show that it was to the knowledge of the Railway Administration that Mancheswar Carriage Workshop had already been working and persons were posted there. It is nobody's case that the workshop was not under the control of an Additional Chief Mechanical Engineer. It has also not been seriously disputed by the respondents that some tests to adjudge the suitability or otherwise of the persons working at Mancheswar were held. Annexure-A/1 and A/2 will leave absolutely no room about the holding of tests and persons named therein to have come out successful in the tests. It would really be unjust and unequitable to ask somebody to appear at a test, then declare the result and subsequently cancel it for no fault of the persons who appeared at the tests. Annexure-A/6 would go to show that tests were held on 1.2.1985 for the posts of Head

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Clerks and Senior Clerks/Senior Time Keepers and this annexure supports Annexures-A/1 and A/2. Annexure-A/7 is a letter by the Deputy Chief Personnel Officer to all Deputy Chief Mechanical Engineers and Shop Superintendent, Kharagpur Workshop asking for inviting further options as by then many posts were lying vacant and this letter is dated 22.12.1983. Thus, it would be found that after calling for options giving publicity persons were posted to Mancheswar Carriage Repair Workshop. Therefore, the contention of the respondents that really there was no workshop cadre does not stand to reason though it is to be added that the interse seniority as amongst the persons who were working at Mancheswar was to be determined as on 1.1.1988. It may be that some persons who opted to come over to Mancheswar had got promotion to higher ranks and there may be some persons who were senior to them in their parent cadres and did not get promotion to the cadres to which those who came over to Mancheswar were promoted. But that cannot stand on the way of debarring the persons who came over to Mancheswar from reaping the benefit of their such coming because they took the risk and as such would be entitled to the corresponding benefit that accrued to them by leaving their parent places of posting.

6. In the light of the above observations, the seniority list be prepared and the order cancelling the suitability tests etc. as per Annexure-5 is quashed and Annexure 1 and 2 to be acted upon. *a*

7. The applicants succeed substantially, but

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however there shall be no order as to costs.

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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 8, 1989/Saranghi.

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Vice-Chairman