

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No.248 of 1989.

Date of decision - December 18, 1989.

V. Rama Rao, S/o Late V.V. Sundar Rao,  
Inspector of Works, Grade-III,  
S.E. Railway, At/P.O. Rayagada,  
District-Koraput.

.... Applicant

Versus.

1. Union of India, represented by  
the General Manager, S.E.Railway,  
Garden Reach, Calcutta-43.
2. Chief Administrative Officer  
(Survey and Construction) S.E.Railway,  
Visakhapatnam (A.P.)
3. Divisional Railway Manager,  
S.E. Railway, Visakhapatnam (A.P.)

.... Respondents

For Applicant : - M/s. B.L.N. Swamy and B.V.B. Das

For Respondents : - Mr. L. Mohapatra,  
Standing Counsel (Railways)

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C O R A M :

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. N. SEN GUPTA, MEMBER (JUDL.)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? *yes*.

3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT.

N. SEN GUPTA, MEMBER (JUDICIAL). The relief sought by the applicant is to regularise his service as Inspector of Works (for short, 'I.O.W.') grade III and to direct the respondents not to call upon him to appear at the test for promotion to the post of I.O.W. grade III. A further relief has been claimed and that relates to promotion to the post of I.O.W. Grade II but however at the hearing it has been submitted that in the meantime he has got the adhoc promotion and therefore that relief is not being pressed at present.

2. The facts alleged by the applicant are that in March, 1958 he was appointed as a Works Supervisor under the South Eastern Railway. In the year 1982 he was promoted to the post of Inspector of Works Grade III on adhoc basis and that being a selection post, he appeared at the written test held on 14.3.82 and viva-voce test on 22.4.82 at Calcutta. The result of the examinations was not communicated to him, but his service in the promotional post of IOW Gr.III has not been regularised. He made representations but nothing has yet been done. Since 24.1.84 he has been working as I.O.W. Gr.III at Rayagada and is continuing as such since then at Rayagada. He was asked to explain as to why he did not appear at the test held on 29.10.89. Against this letter asking him to explain and

*Meenakshi  
19/11/89*

calling upon him to appear at the test after more than five years continuous service in the promotional grade, he has approached this Tribunal for the reliefs above-mentioned, and in support of this he has quoted a circular letter dated 25.3.1967 with regard to the procedure for filling up the Selection posts- Non-gazetted. He has further averred in the application that in the meantime, some persons junior to him have been promoted to Grade II I.O.W. and they are S.K. Basak and P. K. Saha (not made parties to this application).

3. In their counter the respondents have alleged that the applicant was originally appointed as a Mason Mistry on 5.3.58, after he passed the test for the post of Works Mistry, he was appointed to that post on 9.9.58 and the said promotion was regularised with effect from 14.8.1961. They have admitted that the applicant appeared at the test held in March, 1982 but their case is that though he obtained the qualifying marks in the written test, due to the result in the viva-voce <sup>em-</sup> test, he could not be panelled for the post of I.O.W. Grade III although 48 others who appeared at the test had been empanelled. The officiation of the applicant in the post of I.O.W. Grade III was purely on adhoc basis in the exigencies of service and it was expressly mentioned in the order of promotion that this promotion order would not confer on him any title or a claim for continuing in such promotional post. In fine, the case of the respondents is that the applicant not having qualified himself to be empanelled cannot ask for regularisation of his appointment on promotion to the post of I.O.W. Grade III.

*Memorandum  
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As regards the allegations in the application about the appointment of S.K. Basak and P.K.Saha, the case of the respondents is that they were appointed directly against the direct recruit quota to that grade.

4. We have heard Mr. B.L.N.Swamy, for the applicant and Mr. L.Mohapatra for the respondents and perused the papers. Annexure-1 is a copy of the letter dated 25.1.89 to the applicant asking him to give reasons for not appearing at the written examination held on 29.10.88. Annexure-2 is a copy of the recommendation dated 7.7.88 for promoting the applicant and two others then working as I.O.W. Grade III as I.O.W. Grade II. Annexure-3 is a copy of the recommendation for promoting the applicant as I.O.W. Grade II and Annexure-4 is a copy of the letter of the Deputy Chief Engineer(D) to the S.P.O.(C), Visakhapatnam requesting him to communicate the approval of the competent authority for the promotion of the applicant as I.O.W. Grade II on stop-gap measure with effect from 1.9.88. Annexures- B and C are the copies of notices or orders asking nine persons including the applicant to appear at the written and oral tests in April, 1982. Annexure-D is the panel of 48 persons for being empanelled for appointment as I.O.W. Grade III. Sri L.Mohapatra has contended that as admittedly the post of I.O.W. Grade III is a selection post, unless somebody qualifies himself, he cannot claim for a regular appointment. On the other hand, it has been contended by Sri B.L.N.Swamy that when a person is allowed to officiate in a particular grade for five years, it would be deemed that he has been appointed to that post on regular basis and his appointment cannot be said to be adhoc or against a fortuitous vacancy. In support of this

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19/11/1988*

contention of his, Mr.B.L.N.Swamy has drawn our attention to the decision of S.S.Grover and another vs. Union of India & others reported in ATR 1986(2) CAT 365. That case related to the post of Assistant Education Officer (General) and the question that came up for consideration before the Delhi Bench of this Tribunal was whether a person who was promoted to officiate as Assistant Education Officer on ad hoc basis was entitled to be regularised in the grade after officiation in that grade for a considerable length of time. Some of the observations in that case may at the first blush appear to support the contention of Mr. Swamy, but the facts of that case were slightly different where names of the applicants of that case were recommended after a meeting of the D.P.C. and from the facts of that case mentioned at page-366 of the ~~Reporter~~ it appears that the post of Assistant Education Officer was a selection post and that post was to be filled by promotion of Technical Assistants, but no provision was possibly there for appearing at any test whereas in the instant case for promotion as I.O.W.Grade III a person has to appear at written and oral tests. That being so, we are unable to accept the contention of Mr. Swamy that this reported case supports the case of the applicant completely. In a recent decision, though in a slightly different context, a similar case came up for consideration before a Full Bench of the Principal Bench of the C.A.T. In that case, i.e. in Sh. Jetha Nand and others v. Union of India & others (T.844/86 decided on 5.5.1989), the Full Bench was considering the rule of 18 months as given in Railway Board Circular dated 9.6.65. The Full Bench observed that the basic feature was that the railway servant should first be qualified and found suitable

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by a test (underlining is ours to supply emphasis) to be empanelled for appointment to the promotional post. It is only then he would acquire a right to hold the post. In the instant case, as has been indicated above, the applicant was not empanelled and the railway authorities asked him, though in 1988, to appear at a test which the applicant declined. The Full Bench further held that in a case where a person officiated in a promotional post for a considerable length of time, opportunity should be given to him, if necessary, for several times, to qualify and only if he fails to qualify, then only his claim to regularisation may be refused. We are not only bound by the decision of the Full Bench but also, in our opinion, that is the proper course to be followed. There is no denial of the fact that the applicant had not only officiated in the promotional post for a little more than five years and a post which continued for five years cannot be said to be a fortuitous vacancy. Therefore, against the appointment by promotion of the applicant as I.O.W. grade III, <sup>though</sup> the expression 'ad hoc' was pre-fixed, in reality it cannot be deemed to be so for the reasons just mentioned above. In the meantime the applicant has either been promoted to I.O.W. Grade II or at least his name has been recommended for such promotion. Therefore, we are of the opinion that the applicant should be given a chance to appear at the required test and qualify himself and in <sup>15</sup> ~~any~~ circumstances of the case, such a test may be held, if not for others similarly situated, at least for the applicant, within three months from the date of receipt of a copy of this judgment. <sup>If</sup> the applicant ~~not~~ does not qualify in the test to be so held, he may

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be afforded two more such chances and thereafter the department may pass such orders which it deems necessary in the circumstances of the case.

5. The application is accordingly disposed of, leaving the parties to bear their respective costs.

*Mr. Engle*  
.....  
18/12/89.

MEMBER (JUDICIAL)

B.R. PATEL, VICE-CHAIRMAN.

I agree.



*Brindu*  
.....  
18/12/89

VICE -CHAIRMAN.

Central Administrative Tribunal,  
Cuttack Bench, Cuttack,

December 18, 1989/ Jena, SrPA.