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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 360 of 1989.

Date of decision :- 29th March, 1990.

Kishore Chandra Pati and others Applicants
Versus

Union of India and others Respondents

For the Applicants - Mr. G.A.R. Dora, Advocate
For the Respondents- Mr. L. Mohapatra,
Standing Counsel (Railways)

C O R A M :

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

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

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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.
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J U D G M E N T.

N. SENGUPTA, MEMBER (J). This application has been filed by 12 persons working in the Carriage Repair Workshop of the South Eastern Railway at Mancheswar seeking relief of regularisation of their services except applicant No.1

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as Junior Clerks and applicant No.1 as Senior Clerk.

2. The case of the applicants is that for the establishment of the Workshop at Mancheswar some lands were acquired and for providing employment to the displaced persons after acquisition of lands, a ~~panel~~^{panel} for recruitment of Class IV staff was prepared vide Annexure-2 dated 14.2.1983. The applicants, 2, 3, 5 to 8, 10 and 11 having the requisite qualification were such displaced persons and were appointed as Khalasis after selection on the dates as mentioned in Annexure-A/1. Applicant No.1 was officiating as a Junior Clerk at Garden Reach and was transferr-ed to Mancheswar. He was promoted as Senior Clerk on 4.5.85 vide Annexure-A/4. Applicant No.2 who was working for some time as Junior Typist was posted^{as} officiating Junior Clerk on 10.5.85. The persons who were appointed in Class IV were promoted as Junior Clerks on officiating basis by an order dated 3.4.84 vide Annexure-A/6. The Mancheswar Workshop was a new establishment and was in need of persons to manage the work connected with the office of that workshop, and for that purpose, the applicants were appointed to the posts as shown in Annexure-A/1 on the dates mentioned therein. They were managing the work entrusted to them satisfactorily. So the Chief Workshop Manager of the Carriage Repair Workshop recommended to the Chief Personnel Officer to regularise the services of the applicants in the grad~~es~~^{es} they were officiating. As would be found from the letter at Annexure-A/7, 24 posts of Senior Clerks and 17 posts of Junior Clerks had been sanctioned and they were filled up by making ad hoc appointments. The eight displaced persons who were appointed as Khalasis were to be

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promoted in the Artisan category to the higher grades. These eight persons were asked to exercise their option whether should they continue in the Artisan category ^{or} ~~and~~ should they be treated as ministerial category and those eight persons opted to remain in the ministerial category. Subsequently some others of the displaced persons who were recruited as Khalasis were promoted to Grade III, Grade II and to Grade I. Those others also include one Satyajit Nanda who was junior to some of the applicants. The respondents on 17.3.89 have invited applications for selection of persons to the posts of Junior Clerks and this is impugned in the present application on the ground that before regularisation of the services of the applicants, no fresh appointments can be made by which the applicants would be displaced from the posts they are presently holding.

3. The respondents in their counter have stated that as would be evident from the policy for filling up the posts at Mancheswar Carriage Repair Workshop (Annexure-R/1), regularisation was to be made after declaring the cut-off date and this cut off date was fixed as 1.1.1988 by the letter of the Chief Personnel Officer dated 9.11.87 (Annexure-R/2). The applicants had not appeared at any test. So they were given ad hoc promotions out of turn simply to manage the work. In terms of the policy decision dated 9.11.87, the regularisation of the services in the clerical grade of 12 posts of Junior Clerks was to be made on the following basis i.e. 67.6% of 12 posts of Junior Clerks, i.e. 8 posts were to be filled up by direct recruitment, 33.3% i.e. 4 posts

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by promotion and the roster system was also to be followed. According to the roster system for promotion, to posts would be treated as unreserved - one for Scheduled Caste and one for Scheduled Tribe. That being the position, the applicants cannot claim to continue in the posts they are now working. In substance, the case of the respondents is that by ad hoc promotion or working, no right would accrue to any of them.

4. We have heard Mr. G.A.R.Dora for the applicants and Mr. L.Mohapatra for the Railway Administration, and we have also perused the different annexures to the application and the counter. From Annexure-A/2 it would be found that 20 persons who were displaced from their lands which were acquired for construction of the Repair Workshop were empanelled for recruitment as Class IV staff and in this panel, the names of eight persons referred to in the application find place. From Annexure-A/3 it would be found that the applicant No.1 i.e. K.C.Pati was transferred and posted at Mancheswar as an officiating Junior Clerk. Therefore, he was a person who was transferred from another place and to whom, even if it is really any application, the principles stated in Annexure-R/1 would have no application. From Annexure-A/4 it would be found that the first applicant was promoted and allowed to officiate as Senior Clerk with effect from 1.4.1985. From Annexure-A/10 it would be found that it is Kalyan Ranjan Sahu who was officiating as Junior Clerk for more than 2^(two) years prior to the notice (Annex-A/9) and all others had served as Junior Clerks for more than four years prior to the issue of that notice (Annexure-9)

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The question that really falls for consideration

is whether when most of the applicants excepting Kalyan Ranjan Sahu had officiated as Junior Clerks for more than four years and two of them had been promoted as Senior Clerks, would it be proper to displace them by appointing freshers or promoting other Class IV staff. It would require no thought to say that once an employer for his own benefit utilises the services of persons for a considerable time, it would not be proper to revert them to their original posts by appointing others who were nowhere in the picture on the date when the persons sought to be reverted first came to service in the posts they occupied. If a reversion as proposed by the respondents is allowed to be made, it would definitely offend the principles of equality of opportunity and equal treatment in service as enshrined in Articles 14 and 16 of the Constitution of India.

5. The learned counsel for the applicants has urged that the applicants having officiated for more than one year in the posts now they are occupying, they should be regularised without any other test being made. In this connection, he has sought reliance on a decision of the Supreme Court reported in 1988(1)S.L.R. 327 (Gainda Ram and others v. M.C.D. and others). On reading that judgment, which consists of only two paragraphs, it cannot be said that any test was prescribed for regularising the clinical Beldars. It would also appear from the reported case that the services of the applicants as Beldars was on regular basis. In these circumstances, we are unable to accept the contention of Mr. Dora that this case is an authority for the proposition that the applicants should not be required to appear at any test. There is a

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decision of a Full Bench of this Tribunal in the case of Sh. Jetha Nand and others v. Union of India & others which was also a case of railway employees and is reported in 1989 (2) S.L.J. 657 (CAT). That was also a case of Class IV employees being promoted on ad hoc basis to Class III Posts who had been working for several years in Class III posts. and the question which arose in that case was also the same as arises in the present case, namely, regularisation of services in the promotional posts. The Full Bench observed that mere length of service would not entitle a person to be regularised in the promotional post, what is further required is that he must be fit to occupy the promotional post, that would include passing of a Selection Test if it is held for selecting persons to be promoted. There is no clear averment either in the application or in the counter that the applicants really appeared at any Selection Test. In view of the decision of the Full Bench of this Tribunal, we would say that the applicants, if they have not appeared at any Selection Test for the promotional posts must appear ^{at} such Selection Tests and for passing such Tests, they may be afforded three chances if they cannot clear the tests in one chance.

6. In the result, the application is disposed of by saying that after the applicants are afforded opportunities to pass Tests as indicated above, and if they qualify in the Tests, they should be regularised in the available posts in which they are officiating and in case after being given three chances any of them does not qualify, he would not be

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regularised. After following this procedure if there be any vacancy, the Railway Administration would be at liberty to fill it up according to the joint procedure as laid down in Annexure-R/1. No costs.

Prakash
..... 29.3.90

VICE- CHAIRMAN.

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MEMBER (JUDICIAL)

