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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 35 of 1989

Date of Decision: 22.9.92

G.C. Naik

Applicant

Versus

Union of India & Others Respondents

For the applicant

Mr.M.M.Basu,
Advocate

For the respondents

Mr.Ashok Mohanty,
Sr.Standing Counsel
(Central Government)

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C O R A M

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to 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

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a declaration that the applicant is deemed to have been promoted on regular basis to the post of Superintendent Grade II and his seniority in the grade be reckoned from 12.2.1985 and that the directions contained in Annexure-3 be quashed.

2. Shortly stated, the case of the applicant is that he was first appointed as Clerk in the Office of Divisional Railway Manager, South Eastern Railway, Khurda Road on 17.12.1958 and ultimately the applicant was promoted to the rank of Head Clerk on regular basis and thereafter on 12.2.1985 the applicant was promoted on ad hoc basis to officiate as Office Superintendent Grade II, and the applicant is continuing as such. Respondent No.3 vide his order No.110/88 dated 25.3.1988 (Annexure-2) published a seniority ^{list} of the Head Clerks working in the Division of Respondent No.2. By the time of publication of Annexure-2 4 persons were officiating as Office Superintendent Grade II- one as Head Clerk, and the rest as officiating Head Clerks. A circular was issued by the Railway Board laying down that those who have worked in the promotional post for more than 18 months cannot be reverted to his parent post except by way of initiation of disciplinary proceeding. Further grievance of the applicant is that the concerned authority is not conducting selection test and promotions are being given to different incumbents on ad hoc basis without those officials being regularised

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and are made to continue as ad hoc promotees indefinitely which deprives the incumbents from their service benefits. It is further more maintained that since the applicant has been satisfactorily working as Office Superintendent Grade II w.e.f. 12.2.1985, it is improper and illegal on the part of the competent authority to insist on the applicant to appear at a written selection test to qualify himself for the post of Office Superintendent Grade II. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the promotion of the applicant as Head Clerk has been regularised since 1.1.1984 and his promotion to the post of Office Superintendent Grade II is on ad hoc basis to carry on day to day work relating to the said Office. According to the respondents, Annexure-2 is nothing but publication of the result of the suitability test for the post of Head Clerks and is not the seniority list as stated by the applicant. Further more, it is maintained that since the applicant failed in the suitability test, he was reverted to the post of Head Clerk vide Annexure-3.

4. We have heard Mr.M.M.Basu, learned counsel for the applicant and Mr.Ashok Mohanty, learned Standing Counsel (Railways) appearing for the respondents on the merits of the case.

5. The first question that is necessary to be decided is as to whether Annexure-2 is the seniority list or the panel indicating the names of successful candidates found to be suitable resulting from the test

held for the post of Head Clerks. Though Mr. Basu submitted with vehemence that this is a seniority list we are unable to agree with him. On a reading of the contents of Annexure-2 it clearly indicates that ^{it contains} the names of the Officers ~~mentioned therein~~ including the applicant, who have turned out successful and have been found to be suitable for the post of Head Clerks. It is not a seniority list. Vide Annexure-3 the applicant was called upon to appear at a written test for regular promotion to the post of Office Superintendent Grade II. In the counter it is stated that the applicant had appeared at the test and was found to be unsuccessful and therefore, there was no other option left with the competent authority but to revert the applicant to his substantive post of Head Clerk. Vide order dated 29.3.1989 this Bench as an interim measure directed that the applicant should not be reverted to the post of Head Clerk till 15.4.1989 and it was directed that the stay matter may come up on 10.4.1989 the date on which the stay matter was adjourned and thereafter on 6.9.1989 the Bench ordered that the stay order to continue and ultimately the case was dismissed ~~for~~ for default on 10.8.1990. Consequently, the stay order automatically stood vacated. Vide order dated 13.11.1991 passed in connection with M.A.93 of 1991, order of dismissal of O.A.35 of 1989 was recalled and the case was restored for hearing and accordingly O.A.35 of 1989 has come up for hearing before this Bench. The first point which was argued by Mr. Basu is that admittedly, the applicant has worked in the post of Office Superintendent

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Grade II on ad hoc basis since 12.2.1985 and therefore, relying on the judgment of the Orissa High Court passed in the case of S.K. Mohanty vrs. Union of India and others reported in 1980(49) CLT 382 and the case of D.B. Jena versus Union of India reported in (55)1983 CLT 290 and some other judgments of this Bench in which reliance was placed by this Bench on the aforesaid judgments, of the Orissa High Court it was contended that once the applicant has worked in the post of Office Superintendent Grade II, since 1985 he should not be reverted without a disciplinary proceeding and there should not be any insistence on the part of the administrative authority regarding appearance in the selection test. At this stage it may be stated that in the counter, it is maintained by the respondents that the applicant had appeared in a suitability test and he ^{to qualify himself} having failed/was reverted to the post of a Head Clerk. There is no contradiction to this statement made in the counter. Law has, in the meanwhile, changed. The Full Bench in the case of Suresh Chand Gautam and others vrs. Union of India and others forming subject matter of O.A.No.1676 of 1990 decided on 9.7.1991, reported in CAT(F.B.)Vol.II 487, in paragraph 15 of the judgment observed as follows:

" According to Rule 109 of the Indian Railway Establishment Manual, Class IV Railway servants can be promoted to Class III posts on a regular basis only after holding written and practical test, as may be considered necessary. Rule 110 of the Railway Establishment Manual provides that for promotion to higher posts in Class III

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the candidates should qualify in the prescribed test. Therefore, we are in complete agreement with the decision of the Full Bench in Jetha Nanda's case that a pass in the selection test is mandatory before a Class IV employee can be promoted to a Class III posts. We fully endorse the view that if a Class IV employee officiating to qualify in the selection test, he is liable to be reverted even after 18 months without following the procedure laid down in the Railway Servants(Discipline & Appeal)Rules. 3 or more opportunities or several opportunities may be given to the Class IV Railway Employees officiating in Class III post to qualify in the selection test. But when fully qualified candidates or persons regularly selected by the Railway Service Commission are waiting to be appointed to the regular vacancies the Class IV employees officiating in those posts even though for a period exceeding 18 months can have no right to hold those posts. They have to be reverted if necessary for the appointment of the qualified candidates. In Jetha Nand's case the Full Bench has not stated that even when regularly selected and fully qualified candidates are available, those who have failed to qualify in the selection test should be allowed to officiate in the Class III posts blocking the entry of the regularly selected candidates. Such a view would be putting premium on inefficiency which has never been intended in the judgment in the Jetha Nand's case. Therefore we hold that the Railway servant who is allowed to officiate in higher post on temporary basis need not always be allowed at least 3 or more opportunities to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants(Discipline and Appeal)Rules, 1968 and that he can be reverted if such reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates."

In view of the above quoted pronouncement of the Full Bench, we find no merit in the aforesaid contention of Mr. Basu. Apart from taking recourse to the service rendered for more than 18 months, the case of the applicant is also devoid of merit because qualifying in a suitability test is mandatory without which continuance in the promotional post over the head of other employees who have

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passed in the suitability test would be against all cannons of justice, equity and fair play. Since the petitioner has not turned out successful in the qualifying test, it will not be proper to allow ^{him} to continue in the promotional post in preference to the incumbents, who have qualified in the test and have turned out successful.

6. In the circumstances, stated above, we find no merit in this case which stands dismissed leaving the parties to bear their own costs.

b. Lawrence.
MEMBER (ADMINISTRATIVE)

b. Lawrence
22-9-92
VICE-CHAIRMAN



Central Administrative Tribunal
Cuttack Bench, Cuttack
22.9.1992/Sarangi/