

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 145 of 1991

Date of Decision: 21.1.1993

Versus

Union of India & Others Respondents

For the applicant M/r.G.A.R.Dora,
Advocate

For the respondents M/r.Ashok Mohanty
Standing Counsel
(Rly.Administration)

C O R A M

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

AND

THE HONOURABLE MR. S. R. ADGIE, MEMBER (ADMINISTRATIVE)

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

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to direct the opposite parties to hold a separate test for the petitioner and if he is successful, he may be declared senior to the erstwhile juniors and others regularised in pursuance to the test held on 18.4.1991 with other consequential benefits.

2. Shortly stated the petitioner was appointed temporarily as a Gangman on 24.1.1969 and was confirmed on 24.5.1982. In course of time the petitioner was made senior Gangman on 1.4.1986. Vide Annexure-1 dated 21.10.1986, the petitioner was promoted to the post of a Junior Clerk ~~purely~~ on adhoc basis and vide Annexure-A/2 dated 4.5.1988, the petitioner was appointed against a regular vacancy. While the matter stood thus, the petitioner was asked to appear at a written test and he did so. The petitioner turned out to be successful and thereafter the petitioner took the viva voce test. At the time of filing of the application, results of the viva voce test was not declared and therefore it was maintained in the counter filed by the opposite parties that the petitioner has rushed to the Court at a premature stage as he should have waited for the result of the viva voce test and it was therefore maintained by the opposite parties that the case being devoid of merit is liable to be dismissed.

3. We have heard Mr.G.A.R.Dora, learned counsel for the petitioner and Mr.Ashok Mohanty, learned Senior Standing Counsel

4. During the course of argument Mr.Dora filed ~~a~~ xerox

l copies of the letters bearing No.P.3/PR/OC-11/74 dated

20.11.1991 issued by the Divisional Railway Manager, Khurda Road and letter No.P.3/20/PER/OC/11/75 dated 26.11.1991 declaring the petitioner amongst others to have been successful in the viva voce test and the fact that the petitioner has been empanelled. It was therefore contended by Mr.Dora that in view of the changed circumstances, it should not be held that the petitioner has rushed to this Court at a premature stage. In view of the above mentioned documents filed on behalf of the petitioner to-day, we have no hesitation in our mind to hold that the petitioner has been successful both in the written test and viva voce test and has been ordered to be empanelled. Mr.Dora further submitted that the petitioner should be declared as senior to other L.D.Cs who are originally his juniors and occupying the post of L.D.C. Since the competent authority has not passed any orders fixing the seniority of the present petitioner, we do not like to pass any orders on this subject; rather we would leave this matter to the competent authority to fix the seniority of the petitioner keeping in view the observations of Their Lordships of the Supreme Court in the case reported in A.I.R. 1990 SC (Direct Recruit Class II Engg.Officers' Association vs.State of Maharashtra) in which Their Lordships have been pleased to hold that continuous and uninterrupted rendering of service as an adhoc appointee/must go to the credit of the particular officer while computing his seniority. This is a case decided by the Constitution Bench. Similar view has also been **expressed** in the judgment reported in A.I.R 1991 SC 518 (Rajbir Singh vs. Union of India & Others).

5. We would direct the competent authority to take into

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consideration the law laid down by Their Lordships in the above mentioned judgments and fix the seniority of the petitioner preferably within 90 days from the date of receipt of a copy of this judgment. In case the petitioner feels aggrieved by an order passed by the competent authority, liberty is given to him to approach this Bench.

6. Thus the application is accordingly disposed of leaving the parties to bear their own cost.

Arifahige 21/1/93.
MEMBER (ADMINISTRATIVE)

Yagarswami 21.1.93.
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 21.1.1993/ B.K.Sahoo

