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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 18 of 1992

Date of Decision: July 20, 1992.

Raghunath Khuntia Applicant

Versus

Union of India & Others Respondents

For the applicant Mr. P. C. Mohapatra,
Advocate

For the respondents Mr. D. N. Mishra,
Standing Counsel
(Rly. Administration)

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C O R A M

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

AND

THE HONOURABLE MR. M. Y. PRIOLKAR, 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 ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.M.Y.PRIOLKAR, MEMBER (ADMINISTRATIVE) The applicant who was regularised in Railway Service in Class-IV post as Khalasi with effect from 15.5.1979, was promoted by an order dated 21.1.1986 to officiate in Class-III as junior clerk purely on adhoc basis. Although the adhoc appointment was initially only for a period of 3 months, it was continued for over six years. The applicant had appeared in^{the} selection for the post of clerk against departmental promotion quota along with other eligible Class-IV staff, but though he qualified in the written examination, he did not come out successful in viva voce test and hence was not empanelled for regular appointment to the post of clerk. The applicant has been reverted to his substantive post in Class-IV on 4.5.1992 after the stay order was vacated by this Tribunal on 25.3.1992.

2. The grievance of the applicant is that although he has worked for more than six years in the post of clerk without any adverse remarks or departmental proceedings against him, he has been reverted without giving him a minimum of three chances to qualify himself in selection for the higher post to which he is entitled as per the full Bench judgment of the Principal Bench of this Tribunal dated 5.5.1989 in T.A. No.844 of 1986 in the case of Shri Jethananda vs. Union of India and others as reported in Full Bench Judgment of C.A.T. 1989 page 353.

3. In the Full Bench decision in Jethananda's case cited above, and relied upon by the applicant, while holding that the cardinal principle for regularisation is that an employee must

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have
 /passed the selection test, it has been held that all Class-IV employees holding adhoc post in Class-III ~~are~~ to be given several opportunities to qualify and are to be reverted if they do not qualify even after repeated opportunities. The applicant's case is that admittedly he has been given only one opportunity to qualify in the selection for the higher post and has been reverted before he could avail himself of any further chances. We may state, however, that another Full Bench of the Principal Bench of this Tribunal in the case of Suresh Chandra Goutam and others vs. Union of India and others decided on 9.7.1991 (Full Bench judgment of C.A.T. 1989-91 pg. 487), while fully endorsing the view that three or more opportunities may be given to the Class-IV Railway Employees officiating in Class-III to qualify in the selection test, has held that 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 ~~existing~~ ^{exceeding} 18 months, they have no right to hold ^{the} post and that they have to be reverted if necessary for the appointment of the qualified candidates. ~~The~~ 2nd Full Bench has also observed that the First Full Bench in Jethananda's case 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 post blocking entry of the regularly selected candidates. Such a view would be putting ^a premium ^{on} ~~of~~ inefficiency which has never been intended in the judgments in Jethananda's case. The Second Full Bench has therefore held that a Railway Servant who is allowed to officiate in a higher post on temporary basis need not always be allowed atleast three

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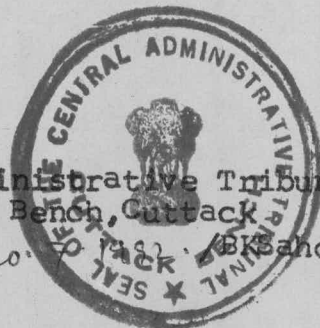
or more opportunity to appear and qualify in the selection for higher post before he can be reverted without following the procedure prescribed under the Railway Servants (Discipline and Appeal) Rules 1968 and that he can be reverted if such reversion is warranted for administrative reasons, such as for appointment of regularly selected qualified candidates.

4. ~~Although~~ In the selection in which the applicant could not come out successful, certain other Class-IV employees have qualified and have been placed in the panel as stated in the counter filed by the respondents. The learned counsel for the respondents also stated that the reversion of the applicant was due to the fact that the post held by him was on purely temporary basis for ~~estimated~~ work for which the sanction has lapsed although no categorical statement has been made in the counter that the post has been abolished. In either case, since regularly selected candidates are available, the applicant will not be entitled to the benefits as claimed by him of the Full Bench decision in Jethananda's case. The prayer in this application for regularisation of his services in the post of clerk with effect from 22.1.1986 and not to revert him before ~~absorption~~ ^{exhaustion} of three chances, has therefore to be rejected. Accordingly we find no merit in this application. It is dismissed ~~that~~ ^{with} no order as to costs.

5/12/92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack

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20.7.92
VICE-CHAIRMAN