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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 277 OF 1992
Cuttack, this the 7th day of January, 1999

Manoranjan Das Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.1.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

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Manoranjan Das, aged about 59 years,
son of late Hariprasad Das, Retd.
Junior Clerk, S.E.Railway, Khurda Road,
At-Khurda Road, Dist.Puri,
at present residing at Jatni (Hat Bazar),
P.O-Jatni, Dist.Puri Applicant

Advocates for applicant - M/s G.C.Mohapatra,
J.M.Patnaik
A.C.Das

Vrs.

1. Union of India, represented by
the General Manager, S.E.Railway,
Garden Reach, Calcutta-43.
2. Divisional Personnel Officer,
S.E.Railway, At/PO-Khurda Road,
Dist.Puri.
3. Divisional Railway Manager,
S.E.Railway, At/PO-Khurda Road,
Dist-Puri.
4. P.Balajee, Senior Clerk, Office of
the D.R.M., S.E.Railway,
Khurda Road, At/PO-Jatni,
Dist.Puri.
5. D.R.Barik, Senior Clerk
6. B.D.Patnaik, Senior Clerk
7. R.C.Mohanty, Senior Clerk,
Nos. 5 to 7 are office of the
D.R.M., S.E.Railway, Khurda Road,
At/PO-Jatni, Dist.Puri Respondents.

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Advocate for respondents - Mr.R.Ch.Rath.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for setting aside the order dated 30.8.1990 (Annexure-A/4) in which four persons, who were originally impleaded as respondent nos. 4 to 7, were promoted to the post of Senior Clerk. He has also prayed for a direction to the respondents that seniority of the applicant should be maintained in pursuance of the order of the Tribunal dated 31.3.1987 in T.A.No. 267 of 1986 (Annexure-A/2). He has also prayed for his promotion to the post of Senior Clerk over and above respondents 4 to 7 and asked for consequential financial benefits since he has in the meantime retired from service.

2. Before proceeding further, it has to be stated that in order dated 3.9.1992 the applicant was asked to file requisite for issue of fresh notice on respondents 4 to 7 by 7.9.1992. As requisites were not filed, in order dated 9.9.1992 the case was dismissed for default in respect of respondents 4 to 7. In view of this, his first prayer for setting aside the promotion of respondents 4 to 7 to the post of Senior Clerk is rejected as the same is not maintainable in the absence of respondents 4 to 7. The other prayers made by him are the subject-matter of this O.A.

3. Facts of this case, according to the petitioner, are that he initially joined as Khalasi in S.E.Railway on 24.12.1970. On 5.9.1981 he was promoted to the post of Junior Clerk and he joined the said post on 16.9.1981. After he had completed 2½ years of service, in order dated 13.4.1984 five persons who were provisionally

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empanelled for the post of Office Clerk, were promoted to officiate as Office Clerk and one of them Shri P.K.Behera was posted in place of the applicant and it was ordered that the applicant working as ad hoc Clerk is reverted to the post of Khalasi Helper. The applicant's case is that he could not have been reverted after 18 months of working in the higher post and he filed a writ application, OJC No. 1038 of 1984 before the Hon'ble High Court of Orissa which was transferred to the Tribunal and was numbered as T.A.No.267 of 1986. In order dated 31.3.1987 the Tribunal allowed the application. The operative portion of the order is quoted below:

"....Admittedly, the petitioner having continued in the promotional post for more than 18 months and no disciplinary proceeding having been initiated against him for unsatisfactory work, Annexure-5 is hereby quashed and it is directed that the petitioner should be allowed to continue in the promotional post as Junior Clerk."

The applicant has stated that even though the order of the Tribunal was communicated to the departmental authorities on 6.4.1987, the Divisional Personnel Officer (respondent no.2) passed an order after more than two years on 11.8.1989 (Annexure-A/3) in which it was ordered that the applicant, a Trainee B.T.M., who was officiating as Junior Clerk in the scale of Rs.260-400/- (Rs.950-1500 revised) and who was reverted to his former post in the order dated 13.4.1984, is allowed to continue as Junior Clerk as per direction given by the Tribunal in TA No.267/86 and posted against the vacancy of a Head Clerk. His reversion order is treated as cancelled. The applicant has stated that because of this order, he should have been treated as senior to P.Balajee, D.R.Barik, B.D.Patnaik and R.C.Mohanty. But without considering the case of the applicant, these four persons,

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who were Junior Clerks, were promoted as Senior Clerks in order dated 30.8.1990 (Annexure-A/4). The applicant preferred an appeal on 8.10.1990 before Divisional Personnel Officer, S.E.Railway (respondent no.2) to fix up his seniority and to give him promotion. But his appeal was not considered and he superannuated from service with effect from 1.10.1991. The applicant submits that his appeal is still pending. In view of this, the applicant has come up with the prayers referred to earlier.

4. Respondents in their counter have opposed the prayers of the applicant. They have stated that the applicant was appointed as Shed Khalasi in 1970 and was deputed to officiate as Junior Clerk with effect from 16.9.1981 purely on ad hoc basis in order dated 5.9.1981. The applicant could not qualify in the selection held in 1984 to fill up the vacancies of Junior Clerk against departmental quota. He was thus reverted from the post of Junior Clerk with effect from 13.4.1984. Against the order of reversion, the applicant went to the Hon'ble High Court of Orissa in OJC No. 1038 of 1984 which was transferred to the Tribunal and registered as T.A.No.267/86. The Tribunal allowed the T.A., quashed the order of reversion and directed that the applicant should be allowed to continue in the promotional post of Junior Clerk. The respondents have stated that the Tribunal in their order did not mention about the protection of his seniority and accordingly the applicant was allowed to continue as Junior Clerk. It is further submitted that Chief Personnel Officer, Garden Reach, in his letter dated 8.6.1988 instructed that the order of the Tribunal should be implemented immediately. It was also indicated that a specific direction of the Court is

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necessary for protection of his seniority as the applicant was protected from reversion only. It is submitted that the applicant was deputed to work as Junior Clerk on ad hoc basis and he could not qualify in the suitability test whereas the four persons who were promoted in order at Annexure-A/4 had qualified in the suitability test. In view of this, the petitioner was treated as regular Junior Clerk from 11.8.1989, the date of the order at Annexure-A/3 when he was treated to have been promoted to the post of Junior Clerk. Thus, the four persons promoted in Annexure-A/4 were treated as senior to the applicant and being senior persons they were promoted to the post of Senior Clerk. The respondents have further stated that the Railway authorities have rightly implemented the order of the Tribunal, and as the Tribunal had not given any specific direction regarding protection of his seniority from the date of ad hoc promotion, the applicant cannot claim seniority over the four persons promoted in Annexure-A/4. It is further stated that the applicant was promoted to the post of Junior Clerk purely on ad hoc basis and as he did not qualify in the suitability test, he had no right to be regularised in the promotional post. Such regularisation was done only in pursuance of the order of the Tribunal in TA No. 267 of 1986. On the above grounds, the respondents have opposed the prayer of the applicant.

5. We have heard Shri G.C.Mohapatra, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned counsel appearing for respondents 1 to 3, and have also perused the records.

6. It is submitted by the learned counsel appearing for the petitioner that in spite of the order dated 31.3.1987 in TA No. 267 of 1986 quashing the reversion

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order, the respondents did not implement the order and the applicant was reverted to his earlier Class IV post. Because of this, he filed CP No.7 of 1989 in March 1989. It is only after filing of Contempt Petition that the respondents issued the order dated 11.8.1989 at Annexure-A/3. The ^{has stated} applicant that as he has been allowed to continue as Junior Clerk in the order at Annexure-A/3, his seniority should be counted from the date of his ad hoc appointment. In support of his contention, the learned counsel for the petitioner has pointed out that the Tribunal in their order dated 31.3.1987 have noted that the Hon'ble Supreme Court in similar cases referred to by the Tribunal in their order have also laid down that no employee should be insisted upon to appear at the suitability test and the above view of the Hon'ble Supreme Court has been accepted by the Tribunal in several other cases. It has also been mentioned that the Tribunal had condoned the alleged infirmity of a particular employee in this regard in other cases. It has been submitted by Shri Rath, the learned counsel appearing for respondents 1 to 3 that the applicant was appointed on ad hoc basis and he appeared at a selection test for filling up of the post of Junior Clerk through departmental quota, but he could not qualify in the test and therefore, he cannot be deemed to have been regularised as Junior Clerk from the date of his ad hoc appointment.

7. We have considered the submissions of the learned counsels for both sides. It is noted that in the operative portion of their order dated 31.3.1987 the Tribunal had only quashed the reversion order and had directed that the petitioner should be allowed to continue in the promotional post of Junior Clerk. There is no direction from the Tribunal that he should be regularised from the date of his initial ad hoc appointment as Junior

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Clerk. There is also no direction that his seniority as Junior Clerk should be protected from the date of his adhoc appointment as Junior Clerk. In view of this, the departmental respondents in their order at Annexure-A/3 had promoted him as regular Junior Clerk from 11.8.1989, i.e., the date of the order. In view of this, it must be held that the applicant is to be treated as a regular Junior Clerk from the date of the above order, i.e., 11.8.1989. It is also to be noted that in the petition filed by the Railway Administration before the Hon'ble High Court of Orissa in OJC No.1038/84 praying for vacation of the interim order of stay of reversion passed by the Hon'ble High Court, it has been urged that the stay order issued by the Hon'ble Court had become infructuous as the petitioner had in the meantime been reverted to his earlier Class IV post. In CP No.7/89 it has been urged by the applicant that he has been continuing in his earlier Class IV post and the departmental authorities have not implemented the order dated 31.3.1987 passed by the Tribunal. From this it is clear that the applicant was given regular promotion in pursuance of the order of the Tribunal in TA No. 267/86 with effect from 11.8.1989. In view of this, he cannot claim seniority over the four persons promoted in Annexure-A/4. These four persons had qualified in the selection test and were senior to the applicant in the rank of Junior Clerks. In view of this, we hold that the applicant cannot claim promotion to the post of Senior Clerk from the date the four persons at Annexure-A/4 had been promoted.

8. In the result, therefore, the Original Application is held to be without any merit and is rejected but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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