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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 476 OF 1992  
Cuttack this the 20<sup>th</sup> day of ~~February~~, 2000  
March,

Jawaharlal Moharana

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

*2.3.2000*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)



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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

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ORIGINAL APPLICATION NO. 476 OF 1992

Cuttack this the 2nd day of March, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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THE HON'BLE SHRI G. NARASIMHAM, MEMBER (JUDICIAL)

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Jawaharlal Moharana  
aged about 41 years,  
S/o. Sri Nidhi Moharana, at present working  
as Permanent Way Mistry, South Eastern Railway,  
Khurda Road, Dist : Puri

Applicant

By the Advocates : Mr. Ganeswar Rath

-Versus-

1. Union of India represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. Senior Divisional Railway Manager, South Eastern Railway, Khurda Road
3. Senior Divisional Personal Officer, South Eastern Railway, Khurda Road
4. Divisional Engineer(C) South Eastern Railway, Khurda Road
5. Divisional Engineer(N), South Eastern Railway, Khurda Road

Respondents

By the Advocates : Mr. Ashok Mohanty

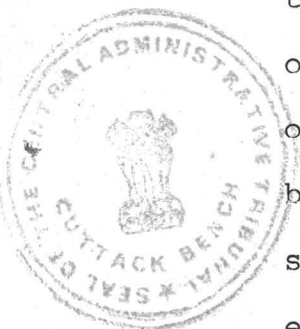
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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, a Permanent Way Mistry under South Eastern Railway filed this application on 13.8.1992 for issue of direction to the railways(Respondents) to regularise his service in the post of Permanent Way Mistry along with all consequential service benefits including seniority.

2. The applicant joined as Khalasi and became regular as Gangman and was ultimately confirmed as Gangman on 4.12.1985. He has educational qualification of 1st B.A. without Mathematics and Science. Still pursuant to the decision under Annexure-1 dated 1.1.1982 that 50% of vacancies in the post of Permanent Way Mistry arising on or after 1.1.1985 in the pay scale of Rs.380-560/- to be filled by candidates who passed 12th Standard with subjects Mathematics and Science. (Annexure-2 is the extract of Est.Sr.No.143/85 dated 9.7.1985 issued vide Office Order dated 20.5.1985.) On 1.10.1985(Annexure-3) the applicant applied for the post of Permanent Way Mistry. In response to his application he was called for the written test vide letter dated 5.5.1986(Annexure-4). In the meanwhile he was promoted to officiate as Junior Clerk in the scale of Rs.250-400/- on adhoc basis for three months. Without publishing the result of <sup>his</sup> written test and after protracted correspondence he was promoted as Permanent Way Mistry on adhoc basis vide order dated 28.3.1991 against 25% Limited Departmental Civil Engineering Quota(Annexure-8). Thereafter the applicant represented to the Divisional Peraonnel Officer, S.E.Railway, Khurda Road to regularise his service as P.W.M. against an existing regular cadre post on

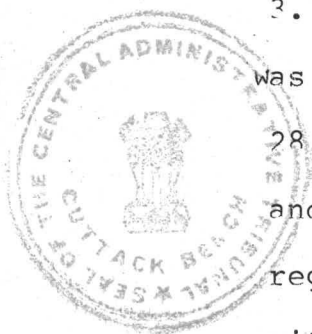


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completion of 90 days of adhoc service(Annexure-9). However, he was allowed to officiate on adhoc basis. By letter dated 1.10.1991 he was informed by the Divisional Personnel Officer to appear in the viva voce test for his selection to the post of P.W.M.(Annexure-11). Though he appeared in the viva voce test, his result was not published even though the result of four persons appearing in the test against 25% departmental quota was published on 25.5.1992. Without declaring his result the railway authorities in letter dated 19.6.1992 promoted five officials in 25% quota to the post of P.W.M. These facts are not in dispute.

3. The case of the applicant is that since he was promoted to the post of Permanent Way Mistry on 28.3.1991 on adhoc basis against a substantive vacancy and since he was not reverted from that post, he is to be regularised in that post from that date. At any rate without declaring the ~~result~~ result of his test, the Department could not have promoted U.Behera and four others by order dated 19.6.1992 by virtue of the test held subsequently.

4. The stand of the Department in their counter filed on 17.5.1994 is that though the applicant was promoted to appear in the written test held on 13.5.1996, it was detected later that he did not possess the requisite qualification with Mathematics and Science as subjects. Hence his case was referred to Headquarters to ascertain eligibility of the applicant. While the matter was so pending, again applications were invited from amongst Gangmen and Gate Keepers to fill up the vacancies of PW Mistries against 25% Limited Departmental Civil Engineering Quota. Qualifications prescribed for this post was 10 + 2 Standard with Mathematics and



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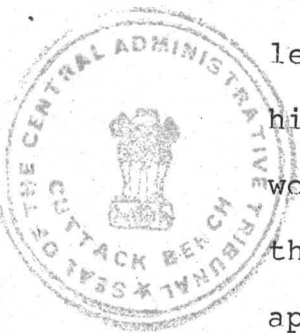
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Science. The application of the applicant applied in response to this notification was forwarded on 30.11.1988 as he did not possess the requisite qualifications and the same is pending. But by virtue of Establishment Sl. No.91/90, the requisite qualifications against 25% Limited Departmental Civil Engineering Quota was liberalised up to 30.9.1990 and the qualification stipulated was pre-University(Science) or Intermediate without any stipulation to any subject. However, the case of the applicant could not be finalised by 30.9.1990. Hence by letter dated 25.9.1992 addressed to the Chief Personnel Officer, the case of the applicant was referred for sanction to conduct the selection in his favour beyond 30.9.1990 and this sanction was received as one time exception in letter dated 22.3.1993. On receipt of the said sanctioned order, as the applicant had already appeared in the written test in the year 1986, his result was published and he was called to appear viva voce test on 18.8.1993 and he was empanelled for promotion to the post of P.W.M. against 25% Limited Departmental Civil Engineering Quota along with three other staff vide Office Order No.9093 dated 26.9.1993. Since he and three others had to undergo training their cases were referred to Zonal Training Centre/Cini and MS/KUR. The applicant will therefore be regularised as P.W.M. on completion of the aforesaid training and formalities. Since he did not possess the requisite qualification required for the test and not completed the training at the time of his adhoc promotion on 28.3.1991, his claim for regularisation before that date cannot be sustained.



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5. We have heard Shri S.N.Mishra, learned counsel on behalf of Ganeswar Rath for the applicant and Shri Ashok Mohanty, learned senior counsel appearing for the respondents. Also perused the records.

The main prayer of the applicant is for regularisation of his service as P.W.M. from the date of his adhoc promotion on 28.3.1991. There is no dispute that by then the requisite qualification for competing the departmental test for selection to the post of P.W.M. was 10 + 2 Standard with Mathematics and Science as subjects. Admittedly the applicant did not possess that Standard with Mathematics and Science as subjects. However, as one time exception the higher authority in letter dated 22.3.1993 considered his case and sanctioned his eligibility for appearing in the test. In other words, at least by 22.3.1993, the competent authority of the Department though as an exception recognised the applicant to be eligible to appear in the test and it was only thereafter his result in the written test for the year 1986 was published and thereafter viva voce test was held on 18.8.1993 and then he was empanelled for promotion to the post of P.W.M. In this view of the matter, we are not inclined to accept the argument advanced on the side of the applicant that in view of his adhoc promotion with effect from 28.3.1991 he has to be regularised as P.W.M. from that date. But ~~since however,~~ as his eligibility was recognised though as an exception in letter dated 22.3.1993, his result in the earlier test of the year 1986 was considered and after a viva voce test he was ultimately selected, we are of the view that he should be regularised as P.W.M. with effect from



22.3.1993. In the result, while disallowing the prayer of the applicant for regularisation in the post of P.W.M. with effect from 28.3.1991, we direct the departmental respondents to regularise service of the applicant as P.W.M. with effect from 22.3.1993.

The Application is allowed in part, but without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN *22.3.93*

B.K.SAHOO



*22.3.93*  
(G.NARASIMHAM)  
MEMBER (JUDICIAL)