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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 657 OF 1992
Cuttack, this the 14th day of July, 2000

Sri Jayakrushna Raj Applicant

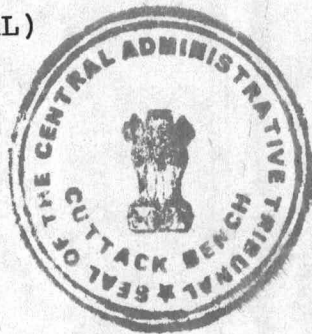
Vrs.

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.

(G.NARASIMHAM)
MEMBER (JUDICIAL)



(SOMNATH SOM)
VICE-CHAIRMAN
14.7.2000

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CORAM:

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

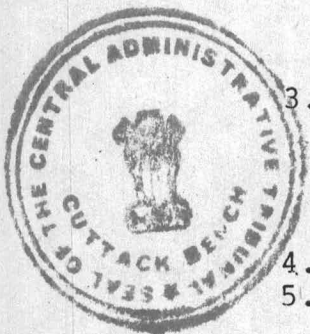
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Sri Jayakrushna Raj, aged about 53 years, son of
Dambarudhar Raj,
at present Post Graduate Teacher Grade-I,
S.E.Railway Mixed Higher Secondary School,
At-Khurda Road, P.O-Jatni,
Dist.Puri Applicant

Advocates for applicant - M/s.B.K.Patnaik
R.C.Mohanty

Vrs.

1. Union of India, represented by the
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43.
2. Divisional Railway Manager,
S.E.Railway, At-Khurda Road,
P.O-Jatni, Dist.Puri.
3. Senior Personnel Officer (Welfare),
Office of the General Manager,
S.E.Railway,
At-Garden Reach, Dist.Calcutta-43.
4. R.S.Pandey, P.G.T. in Sanskrit, KGP
5. Ramadhin Choudhury, PGT in Economics, CKP
6. K.P.Choudhury, ADA,
PGT in History
7. U.C.Mishra, PGT in Oriya, BNDM
8. Ch.N.K.Rao, Eng. KGP
9. K.N.Pandey, PGT in English, NIR
10. N.V.Narasaya, PGT in Mathematics, KGP
11. Y.Dikshit, PGT in English, CKP
12. R.I.Burma, PGT in Mathematics, NIR
13. M.K.Singh, PGT in Biology (Science)BSP
14. Smt.Umega Kujura, KGP, PGT in History
15. N.K.Rath, PGT in Zoology, KUR



Jdm.

16. S.D.Mairal, PGT in Commerce, CKP
17. Smt.Sunita Banarjee, PGT in Economics, KUR
18. Smt.Ava Ray (Chakravarti,
PGT in Political Science
19. Smt.Sukanti Mohanty, PGT in Chemistry, KUR
20. Smt.Bijaya Laxmi Mishra, PGT in Physics, KUR

Respondent nos. 4 to 20 are in care of Senior Personnel Officer (Welfare), Office of the G.M., South Eastern Railway, At-Garden Reach, Calcutta-43.....Respondents

Advocate for respondents -Mr.Ashok Mohanty

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 a direction to the respondents to reckon his seniority as Post Graduate Teacher Grade-I in Political Science in Railway Mixed Higher Secondary School, Khurda Road, from 4.1.1984, the date of his ad hoc promotion, with all service benefits like seniority, arrear salary and increments.

2. Facts of this case, according to the petitioner, are that he is a Second Class M.A. in Political Science with Bachelor's Degree in Education obtained from Utkal University. He was appointed as Grade II Trained Graduate Teacher in Railway Mixed High School, Khurda Road, on 27.2.1965. Higher Secondary classes were opened in the school from the session 1983-84. The applicant on account of his seniority and academic qualification, was appointed as Grade I Post Graduate Teacher in Political Science in Arts Stream with effect from 3.1.1984 and he joined on 4.1.1984.

S.Som.

Copy of the appointment letter dated 3.1.1984 is at Annexure-1. A number of ad hoc Post Graduate Teachers including the applicant were asked to be ready for viva voce test for regularisation on 12.9.1985 in Divisional Railway Manager's office order dated 3.9.1985 which is at Annexure-2. The viva voce was originally slated for 12.9.1985, but it was postponed in order dated 5.3.1986 which is at Annexure-3. It was indicated in this order at Annexure-3 that date and venue of the selection will be intimated later. A list of teachers called to the interview was also enclosed and the petitioner's name was included in this list. Subsequently, in an order dated 22.4.1986 at Annexure-4 the petitioner's name was deleted from the list. Thus, after more than two years of the petitioner's ad hoc appointment as PGT Grade I, regularisation was denied to him on the ground that the post has been reserved. This order dated 22.4.1986 at Annexure-4 is the copy of a message received from Chief Personnel Officer, Garden Reach, by the Divisional Railway Manager, Khurda Road. In this message it is written that the post of Teacher Grade I (Political Science - English Medium) should be reserved for SC instead of UR as indicated in the list circulated on 5.3.1986. It has also been mentioned that J.K.Raj, the applicant, ad hoc Teacher Grade I (Ad hoc) shown against Political Science (English Medium) is deleted. Being aggrieved by this order, the petitioner approached the Tribunal in OA No. 157 of 1987 challenging the Employment Notice by which applications were invited from open market for filling up of the post of PGT Grade I (Political Science - English Medium) by an SC candidate. The Tribunal in their order dated 9.12.1987 quashed the Employment Notice calling for the applications from open market and directed that within two months from the date of receipt of a copy of that order, the suitability



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or otherwise of the applicant should be adjudged by the competent authority and in case the applicant is found unsuitable, other candidates available in the feeder post should also be considered, and if there is no suitable candidate available from the feeder post, the competent authority shall then be at liberty to take resort to open market candidates. It was also directed that while considering the suitability of the applicant and other incumbents in the feeder post, the competent authority would also follow the procedure as per rules. Copy of the order dated 9.12.1987 was despatched by the Registry of the Tribunal in Despatch No. 5892 dated 31.12.1987, but no action was taken by the respondents within a period of two months. Ultimately, a viva voce test was held between 21st and 23rd August, 1989, i.e., one year and eight months after the Tribunal's order and after the interview the Divisional Railway Manager (respondent no.2) in his letter dated 9.2.1990 promoted the applicant to officiate as PGT Grade I (Political Science) in the same school. This order is at Annexure-6. The applicant states that he was under the impression that as he had been promoted on ad hoc basis by the order dated 26.12.1983 and had been working as such from 4.1.1984 without any break and as he was not allowed to participate in the earlier viva voce test on 23/24.4.1986 on the erroneous ground that it was a reserved post, the promotion of the applicant to the post of PGT Grade I (Political Science) would be regular and his seniority would count from 4.1.1984 when he was promoted on ad hoc basis. But the applicant received a seniority list on 15.4.1990 in which persons in serial nos. 93 to 109, who have been promoted/appointed as PGT Grade I, have been shown as senior to the applicant even though all of them were junior to the applicant as Grade II Teachers and persons at serial nos. 108 and 109 have been directly appointed on selection by



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Railway Recruitment Board three years one month after the applicant's promotion as PGT Grade I. He has stated that in case ad hoc promotee is regularised in continuation of the ad hoc promotion the seniority of the ad hoc promotee will count from the date of his promotion on ad hoc basis, but the respondents have not followed this. The applicant's promotion on 9.2.1990 was not because of any act or omission on his part and it was because the respondents cancelled the viva voce test in 1985 and denied him to appear at the test in 1986. As there was no break in service of the applicant as ad hoc appointee his seniority for six years and one month is being denied. The applicant filed six representations from May 1990 to March 1992, but his grievances were not considered and that is why he has come up in this Application with the prayers referred to earlier.

The departmental

3./ Respondents in their counter have opposed the prayer of the applicant. They have stated that the applicant was given ad hoc promotion on 4.1.1984 as a stop gap arrangement without considering his suitability and without considering other candidates and as such the ad hoc promotion was not in accordance with the rules of promotion. Therefore, the question of regularising the applicant in the post of PGT Grade I from the date he got ad hoc promotion does not arise. It is further stated that the Tribunal in their order in OA No.157/87 only directed to adjudge the suitability of the applicant along with others. Immediately after the order dated 9.12.1987 steps were taken to dereserve the vacancy in the post of PGT Grade I (Political Science), and the applicant and others were called to appear at the selection in which the applicant was empanelled for promotion on 25.1.1990 and the order of regularisation came two weeks thereafter on 7.2.1990. The departmental respondents have stated that as the ad hoc promotion was given without following the rules and without having any selection and was done at a stop gap measure, the period of



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ad hoc promotion would not count towards his seniority.

4. The private respondents have not appeared nor have they filed counter.

5. We have heard Shri B.K.Patnaik, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel appearing for the departmental respondents, and have also perused the records. The learned counsel for the petitioner has filed a written note of arguments as well as a date-chart which have also been taken note of.

6. The sole prayer of the applicant is for a direction to the departmental authorities to reckon his seniority as PGT Grade I (Political Science) in Railways Mixed Higher Secondary School, Khurda Road, from 4.1.1984, the date of his ad hoc promotion, with consequential seniority and financial benefits. In other words, the applicant wants that his service as PGT Grade I (Political Science - English Medium) from 4.1.1984 should be taken as regular service. In the alternative, it has been urged that as the applicant was appointed on ad hoc basis from 4.1.1984 and continued in that post without any break and was later on regularised in order dated 9.2.1990, his period of service as ad hoc PGT Grade I should count towards his seniority because the ad hoc service has been without any break and has been followed by regularisation. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Rajbir Singh v. Union of India, AIR 1991 SC 518. The above submissions of the learned counsel for the petitioner are discussed below in seriatim.

7. The first submission of the learned counsel for the petitioner that the ad hoc service of the petitioner as PGT Grade I (Political Science - English Medium) should be regularised with effect from 4.1.1984, i.e., his initial date of appointment as PGT Grade I (Political Science -



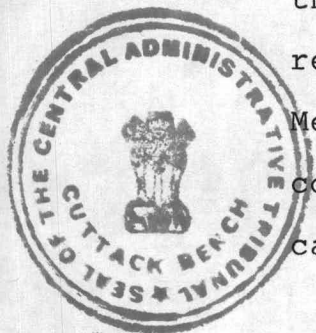
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English Medium) on ad hoc basis, is without any merit because in earlier OA No.157/87 had prayed for a direction to the respondents to regularise his ad hoc promotion in accordance with law and the Tribunal, while disposing of that OA in their order dated 9.12.1987 (Annexure-5), had observed in paragraph 7 that the applicant had been given promotion purely on ad hoc basis and therefore he cannot claim the promotional post as a matter of right and his suitability for holding the post on regular basis has to be adjudged by competent authority. From the above it is clear that this claim of the applicant for getting his service regularised as PGT Grade I (Political Science - English Medium) with effect from 4.1.1984 has already been considered and rejected in OA No.15/87 and the applicant cannot raise the same point again.

8. As regards the second contention that the period of ad hoc service should be taken into account while determining his seniority, the learned counsel for the petitioner has relied on **Rajbir Singh's case (supra)**. In that case the appellants were appointed originally in Class IV posts and were promoted to higher grade in 1975. They were further promoted to Class III post after holding selection test and finding them suitable for the promoted post. They had worked in the promoted posts admittedly on ad hoc basis for about eleven years. Considering the facts of the case, their Lordships of the Hon'ble Supreme Court have laid down the law in the following words:

".....if a person is appointed against a substantive vacancy and is subsequently promoted to continue on ad hoc basis to hold such posts for a number of years, then, in that case the appointment though made on ad hoc basis has to be taken into consideration in reckoning the seniority of the holder on that basis. In the instant case, there is no whisper on the part of the Railway Authorities that the appellants who are already member of the service by being appointed in class IV posts since 1971 and subsequently promoted in 1975 on ad hoc basis after holding regular tests and finding them



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qualified to be promoted and has actually been regularised and promoted in class III service and their services were subsequently regularised in the said posts in 1986. In such circumstances, it cannot be said that such ad hoc service for a period of about 11 years will not be taken into account in determining the seniority of the holders of the class III post, i.e., the appellants..."

In this case, the applicant was given ad hoc promotion not on the basis of his selection and also without considering other eligible persons who were entitled to be considered for such promotion. The departmental respondents have stated in their counter that such ad hoc promotion was given merely as a stop gap arrangement. The learned counsel appearing for the departmental respondents have pointed out that in accordance with the decision of the Hon'ble Supreme Court in the case of Keshav Chandra Joshi & ors v. Union of India and ors, AIR 1991 SC 284, the seniority of an incumbent has to be counted from the date of his appointment to the post in accordance with rules and not according to the date of his confirmation. But where the initial appointment is only ad hoc and not in accordance with rules and is made as a stop gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The applicant's case is similar to Keshav Chandra Joshi's case(supra) because he was not given ad hoc promotion after any process of selection and after taking into consideration other persons who were also eligible to be considered. His ad hoc appointment was also made as a stop gap arrangement, according to the respondents. Thus, just because the applicant has been regularised in order dated 9.2.1990, his prior period of ad hoc working in the post of PGT Grade I (Political Science - English Medium) cannot be taken into account while calculating his seniority.

J. Joshi.

9. It is seen that in this case the applicant has worked as ad hoc PGT Grade I (Political Science-English Medium) for a period of over six years from 1984 till he was regularised in order dated 9.2.1990. The Tribunal in their order dated 9.12.1987 in OA No.157/87 had

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directed that applicant's eligibility should be considered within a period of two months from the date of receipt of copy of that order. The applicant has stated that copy of the order dated 9.12.1987 was sent to the departmental respondents by the Registry of the Tribunal in Despatch No. 5892 dated 31.12.1987 and it must have reached the departmental respondents sometimes early in 1988. In spite of this, no action was taken to implement the order within the period of two months allowed by the Tribunal. The departmental authorities also did not approach the Tribunal to get the time period extended. But the service of the applicant was regularised only after passage of more than two years from the date of receipt of copy of this order. In view of this, it has been submitted by the learned counsel for the petitioner that because of the delay of the departmental authorities to implement the order of the Tribunal, the petitioner for no fault of his is losing his period of service rendered on ad hoc basis in the post of PGT Grade I (Political Science - English Medium) for the purpose of seniority and other consequential benefits. It is also submitted by the learned counsel for the petitioner that the petitioner was unfairly denied the chance to appear at the viva voce test in 1986 for getting regularised in the post. His name was originally included in the list of persons to be called to the interview for regularisation, but subsequently his name was deleted on the ground, which has been held by the Tribunal to be incorrect in their order dated 9.12.1987 in OA No.157/87, that the single post of PGT Grade I (Political Science -English Medium) was meant for a Scheduled Caste candidate. In their Order dated 9.12.1987 in OA No. 157/87 the Tribunal have held that the post was not a reserved post and the applicant and other departmental employees similarly circumstanced should have been considered first for the post of PGT Grade I (Political Science - English Medium) before going in for direct

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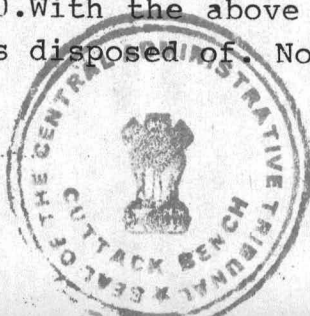


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recruitment for filling up of the post. From the order of the Tribunal passed on 9.12.1987 in OA No.157 of 1987 it is clear that it has been held that the departmental authorities unfairly and illegally denied opportunity to the applicant to get his service regularised by appearing at the interview held in 1986. In the context of the above, it is inescapable that the departmental respondents have taken another two years from the date of receipt of copy of the order dated 9.12.1987 in OA No.157/87 to regularise the service of the applicant. Under these circumstances, the applicant cannot be made to suffer twice firstly by being illegally denied the opportunity to appear at the interview in 1986 for regularisation, and again by delaying his regularisation by about two years beyond the time set by the Tribunal in their order dated 9.12.1987 in OA No.157/87. In view of this, it is ordered that the seniority of the applicant as PGT Grade I (Political Science - English Medium) should be reckoned from the date following the expiry of the period of two months from the receipt of the copy of the order dated 9.12.1987 by the departmental respondents. This is the period which has been allowed by the Tribunal in their earlier order. The departmental respondents should have considered the question of regularisation of the applicant by that date or should have come to the Tribunal for extending the period. Since they have not done so, regularisation must count from the date of expiry of the period fixed by the Tribunal in their order dated 9.12.1987 in OA No.157/87, and we so direct. The petitioner will also be entitled to financial and service benefits accordingly.

10. With the above observation and direction, the Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)



(SOMNATH SOM)
VICE-CHAIRMAN

Somnath Som
14.7.2000