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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 24 OF 1993
Cuttack this the 22nd day of September, 1999

Janakar Patra

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 ? *No*.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
22.9.99

22.9.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 24 OF 1993
Cuttack this the 22nd day of September, 1999

CORAM:

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

Shri Janakar Patra, aged about 33 years
S/o. Late Banambar Patro, Jr.Clerk
Under orders of reversion to the rank
of Khalasi Helper, Office of the Chief Workshop Manager
Carriage Repair Workshop, South Eastern
Railway, At/Po: Mancheswar
Bhubaneswar, Dist: Puri

... Applicant

By the Advocates : M/s.A.K.Mishra
S.K.Das
S.B.Jena

-Versus-

1. Union of India through the General Manager, South Eastern Railway Garden Reach, Calcutta-43
2. The Chief Electrical Engineer, South Eastern Railway, Garden Reach, Calcutta-43
3. The Chief Workshop Manager, Carriage Repair Workshop, S.E.Railway At : Mancheswar, PO: Bhubaneswar-5, Dist: Puri

... Respondents

By the Advocates : Mr.D.N.Mishra
Standing Counsel

ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, a Khalasi Helper in the Office of Chief Workshop Manager under S.E.Railway at Mancheswar files this application on 11.3.1993 to issue directions on the respondents to promote/absorb him in the post of Jr.Clerk lying vacant under the administrative control of Chief Workshop Manager, (Res.3) with consequential reliefs.

2. The applicant initially joined as Khalasi in the scale of Rs.196-232/- (Rs.750-Rs.940/-)R.S. under the Employment Assistance Scheme given to the land displaced persons. While working under Electrical Foreman, Mancheswar, he was promoted as Junior Clerk in the scale of Rs.260-Rs.400/- (Rs.950-Rs.150/- under the revised scale) against construction cadre on adhoc basis. Subsequently he was reverted to Khalasi and promoted to Khalasi Helper in the scale of Rs.800-Rs.1150/- being his position in the seniority of Group D employees. This reversion application was challenged before this Tribunal in Original Application No.146/90. This O.A. along with O.A.135/90 filed by similarly placed employee one Bignya Mohapatra challenging his reversion order was disposed of in order dated 18.12.1990 by quashing the reversion order. However, the applicants were not awarded backwages. There was further direction to respondents to adjust the applicants against available posts in the cadre of Jr.Clerks within a period of 90 days from the receipt of copy of the judgment. This order of the Tribunal was challenged by the Department before the Hon'ble Supreme Court. However, pursuant to the direction of the Tribunal

the applicant again was again promoted to officiate as Junior Clerk on adhoc basis on 8.3.1991. The Hon'ble Supreme Court in order dated 21.10.1992 set aside the order of this Tribunal, but at the same time directed the Department to promote the applicant as and when promotions are made to the posts of Junior Clerk in the concerned Branch. Pursuant to the judgment of the Hon'ble Supreme Court the applicant was again reverted to the post of Khalasi and promoted ~~against~~ to the post of Khalasi Helper in the Scale of Rs.800-Rs.1100/- on adhoc basis. Thereafter the applicant made series of representations for his absorption in the post of Junior Clerk, but without any effect. Hence this application with an averment that there is vacancy in the post of Junior Clerk.

3. Respondents in their counter denied the availability of vacancy in the post of Jr.Clerk. However the other facts stated above are not denied.

4. We have heard Shri J.Sengupta, learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel appearing for the respondents. Also perused the records.

As earlier stated, while the version of the applicant is that vacancy is now available in the cadre of Jr.Clerk, the same is refuted by the Department. Hence it is for the applicant to come up with a clear and concrete proof of the same. But no such attempt has been made by the applicant. We are, therefore, not inclined to accept the version of the applicant as to the availability of vacant post in the cadre of Jr.Clerk by

the time he preferred this Original Application.

More over, as observed by the Hon'ble Supreme Court in para-3 of their judgment(Annexure-5) that even if posts of Junior Clerk are available, the applicant cannot straightaway be accommodated to this post since there may be other eligible candidates whose rights required to be taken into consideration. Bearing this legal position in mind and also the fact that the applicant officiated for more than five years as Jr.Clerk, the Hon'ble Supreme Court gave direction that his claim shall have to be considered as and when promotions are made to that post. In other words, the Hon'ble Supreme Court did not mean that promotion of the applicant to the Jr.Clerk would be automatic soon after a vacancy arises.

In view of our discussions made above, we find no merit in this application which is accordingly dismissed leaving the parties to bear their own costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 22.3.55
 B.K.SAHOO

22.3.55
 (G.NARASIMHAM)
 MEMBER(JUDICIAL)