

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO.28 OF 1993

Cuttack, this the 30th day of August, 1999

Girija Sankar Mishra

.....

Petitioner

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. Naresimham)
Member(Judicial)

(Somnath Som)
Vice-Chairman
30.8.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 28 OF 1993
Cuttack, this the 30th day of August, 1999

CORAM:

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

.....
Girija Sankar Mishra,
son of late Fakir Mohan Misra, aged about 39 years,
presently working as Office Superintendent, Carriage Repair
Workshop, South Eastern Railway, At-Mancheswar, Sainik School
P.S-Sahidnagar (Bhubaneswar) Dist. Puri

.....Applicant

Advocate for applicant - Mr. A.K. Mohapatra

Vrs.

1. Union of India, represented by the General Manager,
South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, South Eastern Railway
Garden Reach, Calcutta-43.
3. Chief Workshop Manager, Carriage Repair Workshop,
South Eastern Railway, Mancheswar, Bhubaneswar-5.
4. Workshop Personnel Officer, Carriage Repair Workshop,
South Eastern Railway, Mancheswar, Bhubaneswar-5

.....Respondents

Advocates for respondents - M/s B. Pal & O.N. Ghosh

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

S. Som
In this Application under Section 19 of
Administrative Tribunals Act, 1985, the applicant has prayed
for quashing the Limited Departmental Competitive Examination
(LDCE) scheduled to be held on 31.1.1993 for preparation of
a panel of Assistant Personnel Officer/Assistant Welfare
Officer (Group-B). The second prayer is for a declaration that
the applicant is eligible to appear at the above examination
and to direct the respondents to forward the applicant's name
and permit him to appear at the examination.

2. By way of interim relief it was prayed that the examination should be stayed. On the day of admission of the petition on 5.2.1993 the interim prayer was disposed of with a direction that the result of the Application would govern future service benefits of the petitioner and appointments made in pursuance of the examination shall be subject to the result of this application and the appointees should be informed accordingly.

3. The applicant's case is that he joined as Junior Clerk on 26.7.1977 in the office of Divisional Personnel Officer, S.E. Railway, Khurda Road and was promoted to the post of Senior Clerk in 1981. In order dated 10.11.1983 he was directed to join on transfer under Chief Workshop Manager, Carriage Repair Workshop (CRW), Mancheswar and accordingly the applicant submitted his joining report on 22.11.1983 before respondent no.3. But respondent no.3 returned the applicant on the plea that there was no vacancy. Ultimately the applicant joined under respondent no.3 as Senior Clerk on 5.7.1984. Later on there was restructuring of supervisory and ministerial cadres in the office of respondent no.3 and the post of Senior Clerk against which the applicant was joined was upgraded as Head Clerk. Respondent no.3 in his order dated 15.3.1985 promoted and posted the applicant to officiate as Head Clerk with effect from 9.7.1984. This order was issued on 15.3.1985 and is at Annexure-1. In order dated 11.11.1989 at Annexure-2 the result of suitability test held on 6.11.1989 for the post of Head Clerk was published and the applicant's name is at serial no.3. At that time he was working ~~xxxxxx~~ as ad hoc Office Superintendent, Grade-II. In order dated 22.12.1989 at Annexure-3 the service of the applicant as Office Superintendent, Grade-II(ad hoc) was regularised provisionally. In this order it has been mentioned that his service has been regularised as Head Clerk provisionally with effect from 1.1.1988. The applicant has stated that his

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original promotion to the post of Head Clerk was not a promotion but upgradation of the post itself. The use of the word "Officiate" in the order at Annexure-1 was therefore superfluous. It is also stated that before issue of the order dated 22.12.1989 at Annexure-3 the applicant was promoted to the existing regular vacancy of Office Superintendent, Grade-II and has been continuing till date without any break. The applicant has stated that officiating appointment on promotion against a regular post would count towards seniority. It is also stated that a person cannot get two ad hoc promotions and therefore his first promotion to the post of Head Clerk must be taken as regular in view of his subsequent ad hoc promotion to the post of Office Superintendent, Grade-II. Respondent no.2 issued a circular for filling up of the post of Assistant Personnel Officer/Assistant Welfare Officer through departmental candidates who have completed five years of regular service as Head Clerk. The applicant had completed more than seven years and therefore applied for sitting for the examination. The circular issued is at Annexure-5. It is stated in this notice at Annexure-5 that all staff of the eligible category who have completed 5 years of ~~regular~~ regular service (non-fortuitous) in the grade minimum of which is Rs.1400/- in the scale of Rs.1400-2300/- and above by 1.4.1992 are eligible. Respondent no.3 forwarded applications of four other persons for appearing at the examination. The petitioner's application was not forwarded. On coming to know of this, the applicant made a representation on 13.11.92 but without any result. He submitted another representation on 11.12.1992 to respondent no.2 but that also did not prove fruitful. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

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4. The respondents in their counter have stated that when CRW at Mancheswar was started, staff from different units of S.E.Railway were brought and they joined CRW as per their option. In the instruction dated 22.12.1980 of Chief Personnel Officer, S.E.Railway, which is termed as Joint Procedure Order (J.P.O) and is at Annexure-R/1, it was mentioned that a cut off date will be announced later and from that day persons working in CRW would be constituted into a separate cadre and their seniority will count from that date. Subsequently, in consultation with the Unions, the Railways decided 1.1.1988 as the cut off date. After that all the people working at CRW, Mancheswar were asked to indicate their option whether they will stay at Mancheswar and will be guided by the instructions contained in the above circular or they will go back to their parent units. Most of the staff opted not to go back to their parent units and accordingly seniority list of all categories was prepared and published after obtaining their substantive status from their respective parent units. This seniority list has been drawn up basing on substantive status of the employees received from their parent units for the purpose of giving promotion and regularisation on and from 1.1.1988. The applicant's substantive status on 31.12.1987 in his parent unit in Khurda Road Division was Senior Clerk and he was regularised as Head Clerk in the scale of Rs.1400-2300/- with effect from 1.1.1988. Therefore, his seniority as Head Clerk will count from 1.1.1988. It is further stated that the applicant was promoted as Head Clerk with effect from 9.7.1984 at CRW purely on ad hoc basis with the clear stipulation that the promotion will not confer any right or claim for seniority. He was regularised as Head Clerk with effect from 1.1.1988 after passing the suitability test. Though the posts were upgraded the incumbents could not be posted against the posts on regular basis prior to 1.1.1988

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as those employees were having lien in their parent units. Had the applicant got upgradation benefit in his parent unit prior to 1.1.1988 then he would have got the same benefit in CRW, Mancheswar. His lien was cut off from the office of Divisional Personnel Office with effect from 1.1.1988 and on that day he was regularised as Head Clerk at CRW, Mancheswar. Because of this, he had not completed five years of service on 1.4.1992 and therefore he was not eligible to be called to the test. ~~to the test~~ It is stated that four employees had been assigned seniority in accordance with the order of the Tribunal in OA No. 178/88 with effect from the date mentioned therein and they had completed five years regular service by 1.4.1992 and therefore, they were sponsored for appearing at the examination. On the above grounds, the respondents have opposed the prayer of the applicant.

5. The applicant in his rejoinder has stated that the instruction does not say that the applicant's service as Head Clerk in CRW, Mancheswar, from 7.7.1984 till 31.12.1987 should be treated as fortuitous and therefore this period should count towards his eligibility for appearing at the examination. The applicant has mentioned the cases of other four employees who ~~are~~ were applicants in OA No. 178/88 and has stated that while allowing those four persons to sit for the examination and disallowing him, he has been discriminated against. On the above grounds, the applicant has reiterated his prayers in his rejoinder.

6. The respondents have filed a counter to the rejoinder in which they have reiterated their averments made earlier and it is not necessary to repeat those averments again.

7. From the above recital of facts it is clear that the whole point of controversy in this case is whether by 1.4.1992 the applicant has completed five years regular service (non-fortuitous) as Head Clerk in the scale of

Rs.1400-2300/-. The applicant's case is that he was promoted as Head Clerk on 7.7.1984. Such promotion even though was on ad hoc basis and in officiating capacity, cannot be termed as fortuitous and therefore that period should have counted towards five years regular service (non-fortuitous) as Head Clerk. We have considered the above submission carefully. We have also gone through the decisions of the Tribunal in OA Nos.178/88, 179/88, 364/91 and 372/91 referred to by the learned counsel for the petitioner. Ad hoc service by its very nature is fortuitous because no employee has a right to get ad hoc promotion. It is also open to the departmental ^{ad hoc} authorities not to give/promotion to an employee and keep the promotional post vacant. A person can also be reverted from any ad hoc post, which he may be holding, without any proceeding subject to the condition that while reverting a person from a higher post held by him on ad hoc basis, his junior cannot be retained in higher post on ad hoc basis. In the instant case, the applicant opted to remain at Mancheswar Carriage Repair Workshop knowing fully well that his seniority in CRW, Mancheswar will count from 1.1.1988 on which date the cadre will be constituted. Prior to that he had lien in his parent Department where his status was that of Senior Clerk. Even though he was given appointment as Head Clerk in CRW, Mancheswar, on officiating and ad hoc basis on 9.7.1984, it is clear from the order at Annexure-2 that the applicant's suitability for the post of Head Clerk was examined in a suitability test held on 6.11.1989. Therefore on 9.7.1984 his appointment as Head Clerk on ad hoc and officiating basis was without any test. In this view of the matter, his appointment as Head Clerk on ad hoc and officiating basis from 9.7.1984 cannot be said to be a regular appointment.

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In several cases dealing with employees in CRW, Mancheswar, the Tribunal have taken the view that where an employee has been given promotion to a higher grade after observing all formality and after holding the required suitability test, his promotion must be taken as regular even though in the order of promotion it has been termed as ad hoc. In the instant case, the applicant was promoted to the post of Head Clerk on 9.7.1984, but the suitability test was conducted only on 6.11.1989. Therefore, the applicant's promotion to the post of Head Clerk on 9.7.1984 cannot be said to have been done on regular basis. As the cadre has been constituted from 1.1.1988, the applicant's seniority as Head Clerk will count only from that date and therefore by 1.4.1992 the applicant cannot be said to have completed five years regular service (non-fortuitous) in the scale of Rs.1400-2300/-.

8. The applicant has mentioned cases of four persons. But those persons approached the Tribunal in 1988 and in accordance with the order of the Tribunal, they were assigned seniority from an earlier date. The applicant not having approached the Tribunal cannot be permitted to claim the same benefit at this stage after passage of another five years.

9. In view of our discussions above, we hold that the Original Application is without any merit and the same is rejected but without any order as to costs. The interim order dated 5.2.1993 is vacated.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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