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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 549 OF 1993
Cuttack, this the 22nd day of November, 1999

Sri V.S.Naidu and others Applicants

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

22.11.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 549 OF 1993
Cuttack, this the 22nd day of November, 1999

CORAM:

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

1. Sri V.S.Naidu, a ged about 43 years, son of Suryanarayan
2. Sri K.Ayodhya, aged about 38 years, son of Appala Swamy.
3. Sri A.Rami Naidu, aged about 46 years, son of Sanyasi Naidu
4. Sri K.Prakasam, aged about 45 years, son of Somulu
5. Sri C.P.Mathai, aged about 51 years, son of Philipose
All are Junior Clerks of South Eastern Railways serving at kPadua and Koraput in Koraput District and Titilagarh Section in Bolangir District in Waltair Division, At/PO-Waltair, District-Visakhapatnam....

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Applicants

Advocates for applicants - M/s B.K.Patnaik
B.Satpathy
S.Panda.

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager, South Eastern Railway, At/PO-Waltair, Munsifi/District-Visakhapatnam
3. Divisional Personnel Officer, South Eastern Railway, Waltair Division, At/PO-Waltair, Munsifi &District-Visakhapatnam..... Respondents

Advocate for respondents - Mr.D.N.Mishra
S.C.(Rly)

ORDER
SOMNATH SOM, VICE-CHAIRMAN

The applicants were originally seven in number. Subsequently, the learned counsel for the petitioners, filed a memo indicating that original

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petitioner nos. 1 and 2 do not/ proceed with this O.A. as
they have been selected for some higher posts in order
dated 19.4.1996 copy of which was also filed.
Accordingly, in order dated 15.4.1998 petitioner nos. 1
and 2 have been deleted.

2. The five applicants in this case have
prayed for a direction to the respondents to regularise
their service in the post of Junior Clerk which they are
holding for periods ranging from 7 to 14 years. By way of
interim relief it was prayed that the respondents should
be directed to allow them to continue as Junior Clerks
till the disposal of the O.A. Initially by way of interim
relief it was ordered on 13.12.1993 that results of
examination held on 11.12.1993 shall not be published
without leave of the Court. This order was modified in
order dated 19.9.1995 directing that seven posts be left
unfilled pending disposal of the O.A. The five applicants
have stated that they initially were appointed as Class
IV employees and in consideration of their seniority they
were promoted as Junior Clerks. A copy of the gradation
list of Grade IV employees circulated by the departmental
authorities is at Annexure-1. According to the
petitioners, petitioner nos. 3, 4, 5, 6 and 7 were appointed
as Gangmen on 28.7.1973, 24.11.1973, 24.3.1974, 24.7.1973
and 3.3.1971 respectively. They were promoted as Junior
Clerks on 1.2.1985, 27.9.1986, 20.9.1986, 3.3.1987 and
20.9.1982 respectively on ad hoc basis. The applicants
have stated that these ad hoc appointments have continued
for all these years. Applicant no. 7 appeared at an
examination conducted in 1984 for regularisation of his

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appointment. After passing of written test he was called to the viva voce in 1985, but the results were not declared. Another examination was held in 1987 at which all the applicants appeared and after clearing the written test they were also called to viva voce test in 1988, but no results were published and their services were not regularised. Another written test was held on 21.8.1993, but the applicants did not appear at the said test. They submitted representation to Divisional Railway Manager and others with a prayer to regularise their services without any further test as one of them had appeared at a test in 1984-85 and all of them had appeared in 1987-88. Grade IV employees much junior to the applicants were called for examination in 1993 and therefore the applicants felt that it was unnecessary for them to appear again and again when results had not been published. The applicants have stated that according to the Railway Board's instructions any ad hoc appointment beyond the period of 18 months has to be regularised and such employees are not liable to be reverted except in accordance with the principles of natural justice. The applicants have stated that after retaining them as Junior Clerks on ad hoc basis for long period of years they should not be reverted. It is also stated that there are decisions that officiating promotion to Class III posts in Railways will lead to regularisation after passing of suitability test. One of the applicants has passed suitability test ^{in 1984} and all of them have passed suitability test in 1987-88, but yet their services as Junior Clerks have not been regularised. Accordingly, they have come up in this petition with the prayers referred to earlier.

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3. Respondents in their counter have stated that the applicants were initially appointed as Gangmen in the Engineering Department and were then allowed to work as Junior Clerks purely on ad hoc basis against workcharged posts sanctioned from time to time against higher grade vacancies and direct recruitment quota vacancies. Such arrangement of ad hoc appointment was made on local arrangement in the exigency of service. The applicants were allowed to work as Junior Clerks without subjecting them to any suitability test. As per Establishment Serial No. 95/88 staff appearing at a test for promotion from Group-D to Group-C posts against the departmental quota have to obtain minimum 50% marks in the written test to be qualified to be called for viva voce in which they have also to get 50% marks for being placed in the panel. Absorption in regular posts is made from the panel as per existing vacancies on the date of initiation of the selection and adding to the existing vacancies anticipated vacancies for the next year and 10% thereof for unforeseen reasons. Absorption is done from the panel on the basis of seniority. In 1987 the applications were invited from eligible Class IV category for forming a panel of seventeen Junior Clerks 1 against 33 1/3% departmental quota in the Civil Engineering Department. 247 candidates responded to the above circular and a panel was formed for 17 candidates. The applicants could not be absorbed in the regular posts as they could not come into the zone of consideration. An examination was again proposed to be conducted for filling up 11 vacancies of Junior Clerk against

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departmental quota. The notice for this selection is dated 29.1.1992 and is at annexure-R/1. The petitioners had applied for sitting at the examination in response to annexure-R/1. But subsequently they filed a representation stating that they were not appearing at the test under protest and should be deemed to have been regularised in the posts they are holding. All such absentees in the original test including the applicants were again called to appear at a supplementary test held on 11.12.1993 as an one time exception. But the applicants avoided to appear at the test and have approached the Tribunal in this O.A. The respondents have stated that the applicants were never promoted on regular basis to the post of Junior Clerk. They were only allowed to work as Junior Clerks on ad hoc basis against vacancies in workcharged posts against direct recruitment quota and higher grade vacancies. The respondents have stated that Annexure-1 of the O.A. is the list of candidates who have come out successful in the written test in the year 1987-88 and it is not the final list for absorption on regular basis in the promotional post of Junior Clerk. The respondents have also stated that the applicants are ~~not~~ entitled to be regularised against 33 1/3% departmental quota and not against the quota of direct recruits or to workcharged posts. For such regularisation, mere officiation for a long period in the promotional posts would not be enough. A person concerned has to pass the suitability test and to be absorbed on the basis of seniority after clearing the suitability test. It is stated that the applicants had ^{not} passed the writtentest and viva voce but were not included in the panel and they could not be regularised in the

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posts due to their low position vis-a-vis the number of vacancies coming against departmental quota. The respondents have also stated that the applicants have been allowed to continue in the promotional posts for such long period due to urgency of work and question of their reversion to the lower posts does not arise at this stage. They have also stated that eighteen months rule has no application to the instant case. On the above grounds, the respondents have opposed the prayers of the applicants.

4. We have heard Shri B.K.Patnaik, the learned counsel for the petitioners and Shri D.N.Mishra, the learned Standing Counsel (Railways) appearing for the respondents and have perused the records. The learned counsel for the petitioners has filed written note of submission which has been taken note of. The learned Standing Counsel (Railways) for the respondents was given time till 8.10.1999 and again till 19.10.1999 for filing written note of submission, but no written note of submission has been filed by the learned Standing Counsel (Railways) for the respondents. The learned counsel for the petitioners has filed a rejoinder on 19.10.1999 after the hearing of the case has been concluded. Copy of the rejoinder has also not been served on the other side.

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5. It has been submitted by the learned counsel for the petitioners that the five petitioners are continuing as Junior Clerks for a number of years, having been allowed to work on different dates between 1982 and 1987 as mentioned earlier and there are instructions of the Railway Board that any ad hoc appointment beyond the period of 18 months will lead to regularisation of service as such ad hoc appointees are no longer liable to

be reverted except in accordance with the principles of natural justice. The Railway Board's circular dated 9.6.1965 lays down that any person who is permitted to officiate in a promotional post for more than 18 months is not available to be reverted without following the procedure prescribed in the Discipline & Appeal Rules. In this connection, the learned counsel for the petitioners has relied on the decision of the Full Bench of the Tribunal in the case of S.Jetha Nand v. Union of India, 1989(2) SLJ (CAT) 657. In the above case it has been held by the Full Bench that this rule applies only in case of those Railway servants who have been selected or empanelled for the promotional post. In this case, the respondents have stated that the applicants passed the written test and viva voce in the 1987-88 Examination which was held for drawing up a panel of 17 names. But even though the applicants qualified in the selection, they could not be empanelled because of their low seniority position. In view of this, the above circular of the Railway Board is not applicable to the case of the applicants. The learned counsel for the petitioners has further stated that in cases where the above circular invoking the 18 months rule is applicable, as such officiating employees could not be reverted without subjecting them to disciplinary proceedings, their services must be deemed to have been regularised in higher posts. As we have already noted the applicants were not empanelled in the 1987-88 Examination. The respondents have also stated that there is no question of their reversion as they are continuing for long years in the exigency of public service on ad hoc basis and

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therefore it cannot be said that by operation of the 18 months rule the applicants must be deemed to have been regularised. It is also to be noted that this rule, as earlier noted, applies only to those who have been empanelled for holding the higher promotional post and have been holding the posts on officiating basis.

6. The second ground urged by the learned counsel for the petitioners is that once a list of successful candidates is prepared for departmental candidates to fill up the posts reserved for them, the list should continue till the same is exhausted. There is no bar for continuation of the list and therefore the applicants having come out successful in 1987-88 Examination, should have been allowed to remain in the list of successful candidates till they are regularised in accordance with their seniority. The learned counsel for the petitioners has referred to the case of Syed Abdul Razzak v. Chairman, Andhra Pradesh State Wakf Board, Hyderabad, decided by the Hon'ble High Court of Andhra Pradesh and reported in 1997 (6) SLR 57. The law as laid down in this case goes against the above submission of the learned counsel for the petitioners. In that case the Hon'ble High Court of Andhra Pradesh has laid down that the select list is prepared for a particular year and for a particular number of vacancies and thus applies only to that year or to the posts and no vested right is created in an employee for being promoted in all future vacancies. In this case the 1987-88 Examination was held for filling up 17 vacancies falling under 33 1/3% departmental quota and even though the applicants came out successful in the written test and

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viva voce, they could not be put in the panel because of their low seniority position. In view of this, it cannot be accepted that by virtue of their qualifying in that test, they should not be required to appear at future test and they should be regularised when their turn comes in accordance with seniority. As the select list for 1987-88 was prepared for seventeen vacancies and the applicants could not come into the panel, they cannot say that by virtue of their qualifying in the test they should be absorbed against future vacancies. This contention of the learned counsel for the petitioners is also therefore held to be without any merit and is rejected.

7. The learned counsel for the petitioners has also relied on the case of Dr. Vijoy Kumar and others v. State of Bihar and others, decided by the Hon'ble Patna High Court and reported in 1984(1) SLR 394. In that case 261 ad hoc appointments were made in 1976, out of which 225 candidates had been regularised and only 36 appointees were continuing on ad hoc basis. The Hon'ble Patna High Court held that as these 36 persons remained in service for pretty long time for about seven years, their services should be regularised and accordingly the Government was directed to take steps for regularising their services also in accordance with law by the same process as was done with regard to others of that batch. In the instant case, regularisation has to be done by being successful in the written test and viva voce. As earlier noted the applicants qualified in the written test and viva voce but could not be empanelled because of their low seniority position vis-a-vis the seventeen vacancies for which the panel was prepared. In the

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written examination held in 1992 and the supplementary examination in 1993 the applicants refused to appear. As such regularisation has to be done in accordance with the same procedure by which the panel was drawn up in 1987-88 for seventeen vacancies, following the law as laid down by the Hon'ble Patna High Court in Dr. Vijoy Kumar's case (*supra*), it must be held that the applicants cannot straightaway claim to get regularised and for this, they have to take the examination and qualify in the same.

8. The learned counsel for the petitioners has relied on the following three cases:

- (i) State of Punjab v. Dharam Singh, AIR 1968 SC 1210;
- (ii) Om Prakash Maurya v. U.P. Co-operative Sugar Factories Federation, AIR 1986 SC 1844; and
- (iii) M.K. Agarwal v. Gurgaon Gramin Bank and others, AIR 1988 SC 286.

The above three cases relate to the period of probation and the legal effect of a person continuing beyond the maximum period of probation and therefore these cases have no application to the facts of the present case.

9. In the instant case the admitted position between the parties is that the applicants have been allowed to work as Junior Clerks on ad hoc basis for a number of years. The respondents have stated that they are not going to revert the applicants to their original posts of Gangmen. The applicants qualified in the written test and viva voce in 1987-88. But their names could not

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be included in the panel because only seventeen vacancies were there and they could not come within the zone of consideration on the basis of their seniority. The applicants have not averred that persons junior to them have been regularised. In paragraph 4.4 of the O.A. they have merely stated that Class IV employees, who are junior to them, were called for examination in 1993. There is no illegality involved in this because after qualifying in the examination the persons have to be absorbed on the basis of their seniority. The applicants have also not made any averment that they are the next in order of seniority to be regularised. There may be other ad hoc Junior Clerks senior to the applicants in the cadre of Gangmen or in other Grade IV posts who are also waiting to be regularised in the post of Junior Clerk. In view of this, the prayer of the applicants for issuing a direction to the respondents to regularise them in the post of Junior Clerk cannot be accepted. The learned counsel for the petitioners has relied on a decision of the Tribunal in OA No. 360 of 1989 (Kishore Chandra Pati and others v. Union of India and others). This O.A. was disposed of in order dated 29.3.1990 which has been enclosed by the applicants at Annexure-5. The applicants therein were working in Carriage Repair Workshop, Mancheswar. The case was disposed of with a direction that the applicants should be afforded opportunity to pass the tests and if they qualify in the tests, they should be regularised in the available posts in which they were officiating and after being given three chances if any of them does not qualify, then he should not be

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regularised. Thus, in this case also the Tribunal has ordered regularisation on the basis of their passing the tests. In the case of the present applicants, regularisation has to be done on the basis of passing of test as also on the basis of seniority amongst the persons who have passed the written test and viva voce. In consideration of the above, we hold that the applicants are not entitled to be regularised as Junior Clerks straightaway. But considering the fact that they have been continuing for many years as Junior Clerks on ad hoc basis, the respondents are directed that the applicants should not be reverted to the lower posts while keeping some other persons who have been appointed as ad hoc Junior Clerks after them in the higher post. We have already noted the fact that the original petitioner nos. 1 and 2 have during the pendency of this O.A. been promoted as Permanent Way Mistry in their technical cadre and they have withdrawn from this O.A. In view of this, we also direct the respondents that notwithstanding the fact that these five petitioners have been working as Junior Clerks for number of years also they should be considered in their turn for promotion in their regular cadre and in accordance with their seniority.

10. With the above observations and directions the Original Application is disposed of but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
22.11.99
VICE-CHAIRMAN