

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 634 OF 1993
Cuttack, this the 07th day of November, 2000

Sushanta Kumar DasApplicant

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
(SOMNATH SOMY)
VICE-CHAIRMAN
7/11/2000

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CORAM:

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

.....

Sushanta Kumar Das,
son of Dhurba Charan Das,
At-Choudhury Sahi,
PO-Motiganj,
District-Balasore....

....Applicant

Advocate for applicant-Mr.D.P.Dhal-
samant

Vrs.

1. Union of India, represented through General Manager (P), South Eastern Railway, Garden Reach, Calcutta-43 West Bengal.
2. Chairman, Railway Recruitment Board, M.M.Building (Fourth Floor), 16, Strand Road, Calcutta-700 001.
3. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43 (W.B.)
4. Senior Personnel Officer (R/P), Office of the Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta-43(W.B.)

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

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a direction to the respondents to appoint him to the post of Office Clerk Grade-I in the pay scale of Rs.1200-2040/- with effect from the date his juniors in the panel or candidates from the subsequent panel were appointed with all consequential financial and service

benefits including seniority. By way of interim relief he has prayed for a direction to the respondents to allow him to join the post of Commercial Clerk/Ticket Collector offered to him pending his appointment as Office Clerk Grade-I. In order dated 23.11.1993 the respondents were directed to allow the petitioner to join the post of Commercial Clerk/Ticket Collector without prejudice to rights of either parties in this application. The respondents have filed counter opposing the prayers of the applicant, and the applicant has filed an affidavit in support of his prayers. For the purpose of considering this petition, it is not necessary to go into too many facts of this case or to refer to all the averments made by the parties in their pleadings which have been taken note of.

2. We have heard Shri D.P.Dhalsamant, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel (Railways) for the respondents. After conclusion of hearing the learned counsel for the petitioner wanted several adjournments to file Employment Notice No.5 of 1989. But on 25.9.2000 it was submitted by him that he is not in a position to file the Employment Notice.

SJm 3. The applicant's case is that in pursuance of Employment Notice of May 1989 issued by Chairman, Railway Recruitment Board, Calcutta (respondent no.2) he applied for the post of Office Clerk Grade-I in the pay scale of Rs.1200-2040/- . According to him, he came out successful in the selection and his name was

recommended to General Manager, S.E.Railway for appointment to the post of Office Clerk Grade-I and the applicant was intimated of the fact in letter dated 15.5.1990 of the Railway Recruitment Board (Annexure-1). The Railway Recruitment Board, Calcutta (respondent no.2) again issued advertisement calling for applications for filling up the post of Office Clerk Grade-I in Employment Notice No.7 of 1990. The list of successful candidates is at Annexure-2. The applicant has stated that the successful candidates have been appointed as Office Clerk Grade-I. While the applicant was waiting for order of his appointment, Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta (respondent no.3) offered him appointment in the alternative category of Assistant Station Master in the scale of Rs.1200-2040/- subject to the applicant being found fit in psychological test and medical test as there was scope for recruitment of Senior Clerk. This letter dated 3.2.1991 is at Annexure-3. Again after two years in letter dated 21.4.1993 (annexure-4) he was asked to indicate his willingness to be appointed as Assistant Station Master subject to his clearing the psychological test and medical test. The applicant appeared at psychological test on 23.8.1993. In letter dated 7.9.1993 provisional appointment letter as Commercial Clerk/Ticket Collector in the lower scale of Rs.950-1500/- was offered to him. In this letter at Annexure-5 it has been mentioned that the applicant failed in psychological test held on 23.8.1993. This letter dated 7.9.1993 was received by the applicant on 21.9.1993 even though in this letter he was asked to

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give his acceptance by 20.9.1993. The petitioner applied for extension of time to give his acceptance, but no intimation was received by him. That is why he has come up in this petition with the prayers referred to earlier.

4. Respondents have pointed out that in Employment Notice No.7 of 1990, copy of which has been enclosed at Annexure-R/1, Railway Recruitment Board had invited applications for different vacancies in Eastern Railway and this has been clearly mentioned in the Employment Notice. As such on the basis of his clearing the examination in response to Employment Notice No.7 of 1990 the applicant cannot claim appointment in S.E.Railway. The respondents have admitted that the applicant was empanelled by Railway Recruitment Board for the post of Office Clerk Grade-I in the pay scale of Rs.1200-2040/- along with 197 other candidates. But due to reduced requirement of Office Clerks Grade-I all the empanelled candidates could not be accommodated as Senior Clerk and therefore they were asked to give option for accepting the post of Assistant Station Master in the pay scale of Rs.1200-2040/- subject to their passing psychological test and medical test. The applicant gave his willingness on 20.5.1993 but did not come out successful in the psychological test held on 23.8.1993 at Garden Reach. Accordingly, he could not be selected for the post of Assistant Station Master. The respondents have stated that as per decision of the Chief Personnel Officer, candidates who could not come out successful in the psychological test ^{or} were declared unfit in the medical test for the post of Assistant Station Master, were offered alternative appointment as Commercial

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Clerk/Ticket Collector in the pay scale of Rs.975-1540/- Rs.950-1500/- subject to their clearing the medical examination. Accordingly, the applicant accepted the job of Commercial Clerk, cleared the medical examination and has been sent for training. The respondents have stated that on completion of training, the applicant will be posted against a post of Commercial Clerk in any Division in S.E.Railway. They have also stated that the interim order of the Tribunal has been complied with. About reduced requirement it has been mentioned that on account of abolition of Steam Locoshed and subsequent electrification, the requirement of staff was reduced and that is why the applicant could not be offered the post of Office Clerk Grade-I.

5. The first point made by the learned counsel for the petitioner is that the applicant came out successful in the examination held in response to Employment Notice No.5 of 1989 and his name was recommended to General Manager, S.E.Railway for appointment and he was informed of the fact in letter dated 15.5.1990 at Annexure-1. The learned counsel for the petitioner had taken time to produce Employment Notice of May 1989 for the purpose of showing that the Employment Notice was for filling up vacancies in S.E.Railway, but this Employment Notice has not been produced. According to the applicant himself, the next Employment Notice No.7 of 1990 was issued for the post of Office Clerk Grade-I. The respondents have rightly pointed out that this Employment Notice clearly speaks of vacancies in Eastern Railway and not in S.E.Railway. Moreover even if it is taken for the sake of argument that earlier Employment

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Notice No.5 of 1989 was for S.E.Railway, in support of which the applicant has filed no document, the settled position of law is that merely by becoming successful in the selection, a candidate has no right to get appointed in the absence of vacancies. The applicant has not averred that out of the panel drawn up in pursuance of selection in response to Employment Notice No.5 of 1989, persons who were below him in the panel were offered appointment as Office Clerk Grade-I. Therefore, he cannot claim that in pursuance of the letter at Annexure-1 he should be given appointment as Office Clerk Grade-I. The subsequent examination in response to Employment Notice No.7 of 1990 is for vacancies in Eastern Railway and the applicant cannot claim a post in S.E.Railway because of vacancies notified in Eastern Railway. The applicant has not stated that in response to Employment Notice No.7 of 1990 he took the examination and became successful and was empanelled. In the absence of vacancies in the post of Office Clerk Grade-I or Senior Clerk in the pay scale of Rs.1200-2040/-, the respondents had offered the applicant the post of Assistant Station Master in the same scale of Rs.1200-2040/- subject to his clearing psychological test and medical test. As the applicant failed in psychological test he cannot claim that he should be appointed as Assistant Station Master in the higher scale. This is also not his prayer in the O.A. Subsequently he has been offered the post of Commercial Clerk/Ticket Collector. He has accepted the same, cleared the medical examination, and has been sent for training. The respondents have stated in their counter filed in March 1994 that on

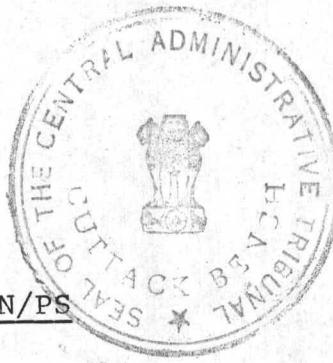
completion of training he will be appointed as Commercial Clerk/Ticket Collector. The applicant has not stated whether in the meantime he has joined the post even though he has filed an affidavit in July 2000. In this affidavit the applicant has mentioned that two Senior Clerks have joined in Kharagpur and Chakradharpur Divisions in 1992 and some other Senior Clerks have joined Khurda Road Division, Bilaspur Division and Sambalpur Division on transfer from other Divisions. From the affidavit it is not clear whether these persons, whose names have been mentioned in the affidavit, have been appointed as Senior Clerks on the basis of examination conducted in pursuance of Employment Notice No.5 of 1989 and therefore, this affidavit does not go to support the case of the applicant. The respondents have specifically stated that because of abolition of Steam Locomotives and electrification, the requirement of Office Clerk Grade-I/ Senior Clerk was reduced and this has not been denied by the applicant by filing any rejoinder. We also note that the applicant has admittedly accepted the post of Commercial Clerk/Ticket Collector in the meantime.

6. In consideration of all the above, we hold that the applicant is not entitled to the reliefs claimed by him in the O.A. which is accordingly rejected.

No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

November 7, 2000/AN/PS



Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
11.11.2000