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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 125 OF 1994.

Cuttack, this the 23rd day of May, 2000.

JAGABANDHU MOHAPATRA & ORS.

....

APPLICANTS.

VERSUS.

UNION OF INDIA & 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

23.5.2000

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C O R A M :

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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1. JAGABANDHU MOHAPATRA,
Aged about 31 years,
Son of Krushna Chandra Mohapatra,

2. Bijaya Kumar Sahoo,
Aged about 33 years,
Son of Niranjan Sahoo,

Both are at present working as Junior Clerk,
Office of the Divisional Commercial Manager
(Claims), South Eastern Railway, Bhubaneswar,
Dist: Khurda.

3. Kunja Behari Rath,
Aged about 32 years,
Son of Kulamani Rath,
at present working as Jr. Clerk,
Office of the Senior Divisional Personnel
Officer, South Eastern Railway, Khurda Road,
Dist: Puri.

.... APPLICANT.

By legal practitioner: M/s. G. A. R. Dora, V. Narasingh, J. Lenka,
Advocates.

- VERSUS -

J. M.

1. Union of India represented through
the General Manager, S. E. Railway,
Garden Reach, Calcutta-43.
2. Chief Personnel Officer,
S. E. Railway, Garden Reach,
Calcutta-43.
3. Senior Divisional Personnel Officer,
S. E. Railway, Chakradharpur,
Dist. Singhbhum (Bihar).
4. Divisional Railway Manager,
S. E. Railway, Khurda Road,
At/Po: Jatni, Dist. Khurda.

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5. Senior Divisional Personnel Officer, S. E. Railway, Khurda Road, At/Po; Jatni, Dist; Khurda.
6. Senior Divisional Commercial Manager, S. E. Railway, Khurda Road, At/Po; Jatni, Dist; Khurda.
7. Akrura Pradhan,
Senior Clerk,
at present working in the Office of the
Divisional Commercial Manager(Claims),
S. E. Railway, At/Po; Bhubaneswar, Dist; Khurda.

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RESPONDENTS.

BY legal practitioner: M/s. B. Pal, O. N. Ghosh, Senior counsel (Rlys.).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for a direction to the Respondents to promote them to the post of Sr. Clerk and to fix their seniority in the rank of Sr. Clerk from 05-12-1989 alongwith all consequential benefits.

S. Som

2. Case of the applicants is that applicants 1 and 2 are working as Junior Clerk under the Divisional Commercial Manager(Claims), S. E. Railway, Bhubaneswar, and applicant No. 3 is working as Junior Clerk under the Senior Divisional Personnel Officer, S. E. Railway, Khurda Road. Initially they were appointed at Chakradharpur Division in the year 1983. Respondents issued a circular dated 17-2-1986 (Annexure-3) for filling up of the 13-1/3 percentage of vacancies in the rank of Senior Clerk from amongst the graduate clerks already serving in the lower grades of Jr. Clerk through a competitive examination allowing them the age relaxation. Applicants applied for sitting at the examination but

they were not informed further about their applications. In the meantime, they were transferred to Khurda Road Division where they came to know that Respondents have promoted one Akrura Pradhan, Res. No. 7, who is junior to them to the post of Senior Clerk on 25.1.1990 against the 13-1/3% graduate quota. Respondent No. 7 is junior to the applicants as he has joined in that post of Jr. Clerk on 12.8.1988 after the date of joining of applicants i.e. on 1.7.1988 and 21.6.1988. On enquiry, they learnt that their names had been sent to the Office of the Res. No. 2 by the Senior Divisional Personnel Officer, Chakradharpur Division but even then they were not called for the examination and therefore, they were not considered for promotion. They filed a representation at Annexure-5. The Divisional Railway Manager sent the representation to the Chief Personnel Officer, SE Railway, Garden Reach, Calcutta with copy to the Chairman, Railway Recruitment Board. In response the Chairman, Railway Recr. Board informed (Annexure-7) that names of applicants were not forwarded to the Railway Board. Applicants sent a further representation at Annexure-8 but without any response and in the context of the above facts, applicants have come up in this Original Application with the prayers referred to earlier.

S.Jam.

3. Respondents, in their counter have stated that the Chief Personnel Officer, issued circular dated 11.8.1988 at Annexure-R/1 calling for applications from graduate Jr. Clerks for filling up of the 13-1/3 per centage of vacancies in the promotional quota in the rank of Sr. Clerks. It is stated that the eligibility of the application was in respect of Junior Clerks who were appointed in the Railways

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between the period from 1-4-1985 to 31-3-1988 only. It is further stated that the applications of the three applicants were received from the Senior Divisional Personnel Officer, Chakradharpur in letter dated 5.4.1989 (Annexure-R/2). On scrutiny it was found that the three applicants having been appointed after 31.3.1988 are not eligible for selection. The other eligible candidates were called for the selection test. As regards, Aknura Pradhan, Res. No. 7, Departmental Respondents have stated that Res. No. 7 was appointed in the SE Railway, Khurda Road as Jr. Clerk on 12.8.1988. He also applied for the post of Sr. Clerk under the 13-1/3% quota. Res. No. 5 forwarded the name of 17 serving graduate Jr. Clerks in his letter at Annexure-R/3 and R/4. Out of 17 candidates, only 14 were eligible and three others not being eligible were rejected. While typing out, the names of candidates in the enclosure to Annexure-R/3 (which has not been enclosed), the date of appointment of Res. No. 7 was wrongly typed out as 12.8.1985 instead of the correct date 12.8.1988 and therefore, it was wrongly held that as Res. No. 7 was appointed as Jr. Clerk on 12.8.1985 he was eligible. Accordingly, Res. No. 7 appeared in the test and was finally selected. The result of the test is at Annexure-6 in which name of Res. No. 7 was wrongly included. Because of this, Res. No. 7 was promoted to the rank of Sr. Clerk. This error was not brought to the notice of the competent authority by anybody nor can it be detected by the official machinery. Only after receipt of a copy of this OA, the mistake could be detected. Respondents have stated that further steps will be taken after disposal of this case. It is further stated that the applicants have come up in this petition five years after the promotion of Res. No. 7 and therefore, their prayer

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is not tenable. It is also stated that one error made in respect of Respondent No. 7 would not justify committing the same error in respect of the applicants. On the above grounds, Respondents have opposed the prayers of applicants.

4. In their rejoinder, applicants have stated that in the letter at Annexure-R/1, CPO has asked for applications to fillup the vacancies of Sr. Clerks which have occurred between the period 1.4.1985 to 31.3.1988. This letter does not show that graduate Junior Clerks who are in service by 31.3.88 should be eligible for consideration. It is further stated that if Annexure-R/1 is interpreted to meant that only those graduate jr. Clerks who had joined service between 1.4.1985 to 31.3.1988 are entitled to take the examination then such interpretation will be violative of the Railway Board's circular at Annexure-A/3 which is a statutory order. As regards Res. No. 7 it has been mentioned in the rejoinder that even though Departmental Respondents have stated that he was allowed to take the examination and was made Sr. Clerk on being successful because of a typographical error about his date of joining but Respondent No. 7 has not yet been reverted and he has been further promoted to the post of Head Clerk. They have further stated that one Nityananda Parida who joined as Jr. Clerk on 12.8.1988 was also allowed to participate in the examination. Applicants have stated that applicants 1 and 2 have already been promoted as Sr. Clerk and applicant No. 3 has been declared suitable. On the above grounds, applicants have reiterated their prayers in the original application.

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5. Railways have filed a reply to the rejoinder, in which they have stated that in the order at Annexure-R/1 the eligibility criteria other than educational qualification was not explicit but it is implied that only graduate Jr. Clerks who have been appointed between 1.4.1985 to 31.3.1988 would be eligible to sit in the examination. They have stated that even granting that the vacancies from 1.4.1985 to 31.3.1988 are to be filled up, a person who had not joined service by 31.3.1988 obviously would not be eligible to be considered. As regards Shri N.N. Parida it has been stated that although he joined as Jr. Clerk on 12.3.1988 his application was wrongly sent to the Railway Recruitment Board, the mistake was detected only after receipt of the original application but Shri N.N. Parida did not come out successful in the selection test and therefore, no further mistake by giving him promotion to the post of Sr.Clerk. It is further stated that in the meantime all the applicants have been promoted to the post of Sr.Clerk against the 66 2/3% Departmental promotion quota after having been declared suitable for the post.

6. *P.Jmm.* We have heard Mr. G.A.R. Dora, learned counsel for the applicant and Shri B. Pal, learned Senior counsel appearing for the Respondents and have perused the records. Learned Senior counsel has filed certain circulars of the Railway Board which have also been taken note of.

7. The admitted position in this case is that three applicants joined service after 31.3.1988. They applied for sitting at the examination for graduate clerks for promotion to the post of Sr.Clerk against 13-1/3% quota and

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their names were duly forwarded to the Chief Personnel Officer by their higher authorities but the Chief Personnel Officer did not forward their names to the Railway Recruitment Board and therefore, they could not sit at the examination. Respondents in their pleadings have stated that this examination was meant only for those graduate clerks who have joined service between 1.4.1985 to 31.3.1988 and as the three applicants joined service after 31.3.1988, their names were rightly not forwarded to the Railway Recruitment Board. In support of their stand Respondents have enclosed the letter dated 11.8.1988 of the Chief Personnel Officer calling for details of the eligible graduate junior clerks at Annexure-R/1. This is a one sentence which is quoted below:

"With a view to filling up vacancies of Sr. Clerk in grade Rs.1200-2040 (RPS) for the period from 1.4.1985 to 31.3.1988, it is requested to send the particulars of Divisions/Units at an early date in the proforma enclosed herewith".

Proforma has also been enclosed. Col. No. 2 of the proforma mentions the following:

"Number of vacancies of Sr. Clerk in scale Rs.1200-2040/- (R&S) occurred and to be occurred from 1.4.1985 to 31.3.1988".

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Thus, from this letter dated 11.8.1988, and the proforma it does not appear that the eligibility was confined only to those graduate junior clerks who have joined service from 1.4.1985 to 31.3.1988. Respondents have stated that the above eligibility criteria confining the dates to graduate jr. clerks who have been appointed from 1.4.1985 to 31.3.88 has not been explicitly spelt out at Annexure-R/1 but this is implicit. Leamed counsel for the petitioners, has, however, relied on the Railway Board's letter dated 29.8.1986 in which it has been

mentioned that in terms of the Railway Board's letter dated 18.6.1981 and 31.7.1981, 13-1/3% of the vacancies in grade of Senior Clerks in scale Rs.330-560/- are required to be filled from amongst the graduate clerks already serving in the lower grades by a competitive examination after allowing emphasis supplied them the age relaxation already in force. It has been submitted by the learned counsel for the petitioners that Railway Board's circular are statutory in nature and therefore, the provisions in the statutory circular can not be diluted or read down by an executive order of the C.P.O. It is further submitted that in the letter of the C.P.O. there is no mention of this additional eligibility criteria. We have gone through the Railway Board's circular dated 18.6.1981 filed by the learned Senior counsel appearing for the Respondents. Para (ii) of the circular lays down that 13-1/3% of the posts of Sr. clerks in the scale of Rs.330-560/- should be filled up from amongst the graduate clerks already serving in the lower grade after allowing them age relaxation already in force. In this circular there is no mention that only such graduate Jr. Clerks who have joined at certain dates would be eligible. On the contrary it has been mentioned that graduate clerks already serving in the lower grades are eligible. The next circular dated 31.7.1981 referred to in the circular at Annexure-A/3 has also been filed and para 2-ii of this circular deals with regard to filling up of 13-1/3% quota. In this circular also there is no reference to this eligibility criteria. We have already quoted the relevant portion of the circular dated 29.1.1986 which is at Annexure-A/3. From a combined reading of the three circulars it is clear that in the Railway Board's circular the eligibility criteria brought in by the CPO has not been mentioned. Moreover, in the letter dated 11.3.83 (Annexure-B/1)

also this eligibility criteria has not been mentioned. In view of this, it is not possible to hold that this eligibility criteria is implicit in the Circular dated 11.8.1983. Hon'ble Supreme Court in the case of COMMISSIONER OF POLICE, BOMBAY VRS. GORDHANDAS BHANJI - REPORTED IN AIR (39) 1952 SC 16 have observed as follows:

"We are clear that public orders publicly made, in exercise of a statutory authority, can not be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, ; or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

From the above it is clear that executive orders have to be interpreted and understood by the express wordings and not by subsequent explanations which are provided in support of the action of the executive. Moreover as we have already quoted in this case the circulars of the Railway Board do not provide for the eligibility criteria brought in by the CPO. In other hand the circular of the Railway Board speaks of graduate clerks already serving in the lower grade. This would mean that those who are serving in the Railway Board by the time the notice has been issued. Therefore, this contention of the Respondents is held to be without any merit.

8. The above contention of the Respondents is also untenable on another ground. It has been submitted by the Respondents that only graduate clerks who have been appointed between 1.4.1985 to 31.3.1988 would have been eligible for sitting at the examination for which details were called for in the letter at Annexure-R/1. In other words, according to

the Respondents a graduate clerk who has been appointed prior to 1.4.1985 is also not eligible to appear. On the other hand, Railway Board's circular dated 18.6.1981 speaks of giving them age relaxation. In the circular dated 29.1.1986 it has been provided that condition regarding age should be removed in respect of future vacancies to be filled against the quota of 13-1/3%. Obviously a person who has been appointed between 1.4.1985 to 31.3.1988 as Jr. Clerk would not require any age relaxation. In view of this, it can not be said that persons who have been appointed as Graduate Jr. Clerks prior to 1.4.85 are not eligible. In consideration of the above, we hold that the application of the three applicants are wrongly withheld by the CPO and they were wrongly not allowed to sit at the examination.

9. The next question which arises ^{is} that under the circumstances what relief the applicants are entitled to. Respondents in their reply to the rejoinder have mentioned that three applicants have already become senior clerks under the 66-2/3% quota after being declared suitable for the post of Sr. Clerk. As the applicants have already become Sr. Clerks we direct the Respondents to fix their seniority in the rank of Sr. Clerks taking them to be Sr. Clerk under 13-1/3% quota. Their seniority as Sr. Clerk should be fixed from the date their immediate junior has become sr. Clerk through the examination in which the applicants were ^{not} ^{allowed to appear} and their pay, in the rank of Sr. Clerks shall be notionally fixed accordingly. The applicants however, would not be entitled to arrears for the period of such notional fixation of pay. This exercise should be completed within a period of 120 days from the date of receipt of a copy of this order.

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10. In the result, therefore, the original Application is allowed in terms of the observations and directions given above. There shall be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
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