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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 178 OF 1994
Cuttack, this the 11th day of August, 2000

Aintha Pradhan and others ...

Applicant

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 SOM)
VICE-CHAIRMAN. 2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

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1. Ainth Pradhan, aged about 42 years, son of late Kasi Pradhan, at present working as Senior Clerk, office of the Inspector of Works, South Eastern Railway, Puri.
2. Pira Mohan Pattanaik, aged about 43 years, son of K.C.Pattanaik, at present working as Senior Clerk, office of the Inspector of Works, South Eastern Railway, Khurda Road, District-Khurda.
3. Sankarsan Samantaray, aged about 43 years, son of late Kubera Samantaray, at present working as Senior Clerk, Office of the Inspector of Works, South Eastern Railway, Khurda Road, Khurda.
4. Venkat Rao Behera, aged about 43 years, son of late Appalaswamy, at present working as Senior Clerk, office of the A.E.N., South Eastern Railway, Cuttack.
5. Sk.A.Hossain, aged about 49 years, son of Sk.M.D.Hossain, at present working as Senior Clerk under C.P.W.I., J.J.K. R., S.E.Railway, Jajpur, Dist.Jajpur

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Applicants
Advocates for applicants - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo

Vrs.

- JSm.
1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
 2. Divisional Railway Manager (P), South Eastern Railway, Khurda Road, Khurda.
 3. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, Khurda... Respondents

Advocates for respondents-M/s D.N.Misra
S.K.Panda

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application, the five petitioners
have prayed for quashing the order dated 22.3.1994

(Annexure-4) calling for names of persons coming within the zone of consideration for appearing at a written examination in connection with suitability test for promotion to the post of Head Clerk. The second prayer is for a direction to the respondents to hold a written examination afresh within a stipulated period.

2. The case of the applicants is that they had been working as Senior Clerks and in the seniority list published at Annexure-1 they have been assigned different positions ranging between 26 and 33 for applicants 1 to 4. Applicant no. 5 who joined as petitioner later on has been shown against serial no. 25. They filed representations for correctly fixing their seniority and in consideration of the representations their seniority was fixed in the seniority list at Annexure-3 in which their names have been shown in positions ranging between 20 and 28. The applicants' grievance is that in the notice at Annexure-4 names of their juniors have been called for appearing at the suitability test for which written test has been scheduled to be held on 9.4.1994 for promotion to the post of Head Clerk. In the context of the above, they have come up with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayers of the applicants stating that the applicants were Senior Clerks working on regular measure with effect from 21.2.1989 and accordingly the seniority list in the rank of Senior Clerk was prepared basing on their original seniority as Junior Clerk. Some graduate Senior Clerks recruited directly against 20% direct recruitment quota and some graduate Junior Clerks promoted as Senior Clerks against 13-1/3% serving graduates quota were recruited/promoted in the years 1984 and 1987 were

rightly shown senior to the applicants. These persons were recruited/promoted as Senior Clerks prior to regularisation of the applicants as Senior Clerks. The respondents have pointed out that the applicants along with many others were officiating on ad hoc basis as Senior Clerks till 21.2.1989 because regular promotions could not be processed due to pendency of cases. On finalisation of the same, in accordance with the guidelines issued by Chief Personnel Officer in his letter dated 1.12.1987 the applicants cleared the suitability test held on 11.12.1988 and were promoted to the post of Senior Clerk on regular measure from 21.2.1989. The respondents have stated that the applicants cannot claim seniority over the other group on the basis of their ad hoc working in the post of Senior Clerk. They have also stated that on a representation received from them claiming seniority over the other group as mentioned above, the seniority list dated 20.7.1994 was erroneously revised and published in order dated 7.1.1994. Both the seniority lists are provisional. After considering the representations from both sides the departmental authorities treated the earlier seniority list as valid and is in accordance with rules. In accordance with this seniority list persons were called to appear at the suitability test in the notice at Annexure-4. These persons are senior to the applicants and on that ground they have opposed the prayers of the applicants.

4. We have heard Shri A.Deo, the learned counsel for the petitioners and Shri D.N.Mishra, the learned Standing Counsel(Railways) for the respondents and have also perused the records.

5. The fact that the applicants were regularised as Senior Clerks with effect from 21.2.1989 after clearing the suitability test on 11.12.1988, as averred by the respondents, has not been denied by the applicants by filing any rejoinder. The only ground urged by the learned counsel for the petitioners is that as the applicants were working on ad hoc basis and later on they were regularised with effect from 21.2.1989 their period of ad hoc service should count towards seniority as laid down by the Hon'ble Supreme Court in the case of Direct Recruitment, Class II Engineering Association v. State of Maharashtra, (1990) 13 ATC 348. The respondents have pointed out that the other group came in under two different quotas. First is 20% quota for direct recruitment and second is 13-1/3% quota for serving graduate Junior Clerks. As those Senior Clerks were appointed under two different quotas and from 1984 and 1987 the applicants cannot claim seniority over them inasmuch as when the applicants have cleared the suitability test only in 1988. The respondents have pointed out that because of delay in regular recruitment/promotion, in order to manage the work, some of these applicants along with many others were allowed to work as Senior Clerks on ad hoc basis. As they had not cleared the suitability test, they cannot claim that their ad hoc period of service should count towards seniority. The fact that the provisional seniority list was wrongly revised would not result in making them senior to the Senior Clerks recruited in 1984 and 1987. In any case this seniority list was also provisional and after considering the representations received from the affected parties, the Railway administration held that the earlier seniority list

dated 20.7.1993 is valid. We find no illegality in the action of the departmental authorities. As in Annexure-4 the departmental authorities have called for names for appearing at the suitability test basing on the valid seniority list, the applicants can have no cause of grievance.

6. In view of the above, we hold that the applicants are not entitled to the reliefs claimed by them. The Original Application is accordingly rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *8/2000*

August 11, 2000/AN-PS