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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 42 OF 1994.
Cuttack, this the 23rd day of May, 2000.

P.JAGADESWARA RAO & ORS.

....

APPLICANTS.

VERSUS

UNION OF INDIA & ORS.

....

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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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 42 OF 1994.

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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 (JUDICIAL).

....

1. P. JAGADESWARA RAO,
S/o. late P. Vallabha Rao,
Jr. Clerk, Office of the
Divisional Engineer,
Mill Wright Work Shop
S. E. Railway, Cuttack,
At/Po/Dist: Cuttack.
2. K. MURALI MOHANA RAO,
S/o. late K. Krishna Murty,
Jr. Clerk Office of the
Sr. Divisional Engineer,
S. E. Railway, Khurda Road,
PO: Jatni, Dist. Khurda.
3. B. APPLA KONDA,
S/o. late B. Ramayya,
Jr. Clerk Office of the
Inspector of Works,
S. E. Railway, Palasa (RS),
Dist: Srikakulam (AP)
4. J. DHARMA RAO,
S/o. Late J. Ramulu,
Jr. Clerk Office of the
Sr. Divisional Engineer,
S. E. Railway, Khurda Road,
PO: Jatni, Dist: Khurda.
5. K. VENKATA RAO,
S/o. late K. Viswanath Rao,
Jr. Clerk, Office of the
Sr. Divisional Engineer,
S. E. Railway, Khurda Road,
PO: Jatni, Dist: Khurda.

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APPLICANTS.

By legal practitioner: M/s. G. A. RDORA,
V. NARASINGH,
Advocates.

- VERSUS -

1. Union of India through the General Manager,
S. E. Railway, Garden Reach, Calcutta-43.
2. Divisional Railway Manager,
S. E. Railway, Khurda Road,
PO: Jatni, Dist: Khurda.
3. Bhagaban Mohapatra,
S/o. Radhakrushna Mohapatra,
at present Junior Clerk in the
Office of the Chargeman,
Divisional Engineering Work Shop,
South Eastern Railway, Cuttack.
4. Khageswar Behari, Sr. Clerk,
In the Office of the P.W.I.,
S. E. Railway, Dhenkanal;
5. Bhagaban Behera,
S/o. Durga Charan Behera,
Jr. Clerk in the Office of the
PWI, Cuttack.
6. Bhawani Shankar Naik,
S/o. Bhaba Naik,
Jr. Clerk in the Office of the
Divisional Store Clerk, Cuttack
SE Railway.

... .. RESPONDENTS.

By legal practitioner; M/s. B. Pal,
O. N. Ghosh,
Sr. Counsel (Railways).

M/s. A. K. Rao,
M. K. Mohanty,
M. Sampat,
S. K. Rath,
Advocates.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application under section
19 of the Administrative Tribunals Act, 1985, the 5(five)
applicants have prayed for a direction to the Respondents

to reckon the applicants' seniority as Jr. Clerks from the dates of their promotion. The second prayer is for a direction to the Respondents to promote the applicants as Sr. Clerks from the dates their juniors were promoted with consequential benefits and seniority.

2. Applicants' case is that they are confirmed Class-IV employees as Gangmen and Khalasis, when they were called to appear the written test for promotion to Jr. Clerks, as per letter dated 28.9.1980 (Annexure-A/1). They passed the test and were promoted to the post of Jr. Clerk which post they joined on 24-10-1980, 23.1.1981, 24.10.1980, 24.10.1980 and 24.10.1980. These promotions were styled as 'Ad-hoc'. Applicants have stated that this was wrong because they were promoted after they passed the test. Applicants were reverted after some years of continuous officiation. They challenged their reversion in OJC NO.1976 of 1983. Under letter dated 13.4.1984, it was ordered that promotions of junior empanelled candidates as office clerk are subject to the result of the writ petition No.1976 of 1983 and 2000 of 1983. Hon'ble High Court in their order dated 10.1.1985, at Annexure-A/3 quashed the order of reversion of Applicants dated 13.4.1984 and directed that they are entitled to service benefits on the footing that the order of reversion is bad and they must be deemed to be continuing in the post of Junior Clerks. Railways went to the Hon'ble Supreme Court against the order of the Hon'ble High Court in SLP No. 7723-24/1985 and the order of Their Lordships of the Hon'ble Supreme Court is at Annexure-A/4. The Hon'ble

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Supreme Court noted the submission of the learned Additional Solicitor General that the petitioners were not reverted for unsatisfactory work. The Hon'ble Supreme Court held that if that is so, the Respondents may seek directions from the Orissa High Court by making application in the High Court of Orissa and with that direction, the Special Leave Petition was disposed of. The Respondents have filed Civil Review No. 27 of 1987 before the Hon'ble High Court of Orissa who in their order dated 4.4.1991 dismissed the Civil Review on the ground that with the enactment of the Administrative Tribunals Act, 1985, the High Court of Orissa ceased to have the jurisdiction of the matter and the Review application has also been filed beyond time. Thereafter, Respondents in their order dated 31.7.1991 (Annexure-A/6) implemented the order of the Hon'ble High Court by cancelling the order of reversion of eleven applicants including the present five applicants in this Original Application. It is stated by the applicants that this order at Annexure-A/6, clearly refers in note-(ii) that as the reversion order has been quashed, these applicants are deemed to have been continuing in their officiating posts of Jr. Clerks and they are entitled to all service benefits. As this order of implementation was issued in July, 1991 applicants' names were not shown in the Jr. Clerks seniority list published in 1988. It is stated that no seniority list of Jr. Clerks was published thereafter. In the Sr. Clerks' seniority list dated 7.1.1994 20 persons promoted as Jr. Clerk long after applicants' promotion have been promoted as Sr. Clerk between the year 1985 to 1989.

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Applicants had filed representation on 17.9.1993, at Annexure-A/7 seeking regularisation and seniority but even though this representation dated 17.9.1993 was filed, prior to publication of seniority list of Junior Clerks dated 7-1-1994, applicants were not promoted to Sr. Clerks and their names were also not included in the seniority list. In the context of the above facts, applicants have come up with the prayers referred to earlier.

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3. Respondents in their counter have stated that applicants are regular Gr.D employees of Civil Engineering Department of Khurda Road Division and they were working on adhoc basis as Jr. Clerks in exigencies of public service. They were ordered to be utilised on adhoc basis as Junior Clerks on the basis of the result of a literacy test. Subsequently, though they applied for sitting in the regular test for promotion to the post of Jr. Clerk from the post of Gr.D in response to the notice at Annexure-R/1 for their regularisation as Jr. Clerks, they did not appear at the test. Consequently, they were reverted to their former substantive posts in order dated 13.4.1984 (Annexure-R/2) for making room for the successful and empanelled candidates. Respondents have mentioned about the applicants alongwith some others approaching the Hon'ble High Court in OJC No. 1976 of 1983, the order of the Hon'ble High Court quashing the order of reversion. Respondents have stated that the Hon'ble High Court quashed the reversion order observing that the petitioners in the OJC were to be continued in their officiating capacity i.e. as adhoc Jr. clerks.

There was no direction in the said judgment regarding their regularisation, seniority etc but the applicants are mainly claiming that they are to be treated as regularised by virtue of the said order of the Hon'ble High Court. Respondents have stated about filing of SLP before the Hon'ble Supreme Court and the Civil Review before the Hon'ble High Court of Orissa. It is further stated that after dismissal of the Review petition, applicants are being continued till date as adhoc Jr. Clerk. For the period, during which they have been reverted, they have been paid their financial dues in compliance with the judgment of the Hon'ble High Court but in the absence of specific direction for regularisation, the matter was referred to the competent authority for a decision and it has been decided to conduct the selection and regularise them as per the existing Rules. Respondents have stated that the Principal Bench, Delhi of the Tribunal in TA No. 844/1986 have held that without passing the selection test, a person does not get a prescriptive right to continue in the higher post even though he had completed 18 months in the higher post. The Tribunal also held in that case that as the applicant appeared in the selection test and failed, his services can not be regularised in the promotional post, but he would be entitled a further opportunity to appear in the selection test. Respondents have stated that in the case of Jetha Nand and others Vrs Union of India and others decided by the Full Bench of the of the Central Administrative Tribunal, Principal Bench, New Delhi and reported in 32(1989) All India Service Law Journal page 657 it has been held that the right to hold the selection/promotional post accrues only to those employees who have undergone a selection test and have been empanelled for the promotion/

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selection post and continue as such for 18 months or more. It is stated that the applicants not having appeared in the selection test held in 1983, 1984 and subsequently have been continued as Jr. Clerk on adhoc basis by virtue of the judgment of the Hon'ble High Court of Orissa but they can not be regularised as per the existing rules and in the absence of any specific direction to that effect by the Hon'ble High Court. Respondents have also stated that the applicants were called to a literacy test in letter at Annexure-R/6. In this letter it was specifically mentioned that this test will not be treated as suitability test for the purpose of regular promotion. It was also mentioned in this letter that in case they are found fit for the post of Jr. Clerk on adhoc basis and posted as officiating Jr. Clerk they should be replaced by the suitable candidates at any time without notice. It is further stated that according to the Departmental Rules, Class-IV staffs are to be promoted to the post of Jr. Clerk, after appearing at a written test and viva-voce. Merely by appearing at a Literacy test, the requirement of rules can not be by-passed. It is also stated that the applicants knowing ^{this} ~~not~~ fully well, did ^{not} appear the selection test held in 1983-84. On the basis of their applications, they were called to appear at the written examination on 18.9.1983 but they did not appear. They were once again called to appear at the supplementary written examination held on 8.10.1983 but on that date also they were absent. Respondents have stated that the seniority list of Jr. Clerks were published in 1983 and as the services of applicants as Jr. Clerk have not been regularised, their names have not been shown in the seniority list of Jr. Clerks. It is stated that action has also been taken

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to conduct selection test for their regularisation in Junior Clerk. The selection was conducted on 4.5.94 and all the applicants have appeared in the selection test. After passing the selection test held on 4.5.94, they were empanelled in the order dated 13.4.1994 at Annexure-A/9. On the above grounds, the Respondents have opposed the prayers of applicants.

4. Applicants in their rejoinder have stated that as the applicants were promoted to the post of Jr. Clerk in 1980 and one of them in January, 1981, after they have passed the test, they are entitled to the seniority of Jr. Clerk from the date of their promotions. It is further stated that as they have passed the test in 1980, they were not required to appear in the test once again in 1983-84. It is stated that in the order at Annexure-6 it has been mentioned that the applicants are entitled to all service benefits and this must include the seniority.

5. We have heard Mr. G. A. RDora, learned counsel for the Applicants and Mr. B. Pal, learned Senior counsel appearing for the Respondents and have also perused the records.

6. Learned counsel for the applicants has relied on the following decisions;

- J. J. Sam.
- a) AIR 1989 SC 278 - DELHI WATER SUPPLY AND SEWAGE DISPOSAL COMMITTEE AND OTHERS VRS. R. K. KASHYAP AND OTHERS;
 - b) AIR 1990 SC 1607 - DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS ASSOCIATION VRS. STATE OF MAHARASHTRA;
 - c) O. A. 145/1991 disposed of on 21-1-1993;
 - d) O. A. 271 of 1989, 383/89, 431/89 decided on 24.12.1991.

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These cases have been perused. It has been submitted by the learned counsel for the applicants that as the applicants have been promoted to the post of Jr. Clerk in 1980-81 after they have passed the test, their promotion must be taken to be regular. Respondents have wrongly styled the promotion as adhoc. Respondents on the other hand have stated that for promotion from group D to Gr. C, according to the Rules, there has to be written and viva-voce test. The literacy test at which the applicants appeared is not the suitability test as envisaged under the Rules. In the notice inviting applications, which is at Annexure-R/6, it was specifically mentioned that this test will not be treated as suitability test for the purpose of regular promotion. It has further been stated that the promotions of the applicants to the post of Junior Clerk in 1980-81 can not be taken as regular promotions and these promotions have been rightly styled as Adhoc. The second ground urged by the learned counsel for the applicants is that Hon'ble High Court of Orissa in their order in OJC No. 1976/83 had quashed the order of reversion of the petitioners from the post of Jr. Clerk and had directed that they are entitled to service benefits on the footing that the order of reversion is bad and they must be deemed to be continuing in the post of Jr. Clerk. In view of this it is stated that their promotion to the post of Jr. Clerk should be treated as regular from the dates they were promoted after acquiring the literacy test. We have considered the above submission of the learned counsel for the Applicants.

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7. Learned counsel for the Applicants has also relied on the decision of the Hon'ble Supreme Court reported in AIR 1989 SC 278 (supra). In that case, Hon'ble Supreme Court have held that when the Adhoc appointments are followed by regularisation such persons should get their service in the adhoc appointment for determining seniority in the absence of any specific rule but if the adhoc appointments are made without considering the seniors, such adhoc service should not be counted. In this case, applicants have not yet been regularised. They have come up for regularisation and therefore, this decision has no application in the facts and circumstances of this case.

8. The decision of the Tribunal in O.A. Nos. 271/89, 388/89, 431/89 decided on 24.12.1991 is about the dispute regarding inter-seniority seniority amongst the Semi-skilled, Highly skilled, Gr. III and Highly Skilled Gr. II employees in the Mancheswar Workshop of South Eastern Railway. Facts of that case are totally different and are not relevant to the present dispute before us. It has only been mentioned in para-22 of the order dated 24.12.1991 that in case of grade promotion for making the employees permanent, those who have passed the relevant trade test, even for adhoc promotion, shall not be called upon to pass the test once again. In this case, applicants appeared only in a literacy test which was distinguished right from the beginning from the suitability test and therefore, this decision has no application to the facts of the present case. The third case relied upon by the learned counsel for the petitioner is O.A. No. 145/91 disposed of 21.1.1993. In this case, the petitioner had prayed for a direction to the Respondents to hold a separate test for the petitioner and if he is

successful, he should be declared senior to his juniors and others regularised in pursuance of the earlier test. In that case, the Tribunal took note of the order dated 20.11.1991 of the Divisional Railway Manager empanelling him for promotion after he was successful in the viva-voce test. The Tribunal held that the petitioner in that case had been successful both in written and viva-voce test and accordingly direction was issued to fix the seniority of the petitioner correctly. This case has also no application to the facts of the present case.

9. The second point urged by the learned counsel for the petitioners is taken up first. It has been submitted that as the Hon'ble High Court in their order dated 10.1.85 in OJC No.1976/83 had quashed the reversion order and had directed that they are entitled to service benefits on the footing that the reversion is bad, the appointment of the petitioners as J_r. Clerks must be taken to have been regular from the date of their promotion. On a careful reading of this order which is at Annexure-A/3, it is seen from the first para that Their Lordships of the Hon'ble High Court had noted that the grievance of the petitioners was that they have been reverted without following the procedure prescribed under the rules. It does not appear that in this case the petitioners prayed for a declaration that their promotion had been done on regular basis. In view of this, the order of the Hon'ble High Court must be understood to mean that the reversion order has been quashed and as a result of the quashing of the reversion order they would be entitled to the service benefits during that period of illegal reversion. Respondents

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have stated that after the SLP was disposed of and Civil Review before the Hon'ble High Court was dismissed they had continued the petitioners in the post of Jr. Clerk and have also paid them their salary as Jr. Clerk during the period of enforced reversion. Respondents have stated that as the Hon'ble High Court had not directed regularisation of the petitioners as Jr. Clerk from the date of their initial promotion, the petitioner can not claim that by virtue of the order of the Hon'ble High Court, they are entitled to promotion. AS we have already noted the Hon'ble High Court did not order that regularisation of the petitioners and therefore, this contention of the learned counsel for the petitioners is held to be without any merit and is rejected.

10. The first point urged by learned counsel for the petitioners is that they were promoted after they have passed the literacy test and therefore, their initial appointment must be treated as regular. In support of his contention learned counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers Association (supra). In that case, in para 44, the Hon'ble Supreme Court have held that if an incumbent is appointed to a post in accordance with rules his seniority to be counted from the date of his appointment and not from the date of his confirmation. As a corollary to the above rule, they have also mentioned that where the initial appointment is only adhoc and not in accordance with rules and made as stop gap arrangement officiation to such post can not be taken into account for considering seniority. Secondly it has been held that if the initial appointment is not made following the procedure laid down by the rules but the appointee

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continues to the post uninterrupted till his regularisation in accordance with rules the period of officiating service will be counted. In the present case, Respondents have pointed out that the literacy test is not the suitability test which involves written and viva-voce test. They have also mentioned that in the notice inviting application for literacy test it was specifically mentioned that this literacy test can not be taken as suitability test. It was also mentioned that persons appointed in pursuance of the literacy test will be appointed on adhoc basis and will be liable to be replaced by the suitable candidates at any time without notice. In view of this, their initial appointment can not be taken to have been made in accordance with Rules. Moreover, appointment being rightly styled as adhoc, following the first principle laid down in Maharashtra Engineering Service (supra) case, this period of service can not therefore, be counted towards their seniority.

11. As regards regularisation, Respondents have pointed out that subsequently, applicants were well aware of the fact that literacy test is not a suitability test and therefore, in response to the circular dated 2.2.83, at Annexure-A/1, they had applied for sitting at a suitability test but they did not actually appear but went to the Hon'ble High Court after they were reverted to make room for successful and empanelled candidates. Respondents have further stated that subsequently the selection test was conducted for these applicants on 4.5.94. All the applicants came out successful in the selection test and were empanelled. They were regularised in order dated 13.5.1994 at Annexure-A/9. From this it appears that applicants themselves have appeared at a subsequent suitability test and have got empanelled and have

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been regularised in order at Annexure-A/9. In view of this, they can not claim that they should be regularised from the date of their initial promotion in 1980-81. This prayer is also held to be without any merit and is rejected.

12. In the result, we find no merit in this Original Application and the same is dismissed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.

23.5.2000