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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 693 OF 1994.
Cuttack, this the 8th day of September, 2000.

POLAIK JAGAN NAIKULU AND OTHERS. APPLICANTS.

VERSUS

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

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ORIGINAL APPLICATION NO. 693 OF 1994.
Cuttack, this the 8th day of September, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE, CHAIRMAN
&
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

..

1. Polaik Jagan Naikulu,
S/o. Late P. Chinnadu,
2. Dhaulas Minz,
S/o. Late Thedare Minz;
3. Moti Ram,
4. Bir Singh Thomsoy,

All the presently working as Goods
Driver (Diesel), At: Bandhamunda Loco Shed,
Bandhamunda Railway Station,
At/PO: Bandhamunda, Dist. Sundergarh. ... APPLICANTS.

By legal practitioner: M/s. B. Mohanty, A. Das, M. Mohapatra,
B. S. Das, C. R. Lenka, J. Kakavia,
Advocates.

- VERSUS -

J. S. M.

1. Union of India represented through
General Manager, SE Railway,
Garden Reach, Calcutta.
2. Senior Divisional Personnel Officer,
Chakradharpur Division, SE Railway,
At/PO: Chakradharpur, Dist. Singhbhum (Bihar).
3. Divisional Mechanical Engineer,
Chakradharpur Division, SE Railway,
At/PO: Chakradharpur, Dist. Singhbhum (Bihar).
4. Divisional Railway Manager,
Chakradharpur Division,
SE Railway,
At/PO: Chakradharpur, Dist. Singhbhum,
Bihar
5. Loco Foreman, Bandhamunda Loco Shed,
Bandhamunda Railway Station,
At/PO: Bandhamunda, Dist. Sundergarh. ... RESPONDENTS.

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

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ORDER

MR. SONNATH SOM, VICE-CHAIRMAN:

In this Original Application, four petitioners have prayed that the notice dated 16.10.1994, at Annexure-A/3 should be quashed alongwith the entire selection process undertaken on 22.11.1994 to 24.11.1994. The second prayer is for a direction to the Respondents to initiate the selection process afresh, after giving due opportunity to Senior Goods Drivers for being considered for promotion to the post of Passanger Driver.

2. Case of the applicants is that they were promoted as Goods Driver in the scale of pay of Rs.1350-2200/- on an officiating basis from 20.7.1989 in the order at Annexure-1. Because of their excellent work, they were regularised in order dated 24.11.1993 at Annexure-2. Applicants have stated that the order of their regularisation was issued on 24.11.1993 after they had passed the necessary tests. The next promotional post from the post of Goods driver is passanger Driver 'A' (Passanger). As per Rules, a person holding the post of Goods Driver Diesel/Goods Driver, is promoted as Driver 'A' (Passanger) only on the basis of seniority as the same is a nonselection post. In the notice dated 16.4.1994, at Annexure-A/3, certain Goods drivers were called to appear a selection test to be held from 22nd to 24th of November, 1994 for selection to the post of Driver 'A' (Passanger). Applicants' grievance is that many of their juniirs in the post of Goods Driver, were called for a selection test but they were not called even though they were senior to those persons in the rank of goods Driver. Applicants have mentioned the date of appointment of eleven of those persons who have been called to the selection test in the order at Annexure-A/3 and their dates of appointment

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as Jr. Goods Driver and these dates are in 1991 and 1992 which is after the officiating promotion of the applicants on 20.7.89. As the applicants' case has been ignored, even though they are senior, petitioners have become up in this Original Application with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayers of applicants. They have interalia denied the fact that the promotion from the post of Goods Driver to Driver A Passanger is on the basis of seniority and it is not a non-selection post. They have on the other hand pointed out that the post of Passanger Driver is to be filled up on the basis of selection after going through a test. They have pointed out that the applicants were appointed as Goods Driver on adhoc and officiating basis on 20.7.1989 even before they had cleared the test for Goods Driver and they were regularised only on 24.11.1993 and the eleven persons mentioned by the applicants who have been appointed as Goods Driver in 1991 and 1992 are senior to the applicants and therefore, they have rightly been called to the selection test in preference to the applicants. On the above grounds the Respondents have opposed the prayers of applicants.

4. We have heard learned counsel for the applicant and Mr. B. Pal, learned Senior Counsel appearing for the Respondents and have also perused the records.

5. From the above pleadings of the parties, it is clear that the grievance of applicants is that they have not been called to the selection test but their juniors have been called. Applicants have stated that they are senior to the eleven persons mentioned in the application because of their officiating promotion from 20.7.1989. This order of officiating promotion is at Annexure-A to the OA. In the order itself it is

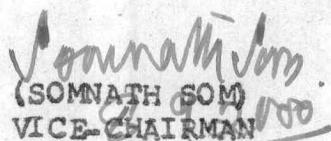
clearly mentioned that these officiating arrangement are adhoc and have been ordered temporarily and will not confer on these persons any right or claim of seniority or for continuation in future. Respondents have pointed out that because of the operational reasons, they were given adhoc officiating promotion with the clear intimation in writing to them that his adhoc promotion will not confer on them any claim for seniority. In view of this, the applicants can not claim that their seniority in the rank of Goods Driver should date back to 20.7.1989. Respondents have pointed out that the applicants' case for regular appointment to the post of Goods Driver was cleared by the DPC on 13.10.1993 and they were regularly appointed to the post of Goods Driver in order dated 24.11.1993. Applicants themselves have mentioned that prior to this order dated 24.11.1993, they had cleared the necessary tests. From this it is clear that the time of their adhoc promotion on 20.7.1989, they had not cleared the necessary test. Law is well settled that the period of adhoc officiation in a post followed by regularisation will count towards seniority only when such adhoc appointment made in accordance with rules. This presupposes that before such adhoc appointment applicants should have cleared the necessary test. As they have not cleared the necessary test by the time they were given officiating promotion they can not claim their adhoc period of service towards seniority. In view of this their seniority has been rightly counted as Goods Driver from 24.11.1993 and therefore, the eleven persons who have been called to the selection test in the order at Annexure-3 who have been appointed in 1991 and 1992 regularly as Goods Driver are Seniors to the applicants. In view of this, applicants can not make grievance that their juniors

have been called to the test while they, seniors have been ignored. In view of this, we hold that there is no case for quashing the notice at Annexure-A/3.

6. Second prayer is to quash the entire selection process. The only ground in support of quashing the selection process is that the seniors have been ignored while juniors have been called to appear at the test. As we have rejected this submission of the petitioners, we hold that there is no case for quashing the selection process as claimed by the applicants. This prayer is also accordingly rejected.

7. In the result, therefore, the OA is held to be without any merit and is rejected but without any order as to costs. Stay order stands vacated.


(G. NARASIMHAM)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.