

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 729 OF 1995.

Cuttack, this the 14th of November, 1999.

Girish Prasad Patnaik.

....

Applicant.

-versus-

Union of India & Others.

....

Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters 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
11.11.99

6

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 729 OF 1995.

Cuttack, this the 11th of November, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

GIRISH PRASAD PATNAIK,
S/o. P. Kumarswamy Patnaik,
presently working as Jr. Clerk (Adhoc),
Office of the P.W.I, S.E. Railway,
Rayagada, Po/Dist. Rayagada.

....

APPLICANT.

By legal practitioner: M/s. H.M. Dhal, P.K. Patnaik, B. Mohanty,
Advocates.

-Vrs.-

1. Union of India represented through its
General Manager, SE Railway, Garden Reach,
Calcutta-43.
2. Divisional Personnel Officer,
SE Railway, Waltier,.
3. Divisional Railway Manager,
SE Railway, Waltier.

....

RESPONDENTS.

By legal practitioner : Mr. Ashok Mohanty, Standing Counsel (Rlys).

.....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

S. Som

In this Original Application under section 19
of the Administrative Tribunals Act, 1985, applicant has
prayed for a direction to Respondents to regularise the
services of the applicant in the post of Jr. Clerk. There is
also a prayer for declaring that the action of the Respondents
in not regularising the service of applicant on the basis
of written test held on 24.7.1987 and viva-voce held on
8.3.1988 is illegal.

7

7

//2//

2. Facts of this case, according to Applicant are that he was appointed as a Tracer on casual basis in the office of the Divisional Engineer (Construction), Jharsuguda on 23.3.1964. After working for six years, he was retrenched from service on 19.5.1970. He was again appointed after due selection as Literary Gangman on 2.7.1973 under the Respondents and was confirmed in the post w.e.f. 2.07.1974. As he is a matriculate, Respondents promoted him to officiate as Junior Clerk against an existing vacancy in order dated 6.9.1984 (Annexure-1). On such promotion, applicant was posted in the Office of the Assistant Engineer, SE Railway, Rayagada. Soon thereafter, he was transferred to the office of the Permanent Way Inspector, Rayagada and has been working there. He is getting the scale of pay prescribed for the post of regular Jr. Clerk as well as periodical annual increments. On 12.3.1985, a written test was conducted for regularisation of the services of Ad-hoc Jr. Clerks. He appeared at the written test and was called to a viva-voce test on 25.3.1985 in letter dated 23.3.1985 (Annexure-2). Though the applicant appeared at the viva-voce test again in letter dated 19.2.1988 (Annexure-3), he was asked to be in readiness to appear at a viva-voce test on the basis of written examination held on 24.10.1987. Applicant has stated that he had passed the viva-voce test and his name was empanelled but in order dated 12.9.1988 only a part panel was published in which his name was not included.

S. Sam.

8

8

//3//

Applicant was under the impression that another panel will be subsequently published since only a part panel had been published vide Annexure-4, but this was not done. While the situation was thus, Respondents have issued another order dated 15.11.1995 (Annexure-5) proposing to hold a viva-voce test for the post of J_r.Clerk against 33 $\frac{1}{3}$ % of Departmental quota. In the list of persons called to this viva-voce test, applicant's name does not appear. In the context of the above facts, applicant has come up in this Original Application with the prayers referred to earlier.

3. Respondents, in their counter, have stated that according to Indian Railway Establishment Manual, 66 $\frac{2}{3}$ % of ^{of Junior clerks.} posts are to be filled up by direct recruitment through ^{^ J.S.M.} the Railway Recruitment Board and rest 33 $\frac{1}{3}$ % of posts are to be filled up by promotion from eligible Gr.D employees through a DPC. As a large number of vacancies are to be filled up by Railway Recruitment Board in the Sr.Clerk grade, these vacancies are manned in the J_r.Clerk grade by promoting Gr.D employees, purely on adhoc basis without the qualifying examination. Respondents have stated that applicant was appointed as a gangman on 2.7.1973 and was promoted to the post of J_r.Clerk in the scale of Rs.950-1500/- purely on adhoc basis for a period of six months. This promotion was given without following the recruitment Rule. It is also stated that the applicant was promoted on adhoc basis against a direct recruitment quota post. Respondents have stated that the applicant had appeared in the written test on 12.3.1985 for filling up of the

9

9

//4//

33 $\frac{1}{3}$ posts
33 $\frac{1}{3}$ % of Departmental quota. Applicant was not called for the viva-voce test on 25.3.1985 because he could not secure the qualifying marks. Respondents have stated that in 1987 it was proposed to form a panel of 17 Jr. Clerks against 33 1/3% of Departmental quota in Civil Engineering Deptt. Written test was conducted on 24.10.1987. Applicant was called for the viva-voce test but he did not qualify in the same. A part panel of 16 jr. Clerks was published on 12.9.1988. Respondents have pointed out that applicant did not qualify for being called in the vivavoce test in the written examination held on 12.3.1985 and in the 2nd viva-voce test which was called on the basis of written test conducted on 24.10.1987, applicant did not qualify in the vivavoce test. Respondents have further stated that the panel out of the examination in 1987 was published on 12.9.1988 and 20.12.1995 at Annexures-R/3 & R/4 against the 33 1/3% of Departmental quota and therefore, question of publishing another panel does not arise. It is further stated that in the year 1993, it is proposed to filled up 11 posts of Jr. Clerks against the Departmental quota but the applicant failed in the examination held in August, 1993. It is further stated that adhoc Jr. Clerks approached the Tribunal in OA No. 549/93 and the Tribunal had stayed the publication of the result. Viva-voce test was held on 4.12.1995 and 5.12.1995 but applicant was not called for the viva-voce test as he did not qualify in the written examination. On the above grounds, Respondents have opposed the prayers of applicant.

J. Som.

10

(10)

//5//

4. Applicant, in his rejoinder has stated that he had obtained 50% marks in the viva voce test and therefore, he should have been empanelled. It is also stated that he has been continuing as Jr. Clerk for the last 14 years and has got only four years more to attain the age of superannuation. In view of this, he has prayed that he should be regularised in the post of Jr. Clerk.

5. We have heard Mr. H. M. Dhal, learned counsel for the applicant and Mr. Ashok Mohanty, learned Senior Standing Counsel appearing for the Respondents and have also perused the records.

6. The position of law is well settled that a person can be regularised only in accordance with the Recruitment Rules. Respondents have pointed out that according to Recruitment Rules, 33 1/3% of posts of Jr. Clerk can be filled up by promotion from amongst the Gr. D employees after they qualify in the written test and viva voce test. In the case of the petitioner he has appeared in the written test in a number of times and in certain occasions he was not qualified for being called to the viva-voce and once he was called to the viva-voce but he did not get the qualifying marks. Applicant's statement that he has got 50% marks in the viva-voce can not be accepted in the context of the averments of the Respondents that he could not qualify in the viva-voce test on that occasion. As the applicant did not qualify in the selection test, his prayer for getting regularised on the basis of written and viva-voce test in 1987 is without any merit and the same is rejected.

J. J. J.

11

11

//6//

At the same time, we note from the averments of the applicant which has been accepted by Respondents in their counter that he has been continuing as Jr. Clerk on adhoc basis for a number of years. The averments of the applicant that he is getting increments in the scale of Rs. 950-1500/- has not been denied by Respondents. In view of this, while rejecting the prayer of the applicant for his regularisation in the post of Jr. Clerk, Respondents are directed that the applicant should not be reverted from the adhoc post of Jr. Clerk unless he is the junior most amongst such Jr. Clerks.

7. In the result, with the observations and directions made above, the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
11.11.79