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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 733 OF 1995  
Cuttack, this the 29th day of August, 2000

B.Ashok Kumar

....

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  
29.8.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 733 OF 1995  
Cuttack, this the 29th day of August, 2000

CORAM:

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

.....  
B.Ashok Kumar, son of Krishna Murty, working as Senior  
Gangman, in the office of P.W.I., Jharsuguda,  
South Eastern Railway,  
At/PO-Jharsuguda, Dist.Sundargarh ... Applicant

Advocate for applicant - Mr.H.P.Rath

Vrs.

1. Union of India, represented by the General Manager,  
South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, South Eastern Railway, Garden  
Reach, Calcutta-43.
3. Divisional Railway Manager, South Eastern Railway,  
At/PO-Chakradharpur, Dist.Chakradharpur, Bihar.
4. Senior Divisional Personnel officer, South Eastern  
Railway, At/PO-Chakradharpur, Dist. Chakradharpur,  
Bihar.

.....

Respondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

*S.Som.*  
In this application the petitioner has  
prayed for quashing the order dated 24.5.1995 (Annexure-7)  
keeping in abeyance his promotion to the post of Junior  
Clerk. The second prayer is for a direction to the  
respondents to allow him to join his promotional post with  
retrospective effect from the date of issue of the order of  
promotion along with consequential service and financial  
benefits.

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2. The case of the applicant is that he was initially appointed as Gangman on casual basis from 28.3.1983 and was conferred with temporary status on 2.12.1988. He cleared the screening sometime around 21.4.1989 and was declared suitable for permanent absorption as per the screening statement at Annexure-1 in which his name appears against serial no.8. Thereafter in order dated 28.4.1989 (Annexure-2) he was posted to Gang No. 83A under P.W.I., Jharsuguda. Initially a panel was published ignoring the name of the applicant on the wrong assumption that he was an entrant of 1988. The applicant represented stating that he entered the service on 28.3.1983 and not in 1988. Ultimately the mistake was rectified and his name was published in the panel list in 1993. Before that the Assistant Engineer in his letter dated 19.9.1990 (Annexure-3) wrote to C.P.W.I., Jharsuguda, that in course of discussion with Senior Divisional Engineer (Co-ordination), Chakradharpur, it was <sup>decided</sup> ~~that~~ no screening list is to be sent to Senior Divisional Personnel Officer, Chakradharpur for empanelment and Assistant Engineers are competent to publish the panel. In view of this the Assistant Engineer in this letter informed the C.P.W.I., Jharsuguda that panel serial no. and serial no. of the screened list in respect of the candidates are to be mentioned in the service sheets. In the advertisement dated 19.4.1993 (Annexure-4) applications were invited from willing candidates of Group-D for selection for promotion to Group-C Ministerial Cadre against departmental quota of 33-1/3% of vacancies. According to the eligibility condition laid down in this letter at Annexure-4 the candidates must have completed not less than three years regular service in

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Class IV category as on 31.3.1993. The applicant appeared at the written examination and viva voce, and was empanelled in the order dated 9.3.1995 (Annexure-5) in which his name appears against serial no.81. Accordingly he was promoted as Temporary Junior Clerk and posted in Senior Divisional Personnel Officer's office, Chakradharpur in order dated 28.3.1995 (Annexure-6). The applicant did not join the post immediately and prayed for change of place of posting to Jharsuguda where three posts of Clerk are lying vacant. The applicant has stated that while his request was pending, in order dated 24.5.1995, his posting on promotion as Junior Clerk against the departmental quota was kept in abeyance till further investigation as he had not completed three years of service which is the minimum eligibility. Being aggrieved with the order he filed representations but without any result and that is why he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayers of the applicant stating that the applicant was screened by Assistant Engineer on 21.4.1989 and the screening list was forwarded by Assistant Engineer, Jharsuguda on 27.4.1989. This screening list has been enclosed by the applicant at Annexure-1 to the OA and has also been enclosed by the respondents at Annexure-R/1 of the counter. The respondents have stated that in the screening list the date of initial appointment of the applicant has been shown as 4.8.1988 and not 28.3.1983 as alleged by the applicant. It is stated that the applicant's posting was made from 29.4.1989 in terms of the Joint Procedure Order which is at Annexure-R/2 which provides that Assistant Engineers are authorised to provisionally appoint the screened suitable candidates subject to their passing

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the medical examination. It is stated that the order of appointment dated 29.4.1989 has been issued by Assistant Engineer before medical examination and therefore the applicant's appointment as Gangman in order dated 28.4.1989 does not indicate that he was permanently absorbed in the regular establishment as Gangman in this order. It is also stated that according to the Railway Board's circular no fresh entrant could be engaged as casual labourer after 1.1.1984 without personal approval of the General Manager, but the applicant has been appointed on 4.8.1988 as a casual labourer. Because of this the applicant and two other similarly situated persons could not be empanelled and out of the eight persons in Annexure-R/1 to the counter and Annexure-1 to the OA, panel was published only in respect of five persons excluding the applicant and two others. The respondents have also stated that the Divisional Railway Manager, Chakradharpur in his order dated 14.7.1989 had indicated that panel should contain only those persons who had acquired temporary status prior to 1.1.1984. Because of this also the applicant's name was excluded from the panel. Subsequently on 8.12.1989 the Assistant Engineer, Jharsuguda, forwarded a list of 29 names of screened casual labourers and in this list the applicant's name finds place against serial no.17. Accordingly his name was published in the panel circulated on 28.12.1993. The respondents have stated that in this panel the date of appointment of the applicant was shown as 28.3.1983. The respondents have denied the claim of the applicant that he was permanently absorbed as Gangman on 28.4.1989. They have stated that no CGEIS subscription was recovered from his salary. They have

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stated that the applicant was regularly appointed only after publication of the panel dated 28.12.1993 and therefore he had not completed three years of regular service as on 31.3.1993 for being eligible to take the examination for promotion to the post of Junior Clerk in 33-1/3% departmental quota. As regards the fact that the applicant did actually take the written examination and viva voce, it has been stated that CPWI, Jharsuguda, while sending his application certified the applicant's regularisation of service from 29.4.1989 and on the basis of that certificate he was allowed to take the examination and his name was included in the panel and shown against serial no.81. Later on a complaint was received by the Additional Divisional Railway Manager that the applicant was empanelled without fulfilling three years regular service criterion. The matter was examined and it was found that the applicant was empanelled only on 28.12.1993 and not on 28.4.1989 and accordingly it was held that he was erroneously allowed to appear at the writtentest and therefore the promotion order has been kept in abeyance. On the above grounds the respondents have opposed the prayer of the applicant.

4. The applicant has filed rejoinder and additional rejoinder in which he has reiterated his prayer stating that after grant of temporary status a casual labourer is entitled to be brought on permanent establishment after he comes through a process of screening. The applicant was cleared in the screening held in 1989. He has stated that it is not a fact that he was initially appointed as casual labourer from 4.8.1988. In this connection he has made the following averment in his

rejoinder:

".....As a matter of fact the date mentioned in Annexure-R/1 on 4.8.1988 has been duly corrected by the A.E.N. Jharsuguda vide its office letter No.E/8/711/dated 25.05.1993, as 28.03.1983."

This letter is at Annexure-10. As regards medical examination the applicant has stated that he had cleared the medical examination in 1988 long before screening. He has also stated that CGEIS deductions have been made from his salary from January 1990 which go to show that he was regularised in 1989. In his rejoinder he has given the notice dated 20.2.1997 for a similar examination for promotion of Group-D staff to the post of Junior Clerk against 33-1/3% quota in which it has been mentioned that the candidates must have completed not less than three years regular service in Group-D category as on 31.12.1996 and it is further noted that temporary service without break followed by regularisation will constitute regular service for three years. In his additional rejoinder he has enclosed the panel published on 28.12.1993 showing that in this panel his date of initial appointment has been mentioned as 28.3.1983. H has also enclosed a copy of his pay particulars showing that CGEIS deduction was made from his salary in April 1993.

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5. We have heard Shri H.P.Rath, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel for the respondents and have also perused therecords.

6. The applicant's entire case is that he was appointed as a casual labourer on 28.3.1983 and was conferred with temporary status on 2.12.1988. The



respondents on the other hand have taken the stand that the applicant was appointed as casual labourer initially on 4.8.1988. It is important to note that the applicant has not enclosed any document showing his initial appointment as casual labourer on 28.3.1983. He has also not enclosed any order conferring on him temporary status with effect from 2.12.1988. He has based his claim that his original appointment is on 28.3.1983 on the basis of Annexure-1 which is a statement showing the names of screened staff. The same document has been enclosed by the respondents at Annexure-R/1. We have carefully compared these two documents both of which have been certified to be true copy and from these it appears that the document supplied by the applicant at Annexure-1 has been interpolated and tampered with. In this document which is a typed and attested true copy the date of initial appointment of the applicant has been shown as 28.3.1983. In Annexure-R/1 which is a xerox copy bearing the signature of Assistant Engineer, the date of initial appointment of the applicant has been shown as 4.8.1988. The fact that in this document the date of initial appointment of the applicant was actually shown as 4.8.1988 is borne out by the fact that it is only in letter dated 25.5.1993 that the Assistant Engineer wrote that the date of initial appointment of the applicant is 28.3.1983 and not 4.8.1988. The very fact that the Assistant Engineer at a later date in 1993 corrected the date of initial appointment of the applicant from 4.8.1988 to 28.3.1983 shows that the date indicated in Annexure-1 filed by the applicant showing the date as 28.3.1983 has been interpolated. As earlier noted the applicant has not enclosed the order granting him temporary status from 2.12.1988. The respondents in their counter have not denied the averment of the applicant that

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he was granted temporary status from 2.12.1988. Under the rules a casual labourer after 120 days of service is to be conferred with temporary status and even going by the averment of the applicant that he has been conferred with temporary status with effect from 2.12.1988, it does appear that his initial appointment would have been on 4.8.1988, the period between the two dates being around 120 days. The next stand of the applicant that he was medically examined in 1988 cannot also be accepted because the rules provide that only after screening the medical examination has to be done. The applicant has also not enclosed any document showing that he was sent for medical examination in 1988. He has made only a vague averment that he cleared the medical examination in 1988. It is also to be noted that the case of the applicant is not an isolated case. Out of panel of 8 persons at Annexure-1 and Annexure-R/1, besides the applicant names of two other persons were deleted from the panel because of their initial appointment being after 1.1.1984. It is also to be noted that in his representation enclosed to the OA against the order keeping his promotion in abeyance he has not mentioned about the so called mistake with regard to the date of his initial appointment in 1983 or 1988 even though on the basis of letter at Annexure-10 which was issued in May 1993 he must have been aware of this discrepancy about the date of initial appointment. The last point is regarding the notice for a subsequent examination which is at Annexure-12 in which it is provided that temporary service without break followed by regularisation will constitute regular service. This condition is not there in the notice at Annexure-4 in response to which the applicant took the examination for


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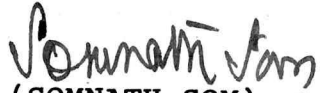
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promotion to the post of Junior Clerk. Moreover, even if it is taken for the sake of argument that this condition applies to the applicant, even then his position does not improve because he was regularised only with effect from December 1993 and therefore he did not have the eligible service as on 31.3.1993.

7. In consideration of all the above, we hold that the applicant is not entitled to the relief claimed by him. The Original Application is accordingly rejected. No costs.

  
(G.NARASIMHAM)

MEMBER(JUDICIAL)

  
(SOMNATH SOM)  
29.8.2000  
VICE-CHAIRMAN.

August 29, 2000/AN/PS