

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 543 OF 1998

Cuttack, this the 24th day of November, 1999

Ranjit Kumar Sahoo and others Applicants

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*

24.11.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.11.99

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 543 OF 1998

Cuttack, this the 24th day of November, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Ranjit Kumar Sahoo, aged about 42 years, son of Raghunath Sahoo, presently working as Jr.Clerk, under Office Superintendent, Bills.
2. Smt.Jyotiprava Tripathy, aged about 32 years, daughter of Narayan Tripathy, presently working as Jr.Clerk, under Office Superintendent, Bills.
3. Duryodhan Biswal, aged about 50 years, daughter of Sudarsan Biswal, presently working as Jr.Clerk, under S.S.E/Paints.
4. Pramod Kumar Biswal, aged about 50 years, s/o late Narayan Biswal, presently working as Jr.Clerk, under Office Superintendent, Recruitment.
5. Smt.Jyoshna Das, aged about 34 years, d/o Achutananda Das, presently working as Jr.Clerk, under Office Superintendent(General)
6. Sri Manoj Kanta Barisal, aged about 40 years, son of late Kumar Barisal, presently working as Jr.Clerk, under Office Superintendent, Bills.
7. Gouranga Charan Rout, aged about 42 years, son of late Nakula Charan Rout, presently working as Jr.Clerk, under Office Superintendent, Bills, and Court Cell

Sl.nos.6 and 7 are in Personal Branch
All are working in the office of the Chief Workshop
Manager, South Eastern Railway, Mancheswar, Bhubaneswar

.....Applicants

S Som.
Advocates for applicants - M/s A.Kamungo,
B.S.H.Rao, S.R.Misra,
S.K.Pathak, B.Ray.

Vrs.

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43

2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43.
3. Chief Workshop Manager, Carriage Repair Workshop, South Eastern Railway, Mancheswar, Bhubaneswar

.....Respondents

Advocate for Respondents - Mr.Chittaranjan Mishra.

....

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the seven petitioners have prayed for a direction to the respondents to regularise and confirm them as Junior Clerks. By way of interim relief it was prayed that they should be allowed to continue as Junior Clerks till the disposal of the O.A. On 10.11.1998 by way of interim relief it was ordered that the applicants should not be reverted from the post of Junior Clerk till 12.11.1998 subject to two conditions. Firstly, if the reversion becomes due because of decision of the Hon'ble Supreme Court in the case of J.C.Mallik v. Union of India, then the stay order shall not be operative. Secondly, it was ordered that if by 12.11.1998 regularly selected candidates turn up for joining as Junior Clerks, then the stay order will not be effective. This interim order has been continued till date.

2. The case of the applicants is that applicant nos.1,2,5 and 6 were initially recruited as Khalasis in the year 1985-86 and were thereafter promoted to the higher

grade as Khalasi Helpers. Applicant nos.3, 4 and 7 were initially Khalasis in the Construction Wing and had come to the Carriage Repair Workshop in 1986 as regular Khalasis and were thereafter promoted as Khalasi Helpers. The Carriage Repair Workshop came into existence in 1981 and became an independent unit on 1.1.1988. As there was requirement to man the regular posts of Junior Clerks notice was issued by respondent no.3 on 12.10.1993 through which applications were invited for filling up of the post of Junior Clerk in the Mechanical Branch from the Group-D staff fulfilling the terms and conditions. In the similar manner by virtue of notice dated 14.12.1993 applications were invited for filling up of the post of Junior Clerk in the Personnel Branch. It was also indicated by an addendum that general candidates must have completed three years of regular service as Group-D on 30.9.1993. In response to the notices, the petitioners applied for the post of Junior Clerk. Applicant nos. 1 to 5 appeared at a written test on 23.11.1993 and viva voce on 1.12.1993. Applicant nos.6 and 7 appeared at written test on 11.2.1994 and viva voce on 4.4.1994. Applicant nos. 1 to 5 were declared to have passed the written test and viva voce in order dated 3.12.1993. Similarly in order dated 5.4.1994 applicant nos.6 and 7 were declared to have passed written test and viva voce. Thus on being duly selected, applicant nos. 1 to 5 were appointed to the post of Junior Clerk in order dated 7.12.1993 and applicant nos.6 and 7 were appointed to the post of Junior Clerk in order dated 9.4.1994.

S. Jam.

The applicants have stated that posts of Junior Clerk are filled up by direct recruitment as also by promotion. Promotion is given in accordance with Rule 189 of Indian Railways Establishment Manual, Vol. I, which has been quoted by the applicants in their petition. They have stated that ever since their joining they are satisfactorily working as Junior Clerks. Initially they have been appointed on 89 days basis with one day break. Ultimately, in order dated 18.6.1998 applicant nos. 1 to 5 were allowed to continue until further orders and a similar order was also passed in favour of applicant nos. 6 and 7. It is further stated that because of their long and uninterrupted satisfactory work as Junior Clerks, they should have been regularised and confirmed as such, but they have been shown to have been appointed on ad hoc basis for 89 days and even though they have come through a regular process of selection, they have not been regularised or confirmed. On the above grounds, they have come up in this petition with the prayers referred to earlier.

S.Som.
3. The respondents in their counter have stated that originally all the applicants were engaged as Group-D Khalasis in Technical Grade and they came to Carriage Repair Workshop, Mancheswar, in Group-D posts. Carriage Repair Workshop, Mancheswar, was declared as an independent unit with effect from 1.1.1988. For the posts of Junior Clerk, $66\frac{2}{3}\%$ is to be filled up by direct recruitment through examination conducted by Railway Recruitment Board. The balance $33\frac{1}{3}\%$ is to be filled up by promotion.

In order to meet the need of the local administration notices were issued inviting applications from willing Group-D staff including Khalasi and Khalasi Helper of Mechanical Department and Personnel Department for selection and appointment as Junior Clerks against the direct recruitment quota on a stop gap and ad hoc basis. After becoming successful in the examination the applicants were appointed initially for eighty-nine days. In the notice which is at Annexure-A/1 it was mentioned that the candidates would be appointed on 89 days basis till such time as empanelled candidates of Railway Recruitment Board are posted or regular candidates/available otherwise. It was also mentioned that on joining of the regular candidates the applicants would be reverted to their original post and such appointment will not confer any right on the selected candidates to continue as such. The candidates were also asked to give a declaration, which the applicants furnished. A copy of the declaration is at Annexure-A/2 in which the applicants ~~xxxx~~ clearly stated that they are ready to accept reversion at any time when regular empanelled incumbents are posted and they understand that the appointment is on stop gap and ad hoc basis and they will not claim seniority. It is stated that appointment of the applicants was ~~xxxxxx~~ extended as no regular candidates were received from the Railway Recruitment Board for the vacancies in the posts held by the applicants. The applicants have not been promoted in substantive capacity and therefore the fact that they are ~~xxx~~ working in the posts would not give them any

S. J. M.

right to be regularised in the posts. It is further stated that applicant nos. 1 and 2 have been promoted in the technical line to the post of Fitter Grade-III after passing the trade test and have been regularised in the said posts and therefore they cannot claim regularisation in the post of Junior Clerk carrying the same scale of pay as Fitter Grade III. The respondents have further stated that $33\frac{1}{3}\%$ promotion quota of Junior Clerks has been regularly filled up by holding proper selection test and the applicants have been given ad hoc appointment against the direct recruitment quota. They have stated that as they are holding direct recruitment quota posts, on getting the empanelled candidates from the Railway Recruitment Board, they are going to be reverted. On the above grounds they have opposed the prayers of the applicants.

4. The applicants in their rejoinder have stated that direct recruitment posts can be filled up only after more posts meant for Phases II and III of Carriage Repair Workshop are sanctioned. It is also stated that they are continuing for a number of years and it is not believable that the Railway Recruitment Board in spite of placing of indent have not been able to sponsor names of empanelled candidates. It is further averred that quota of direct recruitment has been reduced to 25% through a ban imposed by the Railway Board in the year 1992 and there has been no recruitment to the post of Junior Clerk by the Railway Recruitment Board because of the ban.

S. Som.

As regards promotion of applicant nos. 1 and 2 in the technical cadre as Fitter Grade-III it has been submitted that besides promotion in the Technical Cadre, Khalasi Helpers have also a line of promotion to the post of Junior Clerks and this cannot be denied to them. It is further stated that applicant nos. 1 and 2 are being utilised in the Clerical duties even after their promotion to the post of Fitter Grade-III. It is also stated that the applicants because of their long work in the ministerial cadre would not be able to qualify for promotion in the technical cadre and therefore they should be regularised, moreso when they have been so appointed through a regular process of selection. It is further stated that in the order dated 5.2.1994 some of the so called ad hoc Junior Clerks have been promoted as Senior Clerks on ad hoc basis and similarly the applicants should also be regularised and promoted. On the above grounds the applicants have reiterated their prayers in the rejoinder.

5. The respondents have filed an additional counter to the rejoinder of the applicants in which they have reiterated many of their averments made in their counter. The respondents have stated that there is no rule that Railway Recruitment Board after getting the indent must sponsor empanelled candidates within one year. It has been stated that one empanelled candidate B.M.Das was sponsored by headquarters on being recommended as an empanelled candidate by Railway Recruitment Board and on his joining a person who is similarly situated as the applicants, one Urmila Khatua was reverted to her original

post. It is stated that the Railway Recruitment Board is processing papers for conducting recruitment to the post of Junior Clerk against the direct recruitment quota and the recruits may be placed in near future and in view of this regularisation of the applicants against the direct recruitment quota by obtaining one time exception from the Railway Board is not possible.

6. We have heard Shri B.S.H.Rao, the learned counsel for the petitioners and Shri Chittaranjan Mishra, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioners relies on the decision of the Tribunal in OA No.363 of 1993. The written note of submission filed by him along with a copy of the decision of the Tribunal in OA No.363 of 1993 has also been perused.

7. The learned counsel for the petitioners has relied on the decision of the Hon'ble Supreme Court in the case of N.S.K. Nayar v. Union of India, AIR1992 SC 1574. The learned Additional Standing Counsel for the respondents, Shri Chittaranjan Mishra, while opposing the prayers of the applicants, has relied on the following cases:

- JSm
- (i) Suchand Murmu v. Union of India, decided by Calcutta Bench and reported in 1990(3) SLR 524;
 - (ii) Trilochan Singh v. State of Haryana, decided by Punjab & Haryana High Court, and reported in 1990(6) SLR 134;
 - (iii) Union of India v. Hindustan Development Corporation, AIR 1994 SC 988;

- (iv) Shiv Charan Sharma v. State of Rajasthan,
decided by Hon'ble Rajasthan High Court and
reported in 1994 (2) SLR 625;
- (v) Balakrishna V.Ojha v. State of Gujarat,
decided by Hon'ble Gujarat High Court and
reported in 1997 (4) SLR 94;
- (vi) Patna University v. Dr.(Mrs.) Amita Tiwari,
decided by Hon'ble Supreme Court and reported
in 1997(5) SLR 274.

We have gone through the above cases.

8. The learned Additional Standing Counsel for the respondents has also referred to the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain decided by the Hon'ble Supreme Court and reported in 1995 (1) SLR 272. Before proceeding further it has to be noted that in Devendra Kumar Jain's case (supra) the issue was termination of appointment made on temporary basis without giving any opportunity. It was held that no violation of principles of natural justice or Article 311 of the Constitution is involved. This case has no relevance to the controversy under consideration. From the pleadings of the parties it is clear that the applicants have been given ad hoc appointment to the post of Junior Clerk meant for direct recruitment quota. Under the relevant Recruitment Rules, $66\frac{2}{3}$ % of the posts of Junior Clerk is meant for direct recruits to be filled up by persons nominated after examination by the Railway Recruitment Board. The respondents have mentioned that such nomination is made by the Railway Recruitment Board through the headquarters. They have also stated that in the past on getting such an empanelled candidate, a person, who was similarly situated like the applicant, one Urmila Khatua had been reverted from the post of Junior Clerk to the post held by her earlier

to make room for the empanelled candidate sponsored by the Railway Recruitment Board. The first point for consideration is whether the applicants, who have been promoted on ad hoc basis from Group-D posts, to the post of Junior Clerk against the direct recruitment quota, would be regularised against the direct recruitment quota posts. The learned counsel for the petitioners has referred to N.S.K.Nayar's case (supra) which dealt with promotions to the cadre of Junior Time Scale (JTS) from the Telegraph Engineering Service, Class-II. Vacancies in JTS are to be filled up 50% by direct recruitment and 50% by promotion from Telegraph Engineering Service, Class-II. The next promotion is to the posts in the Senior Time Scale (STS). The Rules provided for filling up of the posts in STS cadre as a temporary measure in officiating capacity. The Hon'ble Supreme Court noted that this is because number of posts in JTS is limited whereas number of posts in STS, which is the next higher grade, is substantial and as it is difficult to fill up the posts in STS from amongst the officers in JTS, there was an administrative compulsion to fill up the posts in STS by promoting the members of Telegraph Engineering Service, Class-II. In view of this, there was a specific rule enabling the Government to fill the large number of vacancies in STS by appointing Class II officers to STS directly bypassing JTS.

J Som

In that case the Hon'ble Supreme Court noted that persons appointed to STS in officiating capacity have worked for 10 to 15 years and in view of this, it was held that denying them right of regularisation would be wholly arbitrary and violative of Article 16. In view of this, appointments of such persons in the STS who have completed five years of service and have been holding the posts, were ordered to be regularised. From the above recital of facts it is clear that the facts of that case are widely different from the facts before us in this case. Law is well settled that regularisation can be made only in accordance with the Recruitment Rules. The applicants were appointed to the post of Junior Clerks admittedly through a process of selection but only on temporary and ad hoc basis. Before their actual appointment, they gave an undertaking that when the Railway Recruitment Board sponsored candidates ment for direct recruitment quota are available, they would be willing to be reverted to their original posts. As the posts which are held by the applicants are direct recruitment posts, they cannot claim that they have a right to be regularised against those posts. No equitable consideration also arises in this case because the applicants have given an undertaking as mentioned above and were also fully aware that they are holding the posts on ad hoc basis till the empanelled candidates are sponsored. This contention of the applicants is therefore held to be without any merit.

8. The learned counsel for the petitioners has also relied on the decision of the Tribunal in O.A.Nos.363, 364 and 365 of 1993, which were disposed of by a common order

dated 10.8.1999. The facts of those cases were quite different. There the view taken by the Tribunal following several other cases where the view of the Tribunal was upheld by the Hon'ble Supreme Court, was that when ad hoc appointments were given after following the due process of selection in accordance with the Recruitment Rules (emphasis supplied), such ad hoc appointments should count towards regularisation and seniority even though in the order of such ad hoc appointment it has been mentioned that such appointment would not count towards seniority. In the cases decided in the order dated 10.8.1999 the applicants were given ad hoc appointment to the post of Chargeman Grade-B after subjecting them to the trade test and in the order of appointment it was mentioned that such appointment was on ad hoc basis. There was no issue of direct recruitment and promotion quota, as in this case. In the present case ad hoc appointments given to the applicants even after subjecting them to the selection test, to the direct recruitment posts can ^{not} ~~only~~ be said to have been made in accordance with the Recruitment Rules because ~~xxxxx~~ a direct recruitment quota post cannot be filled up by promotion. Therefore, the decision in OA Nos.363,364 and 365 of 1993 has no application in the present case.

Scm.

9. In the case of Balakrishna V.Ojha (supra) the Hon'ble Gujarat High Court held that an ad hoc promotion as a local arrangement does not give any right to the petitioner to continue in the post when promotion was conditional. In Shiv Charan Sharma's case (supra)

the Hon'ble High Court of Rajasthan also upheld the action of reverting an ad hoc appointee for making room for a regularly selected person. In Suchand Murmu's case (supra) the Calcutta Bench of the Tribunal has held that working in the promotional post on ad hoc basis for four to five years would not entitle the applicant for regular appointment to the post. In consideration of the above, the contention of the learned counsel for the petitioners that because the petitioners have come through a process of selection and have been working for several years, they should be regularised, is held to be without any merit and is rejected.

10. The next point submitted by the learned counsel for the petitioners is that as the applicants have worked for long in the post of Junior Clerk, they have a legitimate expectation to get regularised in the post. It is not necessary for us to go into a discussion of doctrine of legitimate expectation for the present purpose besides noting that the Hon'ble Supreme Court in Hindustan Development Corporation's case (supra) have elaborately discussed the doctrine and indicated the several limitations with regard to giving relief on the basis of the doctrine of legitimate expectation. In paragraph 36 of the decision the Hon'ble Supreme Court have mentioned that legitimate expectations may come in various forms, one of which is the case of promotion, which are in the normal course expected though not guaranteed by way of a statutory right. The Hon'ble Supreme Court have held that

J Som.

in such cases the Court has to see whether promotion is done as a policy or in public interest either by way of Government order, rule or by way of legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not normally qualify for interference unless in a given case the decision taken amounts to abuse of power. From the above it is clear that doctrine of legitimate expectation cannot be invoked in order to overreach the Recruitment Rules. In view of this, as the applicants cannot be promoted against direct recruitment quota posts, by way of doctrine of legitimate expectation, they cannot hope to be regularised against such posts. This contention of the learned counsel for the petitioners is also held to be without any merit and is rejected.

11. It is also to be noted that two of the applicants have already been promoted in their technical cadre to the posts carrying the same scale of pay as Junior Clerks. The applicants' contention that because of their long tenure discharging ministerial duties they may not qualify for promotion in their technical cadre has been belied by the fact that two of them have actually qualified in the trade test and have been so promoted in the technical line. The applicants' contention that along with the promotion in the technical line they are also entitled to be promoted to the post of Junior Clerk is valid to the extent that for such promotion they have to qualify in a selection test and also such promotion can be given only to the posts meant for promotion quota.

J. Ram

12. In the result, therefore, we hold that the Application is without any merit and the same is rejected, but under the circumstances, without any order as to costs.

24.11.99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.11.99

AN/PS