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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 662 OF 1998

Cuttack, this the 7<sup>th</sup> day of September, 2001

Sri 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  
7.9.2001



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CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....  
Sri Kumar, aged about 56 years, son of late Prahalad,  
J.E-II, residing at Qtr.No.6/35, P.O-Rayagada,  
District-Rayagada..... Applicant

Advocates for applicant - M/s N.Lenka  
N.Dash

Vrs.

1. Union of India, represented through Secretary,  
Railways Department, Government of India, New Delhi.
2. Divisional Railway Manager, South Eastern Railway,  
Waltair Division, Visakhapatnam.
3. Senior Divisional Personnel Officer, Divisional  
Railway Manager's Office, Personnel Branch, Waltair.
4. Sri S.Muralidhar, J.R-II (P-SPC), Naupada,  
District-Srikakulam.... Respondents

Advocate for respondents - Mr.S.R.Patnaik

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order dated 26.11.1998 (Annexure-6) reverting him from the post of ad hoc Junior Engineer-II(P) in the scale of Rs.5000-8000/- to the post of Supervisor (P) in the scale of Rs.4500-7000/- and for a direction to allow the applicant to continue in the post of J.E.-II (P) in which post he has been working for more than five years. The respondents have filed counter opposing the prayers of the applicant, and the applicant has filed rejoinder. We have heard Shri A.R.Dash, the

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learned counsel for the petitioner and Shri S.R.Patnaik, the learned panel counsel (Railways) for the respondents. The learned counsel for the petitioner has relied on a decisions of the Hon'ble Supreme Court in the case of Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and others, AIR 1998 SC 2909, and the case of Ghan Sham Sunder and others v. State of Punjab and others, 2001 AIRSCW 2437. We have perused these decisions along with the xerox copies of the Railway Establishment Rules and Labour Laws by K.P.Sharma filed by the learned counsel for the applicant.

2. The case of the applicant is that he joined Railway service originally as a Gangman on 1.7.1969 and was promoted to the post of P.W.M (Supervisor) on 15.10.1982. He continued in that post till in order dated 5.2.1993 (Annexure-1) he was promoted as Ad hoc P.W.I. Grade-III in the scale of Rs.1400-2300/- from the post of P.W.M. also in the scale of Rs.1400-2300/- and was posted at Rayagada in an existing vacancy. The applicant has stated that the scale of PWI Grade-III was revised from Rs.1400-2300/- to Rs.5000-8000/- with effect from 1.1.1996 on the commendation of the Fifth Pay Commission and the designation was changed to Junior Engineer-II. The applicant has stated that he has been working for the last five years satisfactorily in the post of ad hoc P.W.I, Grade-III, subsequently redesignated as Junior Engineer-II when in the impugned order dated 26.11.1998 (annexure-6) he was reverted to his former post and posted as Supervisor in the pay scale of Rs.4500-7000/.



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The applicant has stated that such reversion and reduction in rank attract the provisions of Article 311 (2) of the Constitution and without giving him an opportunity the order of reversion could not have been passed. It is further stated that he belongs to SC community and Railways Establishment Manual provides that persons belonging to SC/ST community should not be reverted and shall be retained in preference to others. Thirdly, it is stated that while the applicant has been reverted, similarly situated persons are continuing in higher scale and post of JE-II. It is also submitted that by his long work in the post of J.E.-II for five years he has acquired a right to the post and the ad hoc promotion given to him must be deemed to have been confirmed. Lastly, it is stated that person who is coming in his place is not in any way more suitable than the applicant.

3. It is not necessary to refer to the averments made by the respondents in their counter and the applicant in his rejoinder as these will be taken note of while considering the submissions of the learned counsel of both sides.

4. Admittedly, the applicant was given promotion to the post of P.W.I, Grade-III on ad hoc basis. The respondents have stated that according to Paragraph 144 of the Indian Railway Establishment Manual, vacancies in the cadre of P.W.I Grade-III are to be filled up 66-2/3% by direct recruitment and 33-1/3% by promotion through selection of Permanent Way Mistries. It is stated that as there were vacancies against direct recruitment quota, the applicant was given ad hoc promotion without subjecting him to any selection or without empanelling him for regular promotion to the post



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of P.W.I, Grade-III. It is further stated that he was reverted from the direct recruitment quota post held by him on posting of P.Subba Rao who was selected through Railway Recruitment Board against direct recruitment quota. It is stated that in the promotion order at Annexure-1 it was specifically mentioned that the ad hoc promotion does not confer on the applicant any title or claim for future promotion either permanent or temporary or for seniority. The respondents have further stated that against the departmental promotion quota selection was held in 1994 and 1996, but the applicant could not qualify for regular empanelment and regular appointment to the post of P.W.I, Grade-III. The applicant in his rejoinder has not denied the averment that the post against which he was given ad hoc promotion belongs to direct recruitment quota and he has been reverted on posting of a person directly recruited through Railway Recruitment Board. He has also not denied that he was given promotion without any selection or empanelment and that he has failed to qualify in the examination twice for empanelment for regular promotion to the post of J.E.II under the departmental promotion quota. In view of this, we reject the contention of the applicant that the person who has been appointed to the post held by him on ad hoc basis, is not more suitable than him. The post is a direct recruitment quota post and a person directly recruited by Railway Recruitment Board has been posted necessitating the reversion of the applicant. Moreover, as this is a direct recruitment quota post, the applicant cannot claim that he should be continued in that post because of his SC status. The respondents have denied the averment of the applicant that even though the applicant



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has been reverted in the impugned order at Annexure-6 similarly situated persons are still continuing in higher post presumably on ad hoc basis. We note that the applicant has not mentioned the name of any such person and therefore, we are not prepared to accept the above contention.

5. As the applicant was appointed to the post admittedly on ad hoc basis and admittedly without being selected and empanelled through any process of selection, he cannot urge that his reversion from that ad hoc post is in the nature of punishment for which the procedure prescribed in Article 311 (2) should have been followed. The applicant has been reverted in terms of the order of his ad hoc appointment and it is not by way of punishment and therefore, Article 311 is not attracted.

6. The last point submitted by the learned counsel for the petitioner is that he has worked for five years in the higher post albeit on ad hoc basis, and thus he has acquired a right to be regularised in that post. The learned counsel for the petitioner has filed xerox copy of the gist of Railway Board's instructions which provide that ad hoc promotion should be avoided as far as possible and should be given in any case for a period not exceeding three months. It is specifically provided that for the purpose of drawing pay of the ad hoc appointee beyond the period of three months, specific sanction of General Manager will have to be obtained. It is further provided that the General Manager should issue provisional sanction for periods exceeding three months at a time. It is stated by the learned counsel for the petitioner that as in this case ad hoc promotion has continued for five years, the applicant has acquired a

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right to get regularised against that post. In Hari Om Sharma's case (supra) question of regularisation in the post held on ad hoc basis was not considered. In that case a person was promoted to the post of J.E.-I on stop gap arrangement and continued in that promotional post. It was held by the Hon'ble Supreme Court that such an appointee will be entitled to the salary of the promotional post and should also be considered for regular promotion. An agreement that he will not claim salary of the higher post to which he has been promoted by way of stop gap arrangement is contrary to law and also against public policy. In this case, the applicant has received the salary of the higher post, and in the <sup>in Hari OM Sharma's case</sup> ~~in the~~ J/S

*above*  
*J/S* context it was held that promotion for such a long period of time cannot be treated to be a stop gap arrangement.

In that case the Hon'ble Supreme Court noted that the Tribunal had held that the promotee having been continued in the post for long period, has a right to be considered for regular promotion and the Hon'ble Supreme Court held that having regard to the facts of that case, there is no reason to differ with the Tribunal. In the instant case, the applicant was given ad hoc promotion against a post of direct recruitment quota and therefore, because of long period of work in that post by way of ad hoc promotion, he cannot claim regularisation against that post. If this is allowed then the fixation of quota of 66-2/3% for direct recruitment and 33-1/3% for promotion will become illusory. In Ghan Shyam Sunder's case (supra) the appellants before the Hon'ble Supreme Court were appointed as Auxiliary Constables. The relevant order stipulated that they would be appointed as regular Constable on completion of one year of service if they



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are found suitable by the Superintendent of Police. Subsequently, a suitability test was introduced and the appellants were unsuccessful in the suitability test. In that case, the Hon'ble Supreme Court held that while the circular for holding the suitability test is in force, no direction can be issued to appoint the appellants as Constable without test. The Hon'ble Supreme Court, however, took note of the fact that prior to issuing of the circular in 1995 providing for holding of suitability test, several persons have been appointed as Constable without undergoing suitability test. Their Lordships also took note of the fact that the appellants before them had already rendered more than seven years of service and were eligible for such appointment even before the circular providing for suitability test came into force. In view of this, their Lordships had ordered that their suitability should be adjudged at a much lesser standard than what has been indicated in the circular of 1995. This decision has no application to the present case. The applicant no doubt failed in the selection test twice in 1994 and 1996 for being empanelled, but that is against the promotional quota, and on the basis of this decision he cannot claim that he should be appointed as J.E-II against the promotional quota. His prayer in this case is for continuation of his appointment against the post which is a direct recruitment quota post.



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7. In view of the above, we hold that the applicant is not entitled to any of the reliefs claimed

