

ORIGINAL APPLICATION NO. 178 OF 1999

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**-VERSUS-**

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(FOR INSTRUCTIONS)

1. Whether it be referred to 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)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.178 OF 1999  
Cuttack this the 23rd day of August/2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)  
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Ch. Bangaru Naidu,  
aged about 50 years,  
S/o. Late Gangu Naidu,  
present working as Jr.Clerk(Estt.)  
Office of the Permanent Way Inspector (PWI)/  
Sr.Engineer(P.W.), Ambadola, S.E.Railway,  
Sambalpur Division, Dist: Sambalpur

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Applicant

By the Advocates

M/s.A.Kanungo  
S.R.Misra  
B.Ray

-VERSUS-

1. Union of India represented through  
its General Manager, South Eastern Railway  
Garden Reach, Calcutta
2. Sr.Divisional Engineer (Co-ordination)  
South Eastern Railway,  
Sambalpur Division, At - Sambalpur
- S.Dam.* 3. Divisional Railway Manager (P)  
Sambalpur, South Eastern Railway  
At/PO/Dist - Sambalpur

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Respondents

By the Advocates

Mr.C.R. Mishra  
Addl.Standing Counsel  
(Railways)

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for quashing order dated 28.1.1999 at Annexure-2 posting the applicant as Office Clerk-cum-Typist under Medical Superintendent Incharge, Sambalpur. The second prayer is for direction to respondents to allow the applicant to continue in the existing vacancy in the post of Junior Clerk, against which post he has been working on adhoc basis from 16.12.1983.

2. The case of the applicant is that he joined as Gangman in 1970 and was promoted on adhoc basis to the post of Junior Clerk on 16.12.1983. He continued as such till 28.1.1999, when he was regularised in that post. Applicant has stated that he was working very sincerely as Junior Clerk. In response to a notification for regularisation in the post of Junior Clerk, the applicant appeared at the written and viva voce test and was regularised in the post of Junior Clerk. In order dated 28.1.1999 (Annexure-2) he has been posted as Office Clerk-cum-Typist under Medical Superintendent I/c., Sambalpur. The applicant has challenged this posting firstly on the ground that he is the senior-most Junior Clerk in the Engineering Department working in the Office of P.W.I., Ambadula and some other junior clerks have been retained in the Engineering Deptt. whereas he has been shifted to Sambalpur. The second ground is that he is the Office Bearer of the Union and as such he should not have been transferred. The Union also filed a representation vide Annexure-4 praying that applicant should be retained under P.W.I., Ambadula in an existing vacancy, but

no sympathetic consideration was shown that is why the applicant has approached the Tribunal in this O.A. with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant and have stated that he was promoted to officiate as ~~ad hoc~~ Junior Clerk under P.W.I., Ambadula against work-charged post created for six months. He continued in this post. Ultimately a test was conducted for promotion to the post of Junior Clerk-cum-Typist against  $33\frac{1}{3}\%$  promotion quota. Applicant along with other candidates applied for the post and along with 17 others applicant qualified in the test. The provisional panel of successful candidates was published and posting orders were issued in which the applicant was posted in order dated 28.1.1999 (Annexure-2) as Office Clerk-cum-Typist under Medical Superintendent I/s., Sambalpur. Respondents have stated that this is not a transfer order, but an order posting the applicant on promotion. Respondents have also stated that it is not obligatory that the Junior-most person should be sent out of Engineering Department and/or there is no restriction to transfer an Office Bearer of the Union. On the above grounds Respondents have opposed the prayer of the applicant.

4. In the Original Application, by way of interim relief the petitioner had prayed that he should be allowed to continue in the existing vacancy of Junior Clerk in his place of posting. In order dated 4.5.1999, the operation of order at Annexure-2 was stayed for a period of 15 days and thereafter the interim order of stay is continuing till date.

5. Applicant in his rejoinder has submitted that he has been regularised as Junior Clerk and therefore, he should have been posted against the post which was held by him on ad hoc basis

for long number of years. He has also denied that he has been transferred on promotion. He has also stated that he was promoted on adhoc basis in July/83 and at present he has only been regularised in that post. In view of the above, the applicant in his rejoinder has reiterated his prayer as made in the Original Application.

6. We have heard Shri A.Kanungo, learned counsel for the petitioner and Shri C.R.Mishra, learned Addl.Standing Counsel appearing for the Respondents and also perused the records.

7. The first point urged by the learned counsel for the petitioner is that order at Annexure-2 is not an order posting him on promotion, but an order regularising his services. We are unable to accept this submission of Shri Kanungo, because, nowhere in the service rules it is laid down that after an adhoc employee is regularised in a particular cadre, he must be regularised against that post which he held on adhoc basis. Moreover, admittedly the applicant appeared at a selection test comprising of written test and viva voce for promotion against 33.1/3% quota, of Junior Clerk. Having taken the written test and viva voce and having come out successful it is not open for him to say that he has not been promoted against the post of Junior Clerk. His statement in the rejoinder that his promotion was given effect to in 1983 is wholly without any basis, because in 1983 he was promoted to officiate as adhoc Junior Clerk against work-charged post. In view of this it is clear that in order at Annexure-2 he was given posting order on promotion in the post of Junior- Clerk-cum-Typist. This contention of the learned counsel for the petitioner is held to be without any merit and the same is therefore, rejected.

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8. The second contention of the petitioner is that he is the senior most amongst the Junior Clerks and while junior clerks have been retained in the Engineering Department, he has been sent out. This contention is also without any merit, because, once the applicant along with 17 others as mentioned by the Respondents in their counter have been promoted to the post of Junior Clerk-cum-Typist, their inter se seniority would depend upon the merit position obtained by them in the selection test. Applicant has made no averment that persons mentioned by him in Para-4.5 of the Application have also qualified in the same test and have occupied the lower position in the merit list. In any case, posting on promotion is not done on the basis of seniority. The applicant has not stated that he has been posted out of his cadre. Apparently the post of Office Clerk-cum-Typist under Medical Superintendent, Sambalpur is also <sup>a</sup> ~~the~~ <sup>an</sup> post within the cadre. In view of this, this contention of the learned counsel for the petitioner is held to be without any merit and the same is rejected.

9. The third contention of the learned counsel for the petitioner is that applicant being the Office Bearer of the Union is not liable to be transferred and he should have been posted on promotion to the post of Junior Clerk under P.W.I., Ambadula, where he was working on adhoc basis. The applicant has not mentioned as to what exactly is his status as representative of the Union. He has merely stated that he is the Office Bearer of the Union. He has also not mentioned whether he is the Office Bearer of the Union Division-wise and/or Unitwise. We find from the representation filed by the Union vide Annexure-4 that applicant is the Office Bearer of the Union at Titlagarh Branch. There is no ruling that in case of promotion Office Bearer

of the Union cannot be posted out on promotion. In any case it is always open for the applicant to refuse promotion. He has also not mentioned as to what precise post he is occupying in the Union. This contention of the learned counsel for the petitioner is held to be without any merit and the same is rejected.

10. Learned counsel for the petitioner relied on a decision of of this Tribunal in Original Application No.360/89 disposed of on 29.3.1990 in support of his contention. We have gone through this decision. The facts of ~~the~~<sup>8/om</sup> case are wholly different and have no bearing <sup>on</sup> to the dispute before us. <sup>^ 8/om.</sup>

11. In view of above discussions we hold that the applicant has not been able to make out a case for any of the reliefs prayed for. Original Application is therefore, held to be without any merit and the same is rejected, but without any order as to costs.

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*22.3.2000*

B.K.SAHOO//