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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 287 OF 1999.  
Cuttack, this the 1st day of November, 2000.

SRI KAMALA KANTA MISHRA. .... APPLICANT.  
VRS.  
UNION OF INDIA & 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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 287/1999.  
Cuttack, this the 1st day of November, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

Sri Kamala Kanta Mishra,  
Aged about 38 years,  
Son of Late Rama Chandra Mishra,  
Permanent resident of At/PO: G. Baliapal,  
Dist. Balasore at present working as  
Jr. Clerk, Office of the Sr. Divisional Signal  
and Telecommunication engineer, SE Railway,  
Khurda Road, Jatni, Dist. Khurda.

... Applicant.

By legal practitioner: M/s. D. B. Mishra, S. S. Das, P. K. Das,  
A. P. Misra, T. K. Sahoo, Advocates.

- Versus -

1. Union of India represented through  
its General Manager, SE Railway,  
Garden Reach, Calcutta-43.
2. Divisional Railway Manager,  
S. E. Railway, Khurda Road, Jatni-752050.
3. Sr. Divisional Personnel Officer,  
SE Railway, Khurda Road, Jatni-50.
4. Mr. M. J. Tiwari,  
Jr. Clerk,  
Office of Sr. Divisional Signal and  
Telecommunication engineer, SE Railway,  
Khurda Road, Jatni-752050.
5. Mr. B. N. Sahoo,  
Jr. Clerk,  
O/o. Sr. Divisional Signal and  
Telecommunication Engineer,  
S. E. Railway, Khurda Road,  
Jatni-752050.

.... RESPONDENTS.

By legal practitioner : Mr. P. K. Mishra,  
Additional Standing Counsel (Rlys.).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, the applicant has prayed for a direction to the Respondents to finalise the seniority list at Annexure-8 and for a direction to fix the seniority of the applicant above Respondents 4 and 5 who have been placed above him in the seniority list at Annexure-8. The next prayer is for a direction to the Respondents to finalise the provisional seniority list in the feeder cadre of Jr. Clerk and to promote the persons to the post of Senior Clerk only after finalising the seniority list.

2. Respondents have filed counter opposing the prayers of the applicant and the applicant has also filed rejoinder reiterating his prayer.

3. For the purpose of considering this Original Application it is not necessary to go into too many facts of this case but the facts admitted by both the parties can be briefly stated. Applicant initially joined as RPF Constable and was declared medically unfit in B-1 category and joined as Peon under Senior Divisional signal Telecom Engineer, Khurda and in due course, was promoted to the post of Record sorter from 21-2-1990. He appeared in the written examination and viva-voce for recruitment to the post of Jr. Clerk under 33 1/3% quota and in the panel his position was against Sl.No.11. This panel is at Annexure-1, of the O.A.. Respondents in para 8.4 of their counter have mentioned that this was a provisional panel but subsequently another provisional panel has been drawn up and in this panel also the applicant's position is at Sl.No.11.

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This final Panel is at Annexure-R/4 to the counter and in this panel, the name of applicant is at Sl.No.11 whereas the the names of Respondent No.4, M.J.Tiwari and Respondent No.5, B.N.Sahoo appeared against Sl.No. 20 and 21. It is also important to note that in the initial panel, at Annexure-1, the names of Respondents 4 and 5 do not appear. Applicant has stated in para 4.5. of the O.A. and Respondents have not denied that from this panel appointment orders were issued to persons against Sl.Nos.1 to 10 and thereafter ignoring the name of applicant against Sl.No.11, appointment order was issued to Sl.Nos.12 and 13 on 5.7.1992 and Serial Nos.14 and 17 on 11.7.1992. Applicant filed a representation on 17.7.1992 enclosed by the Respondents at Annexure-R/1 of their counter in which he mentioned that a post of Junior Clerk is vacant under DSTE(M), Khurda and accordingly, he should be posted in that Office and to that post of Junior Clerk. The order of promotion of applicant was issued for the first time in order dated 23-7-1992 (Annexure-2) i.e. after this representation dated 17-7-1992 and in this order, the applicant was posted as Jr. Clerk in the Loco Foreman Khurda Road, against a vacant post. Later on, in order dated 8.8.1992, the applicant was posted as Jr. Clerk under DSTE(M), Khurda Road. This order was issued on 8.8.1992. It is the admitted position that the applicant joined as Jr. Clerk in the Office of the DSTE(M), Khurda Road on 31.7.1992. From the above recital of fact it appears that even though in order dated 8.8.1992 the applicant was posted

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as Junior Clerk in the Office of the DSTE(M), Khurda Road, he had apparently joined even before issuing this order as Junior Clerk, in the Office of the DSTE(M), Khurda Road on 31.7.1992 and presumably, the Departmental Authorities have allowed him to join as Junior Clerk, in the Office of the DSTE(M), even prior to issue of the order dated 8-8-1992. The present controversy is that the Respondents have taken the stand that on promotion, seniority of applicant in the post of Jr. Clerk will count from 31.7.1992 because on his own representation he was transferred to the Office of the DSTE(M) Khurda Road. Applicant challenges this decision.

3. We have heard Dr. D. B. Mishra, learned Counsel for the applicant and Mr. P. K. Mishra, learned Additional Standing Counsel appearing for the Respondents and have also perused the records. Normally when promotion is made on the basis of a written test and viva-voce, the seniority of the persons in the promotional grade is determined on the basis of their position in the merit list. But in this case, as those who have qualified in the selection as per the select list at Annexure-A to the OA and Annexure-R/4 of the counter have been posted to different <sup>seniority</sup> units and accordingly their seniority have been counted from the date of joining but in the process, an injustice has been done to the petitioner because as in this case seniority has to be counted from the date of joining, it was incumbent on the part of the Departmental Authorities to issue appointment/promotion order to the selected candidate, strictly on the basis of their position in the panel but this has not been done as we have noted earlier.

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4. Coming to the case of Private Respondents 4 and 5 we have also noted that in the final panel their names were against Sl.Nos. 20 and 21 as against the applicant's position at Sl.No.11 but they have joined in the office of the DSTE(M) on 22-7-1992 even before the original appointment/promotion order of the Applicant posting him to the Loco foreman, Khurda Road was issued on 23-7-1992. From this it is clear that promotion order of Private Respondents 4 and 5, even though they were lower in the panel, were issued prior to issuing the original promotion order to the applicant even though he occupied much higher position in the panel. Applicant has stated and Respondents have not denied that persons whose names appeared at Sl.No.12 in the provisional panel dated 20-11-1991, at Annexure-1 has been issued appointment order on 5-7-1991 whereas in the case of applicant his initial appointment order was issued on 23-7-1992. On a reference to the final panel brought out on 25-6-1992, we find that Respondents 4 and 5 have come against Sl.Nos. 20 and 21 whereas applicant's name appeared against Sl.No.11. Respondents 4 and 5 have been given promotion order prior to the applicant's order and in the process, the applicant's position in the panel list has not been given due regard. It is also well settled that once the applicant along with others have been empanelled and because seniority counts from the date of joining, Respondents should have issued appointment/promotion order strictly on the basis of the position in the panel. In the Original panel, person immediately below the applicant is one K.L.N. Rao, appearing at Sl.No.12. In the final

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panel, at Annexure-R/4, person appearing at immediately below the applicant is one N.B. Patnaik. So far as N.B. Patnaik is concerned, no averment has been made by the parties as to when appointment order has been issued and when he joined in the post, ; whether before and after the appointment order has been issued to the applicant.

5. In consideration of the above, we hold that the applicant is entitled to count his seniority in the cadre of Jr. Clerk in the Office of the DSTE(M) from the date the person against Sl.No.12 i.e. K.L.N. Rao in the panel at Annexure-1 or Shri N.B. Patnaik, the person against Sl.No.12 in Annexure-R/4 have joined, whichever is earlier.

6. It has been submitted by learned Additional Standing Counsel that applicant was initially posted under the Loco Foreman and he has represented for his transfer to DSTE(M) and therefore, his seniority has been rightly counted from the date he joined in the Office of the DSTE(M). This contention is wholly without any merit because in the representation of the applicant which has been enclosed by Respondents at Annexure-R/1, the applicant has not sought for his transfer from the Office of the Loco Foreman to the Office of the DSTE(M). This representation has been made on 17-7-1992 even prior to issue of original appointment order and therefore, it can not be said that the applicant has been transferred from <sup>one</sup> Jr. Clerk post to another Jr. Clerk post on his own request and thereby he will lose seniority. This contention is therefore, held to be without any merit and is rejected.

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7. First prayer of applicant is disposed of with a direction to count his seniority in his present office from the date Shri K.L.N.Rao and N.B.Patnaik is appointed whichever is earlier.

8. Second prayer of the applicant is for finalising the seniority list in the office of the DSTE(M) accordingly. We direct that the appropriate authorities will take up the question of finalising the seniority list with utmost despatch more so when the question of seniority to the next higher grade is under consideration but because in case of any change of seniority list representation etc is called for, we are not inclined to fix any time limit for finalising the seniority list.

9. By virtue of interim order of the Tribunal, the applicant has appeared at a suitability test and has been found suitable as per the averment made by learned counsel for the applicant. We are not inclined to take note of this fact because there is no document on record showing that the applicant has been declared suitable for the post of Sr. Clerk. In case the applicant has been so declared suitable then his case for promotion be considered to the post of Sr. Clerk strictly in accordance with rules and in that case his seniority as determined by virtue of our order shall be taken into account.

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10. Before parting with the case, we would like to mention that in the final panel at Annexure-R/4it has been mentioned that the above panel is subject to the decision of the writ petition. In this order the number of writ petition and the forum in which it is pending has not been mentioned. But with

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regard to the matters apparently connected with these facts a writ petition is pending before the higher forum. In view of this we make it clear that our direction with regard to **refixing** the seniority of the applicant will be subject to the above condition mentioned in the final panel at Annexure-R/4.

11. In the result, with the observations and directions made above, the Original Application is allowed. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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(SOMNATH SOM)  
VICE-CHAIRMAN

KNM/CM.