

**CENTRAL ADMTNSTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**ORIGINAL APPLICATION NO. 552 OF 1999
Cuttack this the 3rd day of March, 2000**

Janakar Patra

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
3.3.2000

3.3.2000
(G.NARASTHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 552 OF 1999
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CORAM:

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

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Janakar Patra, 39 years
S/o. Late Banambar Patra, Jr.Clerk under
Orders of reversion to the rank of Khalasi
in the office of Chief Workshop Manager(P)
Mancheswar, Dist: Khurda

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Applicant

By the Advocates : M/s.A.K.Mishra
J.Sengupta
B.B.Acharya
P.R.J.Dash,
C.Mohanty
D.K.Panda
G.Sinha

-Versus-

1. Union of India through the
General Manager, S.E.Rly., Garden Reach
Calcutta-43
2. The Chief Electrical Engineer, S.E.Rly.,
Garden Reach, Calcutta-43
3. The Chief Workship Manager
Carriage Repair Workshop, S.E.Rly.,
Mancheswar, Bhubaneswar-5
4. Bikash Mohapatra, Jr.Clerk
Workshop Electrical Engineer
Carriage Repair Workshop, Mancheswar
Bhubaneswar-17

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Respondents

By the Advocates : Mr.D.N.Mishra
Standing Counsel
(Railways)

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ORDER

MR.G.NARASTHAM, MEMBER(JUDICIAL): In this application for quashing the order of appointment dated 11.10.1990(Annexure-7), for empanelment for the post of Junior Clerk in favour of Bikash Mohapatra(Res.⁴) in the Workshop of Electrical Engineering, Carriage Repair Workshop, S.E.Railway, Mancheswar and simultaneously for quashing order dated 12.10.1990(Annexure-8) reverting the applicant Jayakar Patra from the post of Junior Clerk in view of the order under Annexure-7, facts not in controversy are that the applicant was initially appointed as Khalasi under the Electrical Foreman, S.E.Railway, Mancheswar. He was promoted as Junior Clerk in the scale of Rs.260-400/- against Construction Cadre on adhoc basis. Subsequently he was reverted to Khalasi and promoted to Khalasi Helper in the scale of Rs.800-1150/- on the basis of his position the seniority of Group D employees. This reversion was challenged before this Tribunal in O.A. 146/90. This Original Application along with O.A. 135/90 filed by a similarly placed employee Bigyan Mohapatra was disposed of in common order dated 18.12.1990 by ~~quashing~~ the reversion order. However, the applicants were not awarded back wages. There was further direction to the respondents to adjust the applicants against available posts in the cadre of Junior Clerk within a period of 90 days. This order of the Tribunal was challenged by the Department before the Supreme Court. However, pursuant to the direction of this Tribunal the applicant again was promoted to officiate as Junior Clerk on adhoc basis on 8.3.1991. The Supreme Court by order dated 21.10.1992 set aside the order of

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this Tribunal, but at the same time directed the Department to promote the applicant as and when promotions are made to the post of Junior Clerks in the concerned Branch. Pursuant to this judgment of the Supreme Court the applicant was again reverted to the post of Khalasi and promoted again to the post of Khalasi Helper in the Scale Rs.800-1150/- on adhoc basis. Thereafter the applicant made series of representations for his absorption in the post of Junior Clerk, but without any effect. Hence he moved this Tribunal again in O.A. 24/93 which was disposed of on contest on 22.9.1999 disallowing the prayer of the applicant for issue of direction to the Department to promote/absorb him in the post of Junior Clerk said to have been lying vacant under the administrative control of the Chief Workshop Manager with consequential reliefs.

During the pendency of O.A. 24/93 and pursuant to the interim orders in that O.A., the applicant was given adhoc promotion as Junior Clerk against available vacancy on 22.11.1996 (Annexure-2) which was temporarily transferred to Electrical Department from the Mechanical Department for operation in the Electrical Department with a clear understanding that this transfer of the post would be in force till such time sanction of three posts of Junior Clerks is received from the Headquarters. In this way the applicant continued on such adhoc basis from time to time. During May, 1998 three posts of Junior Clerks were transferred from Kharagpur Workshop to Mancheswar Workshop and these three posts were allotted to Electrical Department of the Mancheswar Workshop.

2. On 8.3.1999 a notice was circulated for selection to the post of Junior Clerk against 33.1/3% of

departmental promotion quota in the Electrical Department of Mancheswar Workshop and the vacancy was 1(Annexure-6). On 11.10.1999 under Annexure-7 Respondent No.4 was empanelled for that post.

It is the case of the applicant that in view of his continuous officiation in the post of Junior Clerk he gained sufficient experience than other incumbents and as such he has a better claim over the post in comparison to Res.4. This apart even though there are two vacancies in the post of Junior Clerk, the applicant could not have been reverted in view of clear order of the Hon'ble Supreme Court.

3. Respondent No.4 had neither appeared nor contested the case.

4. The stand of the Departmental respondents in their counter is that interim orders passed in favour of the applicant in O.A.24/93 stood automatically vacated on final disposal of that Original Application. Though three new posts of Junior Clerk were sanctioned for the Electrical Department(~~one such post has to be surrendered~~) the existing post held by the applicant on adhoc basis had to be surrendered to the Mechanical Department in view of order dated 12.11.1996 under Annexure-1. Out of the three posts sanctioned, one post is reserved for Departmental Promotion Quota and other two posts to be filled up by direct recruitment through Railway Recruitment Board. For this one post of Departmental Promotion Quota, selection was held in which ^{and} the applicant along with Res.4 participated in that selection applicant could not qualify himself. As performance of Res.4 was better, he was selected and

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empanelled to be posted. In view of selection and promotion of Res.⁴, order of reversion had to be passed since there was no vacancy in the post of Junior Clerk. On these grounds departmental respondents have opposed the prayer of the applicant.

5. Applicant has filed rejoinder more or less reiterating his claim for permanent absorption as Junior Clerk.

6. During pendency of this Original Application by order dated 25.11.1999 order of reversion of the applicant was stayed on condition that the applicant had not been relieved by then. This order is still continuing and it is also not the case of the respondents that the applicant has since been reverted.

7. Various Misc. Applications viz. Misc. Application Nos. 751/99, 752/99, 773/99 and 793/99 have been filed making various prayers during pendency of this Original Application. Since the pleadings in this case were complete, no separate hearing was taken up to consider these Misc. Applications and the Original Application was ultimately heard.

8. We have heard Shri A.K.Mishra, learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel appearing for the Railway Administration. Also perused the records.

9. It is not in dispute that out of three sanctioned posts for the Electrical Department, only one is meant for Departmental Promotion Quota and for this one post, selection took place and in that selection the applicant though duly participated could not qualify himself and Res.⁴ on the other hand was selected. Having

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participated in the selection test the applicant is estopped from challenging the selection test and the consequent selection of Res.⁴ to that post. Hence the prayer for quashing the order dated 11.10.1999 under Annexure-7 issued in favour of Res.⁴ for the post of Junior Clerk is disallowed.

The fact however remains that there are two more vacancies meant for direct recruitment which have not been filed up by the time counter was filed. If these posts are still vacant without being filled up through any appointment made through direct recruitment conducted by the Railway Recruitment Board, there shall not be any legal difficulty for the Department to promote the applicant (in case the order of reversion under Annexure-8 had worked out itself in the meanwhile) on adhoc basis or to continue him on adhoc basis (in case of reversion has not been made effective) as Junior Clerk as against one of those two vacancies till such time when the vacancies are filled up by direct recruits through Railway Recruitment Board.

10. In the result while dismissing the prayer of the applicant for quashing the selection of Res.⁴ through order dated 11.10.1999 under Annexure-7, we direct the departmental respondents to continue the applicant on adhoc basis as Junior Clerk, in case the reversion order under Annexure-8 has not been fully carried out and/or in case of this reversion order having worked out itself to promote the applicant on adhoc basis to the post of Junior Clerk against one of the two vacancies meant for direct recruitment quota till such time when the same is filled up by direct recruitment in

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case the same has not been filled up already.

The Application is accordingly disposed of.

Interim order accordingly stands vacated.

In view of disposal of Original Application, Misc.Application Nos.751/99, 752/99, 773/99 and 793/99 are accordingly disposed of. There shall however, be no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

3.3.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.Sahoo