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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 397 OF 2001

Cuttack, this the 8th day of April, 2004

Shri Janakar Patra

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

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(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 397 OF 2001

Cuttack, this the 8th day of April, 2004

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Shri Janakar Patra, aged about 41 years, son of Banambar Patra, At Gadakana,
P.O.Mancheswar (R.S.), Bhubaneswar, District Khurda

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Applicant

Vrs.

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2. Chief Workshop Manager, Carriage Repair Workshop, South Eastern Railway, Mancheswar, Khurda.
3. Workshop Electrical Engineer, Carriage Repair Workshop, Mancheswar, Khurda

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Respondents.

Advocates for the applicant - M/s A.K.Misra, J.Sengupta, P.R.J.Dash,
D.K.Panda & G.Sinha.

Advocates for the Respondents - M/s D.N.Mishra, S.K.Panda & S.Swain.

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

Shri Janakar Patra has filed this Original Application challenging the action of the Respondents in not regularising his services as Junior Clerk though persons junior to him and those who have joined service in 1994 have been regularised.

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2. The applicant has been approaching this Tribunal again and again on the same issue. In fact it is a history of litigation spanning over a decade. Briefly the historical background of the case may be recapitulated as follows. The applicant after being appointed as Khalasi on regular basis on 30.8.1983, was promoted on ad hoc basis to the rank of Junior Clerk on 20.11.1984 and reverted to his substantive post on 19.4.1990. His reversion he challenged in O.A.No.146 of 1990 with success, but then the Respondents carried the matter in appeal to the Hon'ble Apex Court in Civil Appeal No.4541-42 of 1992. The Hon'ble Apex Court allowed the appeal but directed that as and when promotions are made to the posts of Junior Clerk in the Branch in which the applicant was working (Electrical Branch) his claim also should be considered, should he be entitled to such a benefit. The applicant was again promoted on ad hoc basis as Junior Clerk with effect from 8.3.1991 and was reverted to the post of Khalasi with effect from 30.6.1995 on the ground that the post that he was holding had been abolished. His grievance is that at that point of time, in the Electrical Department three posts of Junior Clerk were available against which two posts were filled up, leaving one post to accommodate him. But the Respondents did not act in that way. Thereafter again on 20.11.1996 he was promoted as Junior Clerk on ad hoc basis in the Electrical Department where he continued till 20.1.1999. During this period he appeared in a departmental test for regular promotion to the post of Junior Clerk and although he had done well, but for the reasons best known to the Respondents he was not declared successful. Instead one Shri Bikram Mohapatra was selected and


appointed on regular basis to the post of Junior Clerk. This action of the Respondents was challenged by the applicant in OA No.552 of 1999. The Tribunal, while disposing of the matter, directed the Respondents to allow the applicant to continue against a post meant for direct recruitment quota. It is further submitted by the applicant that Shri K.C.Pati and others, who were also promoted as Junior Clerk on ad hoc basis on various dates from 1983 and thereafter had filed OA No.360 of 1989 before ~~XXXXXXXXXXXXXXXXXXXX~~ this Tribunal and that O.A. was disposed of by the Tribunal directing the Respondents to allow those applicants to appear in the selection test and if they would qualify in the test, they should be regularised in the available posts. Whereas those applicants were allowed by the Respondents to appear at the selection test, the present applicant who had also made a request to appear in the selection test along with them was refused permission. He has submitted that on 7.2.2001 seven persons, namely, Shri Manoj Kanta Barisal, Shri G.C.Rout, Shri R.K.Sahoo, Shri J.P.Tripathy, Shri D.Biswal, Shri P.K.Biswal and Smt.J.Dash, who were continuing as Junior Clerks on ad hoc basis were regularised although they were appointed on promotion on ad hoc basis as Junior Clerks only from 1994, but the applicant though continuing as Junior Clerk from 1984 was not regularised. His repeated representations yielded no result.

3. The Respondents have contested the Original Application in all respects by filing a detailed counter. The facts of the case are, however, not disputed.

The Respondents have submitted that the applicant has made misleading

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submissions and has put the facts out of context. In the first instance, they have pointed out that the applicant though requested thrice to appear in the selection test for the post of Khalasi Helper, which is a promotional post for Khalasi, never appeared at the same nor assigned any valid reason for not appearing in the said test. Secondly, he had submitted that as if the Respondents had given undertaking before the Apex Court that as he had officiated on ad hoc basis in the post of Junior Clerk for five years he was entitled to regularisation in the post. The fact of the matter is that the Respondents have not made any such submission before the Hon'ble Apex Court nor did the Hon'ble Apex Court issue any direction to that effect. All that the Hon'ble Apex Court had said after setting aside the judgment of this Tribunal in OA No.146 of 1990 is that the claim of the applicant should be considered when promotion would be made to the post of Junior Clerk in the Electrical Branch in which he is working provided he is entitled to promotion at that point of time. Thirdly, the applicant had again agitated the issue of his regularisation in OA No.24 of 1993 before this Tribunal. The Tribunal by its judgment dated 22.9.1999 observed that "the applicant cannot straightaway be accommodated in this post since there may be other eligible candidates whose rights are required to be taken into consideration." The Tribunal also, by way of clarification, observed that the Hon'ble Supreme Court, while giving the direction in the order passed in the Civil Appeal, referred to earlier, did not mean that promotion of the applicant to the post of Junior Clerk would be automatic soon after a vacancy arises. The Tribunal had also dismissed the



said O.A. on merit. Fourthly, while continuing as Junior Clerk on ad hoc basis from 20.11.1996 to 12.10.1999 the applicant was allowed to participate in a selection test for filling up the vacancy of the departmental promotion quota as per the prescribed procedure, but he could not come out successful in that test whereas one Shri Bikash Mohapatra came out successful and consequently was promoted as Junior Clerk on regular basis by order dated 11.10.1999. This action of the Respondents was challenged by the applicant in OA No. 552 of 1999 before this Tribunal which disallowed the prayer of the applicant for quashing the selection of Shri Bikash Mohapatra although the Tribunal directed the Respondents to allow the applicant to continue as Junior Clerk on ad hoc basis against a direct recruitment quota vacancy if such a vacancy would exist and that he should be allowed to continue till that vacancy was filled up through direct recruitment. Fifthly, with regard to the applicant's allegation that seven persons who were given ad hoc promotion only in 1994 had been regularised, the Respondents have disputed this averment and have stated that the names of those persons though appeared in the select list have not been regularised as that select list has not been acted upon because of certain administrative reasons. The Respondents have stated that the applicant, however, cannot compare his case with them as till date he has not passed the selection test prescribed for the post of Junior Clerk. Finally, with regard to the applicant's allegation that whereas the applicants in OA No.360 of 1989 were allowed to appear in the selection test, he was refused, they have rebutted the same stating that the applicant was also allowed to appear in that

test, but he could not come out successful in the selection test, as a result of which he was not empanelled. This statement of the Respondents has not been rebutted by the applicant in his rejoinder.

4. I have heard the learned counsel for both the parties and have perused the records placed before us.

5. The grievance of the applicant right from O.A.No.146 of 1990 to the present O.A. has been revolving round the question of his regularisation. In OA No.146 of 1990 he had raised the claim that having officiated on ad hoc basis for five years uninterruptedly, he was entitled to be regularised on that ground itself. Thereafter by filing OA No.24 of 1993 he had re-agitated the same issue and by filing OA No.552 of 1999 he had claimed that he should be promoted before anyone junior to him was regularised. The question, therefore, arises as to whether for the purpose of promotion, long officiation should be the yardstick for claiming preference to promotion or seniority alone should be the basis of promotion or promotion from one grade to another is to be made on the basis of merit subject to seniority. The question raised by the applicant is not a complicated matter of law and the answer is readily available for clearing the doubt. The Recruitment Rules are framed by the Government under Article 309 of the Constitution to provide statutory basis for recruitment to civil posts ^{to a civil post}. The methods of recruitment include direct recruitment from open market, promotion, transfer, and transfer on deputation. Like any other Department, in the Respondent-Railways recruitment rules for effecting promotion from one grade to another grade or from one post to

another have been prescribed and these are available in the Indian Railway Establishment Manual, Vol.I (Revised Edition 1989). I have, therefore, referred to the recruitment rules governing selection for appointment to the post of Junior Clerk, etc., in the Railways:

"189. Promotion to higher grades in Group C:-

(a) Railway servants in Group D categories for whom no regular avenue of promotion exists 33-1/3% of the vacancies in the lowest grade of Commercial Clerks, Ticket Collectors, Trains Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typists and Stores Clerks, etc. should be earmarked for promotion. The quota for promotion of Group D staff in the Accounts Deptts. to Group C post of Accounts Clerks will be 25%. Promotion to Group C will be subject to the following conditions:

(i) All promotion should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates followed by interviews where considered necessary. Group C categories referred to above should be suitably linked with specified categories in the lower grades on broad affinity of work to form groups for promotion but it should be ensured that the prospects are made regularly equal in the different groups. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servants who are generally non-matriculantes. The aim of the examiners should be to assess the general suitability of the Class IV railway servants offering themselves for promotion to Class III posts from the point of view of their knowledge of English and their general standard of intelligence.

(1) xx xx

(2) xx xx

(3) xx xx

(4) All those who qualify in written and oral test, the qualifying percentage of marks being prescribed by the General Manager, should be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Group C categories."

Thus according to the rules, seniority of an employee is the basic requirement for acquiring a right by him to be considered for promotion provided he is within the zone of consideration according to the number of vacancies. Thereafter, if a post is to be filled up on selection basis, which is the matter in this case, every candidate aspiring for promotion has to pass a selection test which consists of a written test and viva voce, and a candidate has to obtain the required percentage of marks to merit inclusion of his name in the select list for appointment by way of promotion. In this regard, I have referred to the decision of the Apex Court in the case of **State of Mysore v. Syed Mahamood**, AIR 1968 SC 1113, where their Lordships have laid down that promotion cannot be claimed as a matter of right by virtue of seniority alone. If an employee is found unfit for promotion to a higher post, he may be passed over and an officer junior to him may be promoted. The Hon'ble Supreme Court earlier in the case of **Saant Ram Sharma v. State of Rajasthan**, AIR 1967 SC 1910, had observed as follows:

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. The main interest to be served is the public interest, not the personal interest of members of the official group


concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of merit. For the merit system ought to apply as specifically in making promotions as in original recruitment. Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight when seniority is made the sole determining factor, at any level it is a dangerous guide. It does not follow that the employee longest in service in a particular grade is best suited for promotion to a higher grade; the very opposite may be true."

The Hon'ble Supreme Court have also further clarified the concept of seniority in promotion in the case of *R.Prabha Devi v. Government of India*, AIR 1988 SC 902 when their Lordships observed as follows:

"Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rule. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. "

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6. From the above, the law is now clear that merely on the ground of seniority the applicant can hardly make his claim for promotion. In the matter of promotion, not only he should be senior enough to be within the zone of consideration, he must acquire all the eligibility conditions set for such a promotion. In the instant case, the eligibility condition consists of passing selection test and as he has failed to acquire the eligibility condition, he cannot have a grievance to ventilate. Having regard to the law position in the matter and also the facts of the case, I see no merit in this Original Application which is accordingly dismissed, being devoid of merit. No costs.


(B.N. SOM)
VICE-CHAIRMAN

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