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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO.736 of 2005
Cuttack, this the 01st day of August 2008

K.Ayodhya & Anr. Applicant
Versus
Union of India & Drs. Respondents

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

A N D

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

1. K.Ayodhya aged about 50 years, Son of Late APPALA Swamy, at present working as Jr. Clerk, Office of the Section Engineer (P.Way), Titilagarh Sub Division, East Coast Railway, Titilagarh, Dist. Bolangir.
2. V.S.Naidu, aged about 55 years, Son of late S.N.Naidu, at present working as Sr. Clerk Office of the Section Engineer (P.Way), Titilagarh Sub Division, East Coast Railway, At/Po.Titilagarh, Dist. Bolangir.

..... Applicants

By legal practitioner: M/s. P.K.Mohapatra,
S.K.Nath,S.Ghosh,Counsel.

-Versus-

1. Union of India represented through its General Manager East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist.Khurda.
2. Divisional Railway Manager, East Coast Railway, Sambalpur,At/Po/Dist.Sambalpur.
3. Divisional Personnel Officer, East Coast Railway, Sambalpur, At/Po./Dist.Sambalpur.
4. R.K.Ramacharyulu, Head Clerk, O/D. the Section Engineer (W), Bolangir Sub Division, East Coast Railway,Bolangir.

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5. A.Srinivasa Rao, Head Clerk, O/O. the Section Engineer (W), Titilagarh Sub Division, East Coast Railway, At/Po.Titilagarh, Dist. Bolangir.

.....Respondents

By legal practitioner: Mr.R.C.Rath, Counsel.

ORDER

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

There are two Applicants in this Original Application. Both of them are working as Jr. Clerk and Sr. Clerk respectively in the Office of the Section Engineer (P.Way), Titilagarh Sub Division of East Coast Railway. Their grievance is against the order under Annexure-A/II dated 10.01.2005 rejecting their claim for counting their ad-hoc period of service towards seniority and for granting them promotion to the post of Senior Clerk and Head Clerk with effect from 4.1.2001 and 17.7.2003 respectively. Being aggrieved by the aforesaid order under Annexure-A/II, they have filed this OA U/s.19 of the A.T. Act, 1985 praying the following relief:

- "(i) quash the order dated 10.01.2005 as at Annexure-II;
- (ii) direct/order the respondents to treat the 13 years continuous ad-hoc service without any break as Non-

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fortuitous and the same should be counted for assigning of seniority;

- (iii) direct/order the respondents to consider the cases of the applicants in terms of Board establishment SL.No.266/99 and promote them to the post of Senior Clerk and Head Clerk w.e.f. 4.1.2001 and 17.7.2003 when juniors were promoted.
- (iv) pass such other order(s)/directions as would deem fit and proper."

2. The contentions of the Respondents in the counter filed in this case are that K.Ayodhya and V.S.Naidu (Applicants 1 & 2) in this case were initially appointed as CPC Gangmen on 24.11.1973 & 28.07.1973. Subsequently, they were regularized as Jr. Gangmen on 20.12.1980 and 01.08.1980. While working as such, they were promoted purely on Ad-hoc and officiating basis to the post of Junior Clerk in the scale of Rs.950-1500/- (RPS) on 27.09.1986 & 01.02.1985 and they were regularized in the post of Jr. Clerk cum Typist carrying the scale of Rs.3050-4590/-(RPS) on 20.11.2000. While both the Applicants were continuing as Jr. Clerk in Titilagarh, based on their seniority suitability, both the Applicants were promoted to the post of Senior Clerk vide office order dated 18.09.2004 and 04.10.2005 respectively. It is the contention



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of the Respondents that the posts of Junior Clerk were to be filled up by way of selection. As the Applicants' promotion was purely on ad-hoc/officiating basis, they don't have any right to claim counting of seniority from the date(s) of their promotion to the post of Jr. Clerk; especially when such promotion de hors the Rules.

3. As regards the contention of the Applicant that their promotion to the post of Jr. Clerk was only after the selection, it has been contended by the Respondents that prior to induction of the Applicants to SBP Division, the Applicants were working under the administrative control of WAT Division. SBP Division was formed in the year 1993. Therefore, it has been contended by the Respondents that in the absence of adding the concerned Divisional Authority as parties, the present Respondents are unable to state as to whether the promotion of Applicants was after any selection. They have stated that both the Applicants were promoted on regular basis to the post of Jr. Clerk cum Typist w.e.f. 20.11.2000 after being selected and empanelled through a positive action of selection conducted during February, 2000.

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Further contention of the Respondents is that to fill up the post of Sr. Clerk and Head Clerk in Engineering Department, suitability test was conducted in the year 2001 and 2003. According to the Respondents Estt. Sl.No. 266/1999 is not applicable to the case of the Applicant as both of them were not coming within the zone of consideration taking into consideration their date of promotion to the posts of Jr. Clerk as 20.11.2000. As regard the contention of the Applicants that juniors to the applicants were considered and promoted to next posts, it has been stated by the Respondents that after formation of SBP division selection test was conducted for the first time in the year 1995 for filling up of the post of Jr. Clerk cum Typist. While the so called juniors participated in the selection tests conducted in the year 1995, the Applicants did not offer their candidature for appearing the tests. According to the result of the tests, the so called juniors of the applicants having been absorbed in the post of Jr. Clerk on regular basis were promoted to next higher posts according to their place and position in the seniority list of the respective places of their postings. They have, therefore, stated that on that count, the Applicants can hardly have any

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grievance. By stating so, the Respondents vehemently opposed the prayers of the Applicants and accordingly, prayed that this OA being devoid of any merit is liable to be dismissed.

4. By filing rejoinder, the Applicants have stated that they were promoted to the post of Jr. Clerk on adhoc basis w.e.f. 27.09.1986 and 01.02.1985. Thereafter, they were allowed to continue in the said post of Jr. Clerk continuously without any break till their appointment/promotion as Jr. Clerk on regular basis. In the year 1987, they were called upon to appear for suitability test for promotion to the post of Jr. Clerk and were also selected. But on 20.11.2000 the applicants were promoted to the post of Jr. Clerk and by that time they have completed near about 15 years of service on adhoc basis. As such, as per the provisions contained in Section B of Chapter II of Indian Railway Establishment Manual Vol. 1, 1989 Edition as well as Estt. Srl. No. 266/99 they having completed the residency period of service in the lower grade ought to have been considered for promotion of senior clerk w.e.f. 04.01.2001.

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5. Learned Counsel for the Applicants submitted that according to the Respondents non-fortuitous service is only counted for assigning of seniority. As the Applicants ad-hoc promotion was continuous one and they have possessed the requisite qualification their services should be accepted as non-fortuitous for counting their seniority from the date of their adhoc promotion and grant of all consequential benefits from the date others were given. This argument of the Learned Counsel for the Applicants was strongly opposed by the Learned Counsel for the Respondents by reiterating that since the promotion of the applicants to the post of Jr. Clerk was not in accordance with Rules, they are not entitled to count their seniority.

6. We have given our in depth consideration to various arguments advanced by the parties based on the pleadings and have gone through the materials placed on record.

7. No material has been produced by the Applicants substantiating their stand that their promotion to the post of Jr. Clerk was only after qualifying in the test conducted by the respective Divisions before they came to

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the SBP Division. Rather it is seen that the Applicants earlier approached this Tribunal in OA No. 549 of 1993 seeking regularization of their adhoc promotion to the posts of Jr. Clerk. It was the contention raised by the Respondents therein that the promotion/appointment of the Applicants to the post of Jr. Clerk was made on local arrangement in the exigency of service on adhoc basis. They were allowed to work as Junior Clerks without subjecting them to any suitability test. As per Establishment Serial No. 95/88 staff appearing at a test for promotion from Gr. D to Gr. C posts against the departmental quota have to obtain minimum 50% marks for being placed in the panel. Absorption in regular posts is made from the panel as per existing vacancies on the date of initiation of the selection and adding to the existing vacancies anticipated vacancies for the next year and 10% thereof for unforeseen reasons. Absorption is done from the panel on the basis of seniority. In 1987 the applications were invited from eligible class IV category for forming a panel of seventeen Junior Clerk against 33 1/3% departmental quota in the civil engineering department. 247 candidates responded to the above circular and a

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panel was formed for 17 candidates. The applicants could not be absorbed in the regular posts as they could not come into the zone of consideration. Examination was again proposed to be conducted for filling up of 11 vacancies of junior clerk against departmental quota. The notice for this selection was issued on 29.1.1992. The Applicants had applied for sitting at the examination. But subsequently they filed a representation stating that they were not appearing at the test under protest and should be deemed to have been regularized in the posts they are holding. They were again called to appear at a supplementary test held on 11.12.1993 as a one time exception. But they avoided appearing at the test and have stated that the applicants were never promoted on regular basis to the post of Junior Clerk. Based on the records, this Tribunal ultimately disposed of the aforesaid OA on 22nd November, 1999 holding as under:

"...In consideration of the above, we hold that the applicants are not entitled to be regularized as Junior Clerks straightway. But considering the fact that they have been continuing for many years as Junior Clerks on adhoc basis, the respondents are directed that the applicants should not

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be reverted to the lower posts while keeping some other persons who have been appointed as adhoc Junior Clerks after them in the higher post. As have already noted the fact that the Original Petitioner Nos. 1 and 2 have during the pendency of this OA been promoted as Permanent Way Mistry in their technical cadre and they have withdrawn from this OA. In view of this, we also direct the Respondents that notwithstanding the fact that these five petitioners have been working as Junior Clerks for number of years they should also be considered in their turn for promotion in their regular cadre and in accordance with their seniority.

8. It is not the case of the Applicants that the above orders of this Tribunal have been reversed/reviewed by any higher Court or by this Tribunal. Fact remains that the applicants after being qualified were promoted to the post of Jr. Clerk on regular basis w.e.f. 20.11.2000. No Rule or instruction has been produced by the Applicants to show counting of their ad-hoc service, as in the present case, for the purpose of seniority. It is trite law that any appointment made de hors the rules, the appointee cannot claim any right for regularization or continuation in the post. In the above view of the matter, we find no force in the submission of the Learned Counsel for Applicants for counting the ad-hoc period of service for the purpose of seniority. Corollary to

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the above the claim of Applicants for their promotion to the next higher posts by application of EsttSL.No.266/99 also fails.

9. In the light of the discussions made above, this OA is sans any merit and deserves to be dismissed. Ordered accordingly. No costs.

Thankappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)

KNM/PS.