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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

O.A. NO. 579 OF 2002

Cuttack, this the 10th day of August, 2005.

SURESH KU. PRADHAN

APPLICANT

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*.

2. Whether it be circulated to all the Benches of CAT? *Yes*.


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

10/08/05

CETRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 579 OF 2002
Cuttack, this the 10th day of August, 2005

CORAM:-

*THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)*

Suresh Kumar Pradhan, aged about 40 years,
S/o. Late Umakanta Pradhan, Law Assistant,
O/O. Estate Officer, South Eastern Railways,
Khurda Road, Jatni, Dist. Khurda, a permanent
A permanent resident of Balichhaksahi, Jatni,
Dist. Khurda.

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APPLICANT.

For the Applicant : M/s.B. Mohanty-1, S. Patra, P.K. Majhee,
A. Panda, Advocates.

-V E R S U S-

1. Union of India, represented through General Manager,
South Eastern Railways, Garden Reach, Kolkata, W.B.
2. Chief Personnel Officer, South Eastern Railways,
Garden Reach, Kolkata, West Bengal.
3. Divisional Railway Manager (P), S.E. Railways,
Khurda Road, Po: Jatni, Dist. Khurda.

4. General Manager, East Coast Railways,
Chandrasekharpur, Bhubaneswar,
DIST. Khurda.

RESPONDENTS

For the Respondents:- Mr. Ashok Mohanty,
Sr. Counsel(For Res.No.3)
M/S.B.Pal,C.R.Mishra,A.Pal,
Senior Counsel for Res.Nos.1 & 4.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER(J):

Seeking a direction for regularization of his services (as Law Assistant) under the S.E. Railways (presently "East Coast Railway"), the Applicant has approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985.

2. It is the case of the Applicant that he has been working as Law Assistant, on ad hoc basis, with effect from 9.7.1996, after being qualified in the written test conducted by the Respondent-Railways. While continuing as such, BY notification under Annexure-A/5 dated 27.9.1999, a panel was published by the Railways. The said panel consisted of Part A and B. In

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Part-A the services of certain Law Assistants, continuing on ad hoc basis have been regularized; whereas in Part-B 12 nos. of Law Assistants, (including the applicant) have been allowed to continue as such, on ad hoc basis until further orders. While the matter stood thus, the Respondents published an Advertisement (under Annexure-A/6 dated 13.10.1999) for recruiting personnel as Law Assistants against departmental quota vacancies. While the Applicant has offered himself (pursuant to the said notification dated 13.10.1999) for the post of Law Assistant, yet he approached this Tribunal in O.A.No.583/99 (with a prayer to quash Part-A of Annexure-A/5 dated 27.9.1999 and future selection to be made under Annexure-A/6 dated 13.10.1999) but since he wanted to bring certain amendment within the ambit of that O.A. (which was not allowed by the Tribunal) the Applicant had sought leave of this Tribunal and ultimately, the said O.A., (by order dated 18.4.2000) was withdrawn. Then the Applicant by his representation ^{under} ~~undr~~ Annexure-A/7 dated 2.5.2002 represented to the authorities for regularizing his service. While the matter stood thus, the Applicant, having come to know from the reliable source that he may be reverted from the post of Law Assistant, has, again moved this Tribunal in the present O.A. with the prayers referred to above.

3. Respondents have filed their counter opposing the prayer of the applicant.

4. This matter came up for admission on 2.7.2002 when, while directing issuance of notice to the Respondents, this Tribunal directed, as an ad interim measure, The Respondents not to revert the Applicant from the post of Law Assistant, without the leave of this Tribunal and the said Ad-interim order is in force till to-day.

5. We have heard the learned counsel for the parties and perused the materials placed on record. It has been submitted by the learned counsel for the Applicant that since a number of posts in the grade of Law Assistants are lying vacant and the applicant has been allowed to continue as Law Assistant on ad hoc basis more than five years, the Respondents have acted illegally and arbitrarily (a) in not regularizing his services and (b) in initiating the process of selection afresh, for filling up those posts, without considering the claim of the applicant. It has been further submitted by him that while other persons viz., S/Shri Subhasish Sarka, B.J.Rao, Ahiram Mishra, R.Bhaskar Rao, S.N. Mishra, Kumari K.Lilly and P.Papa Rao; some of whom are junior to the applicant as ad hoc Law Assistant) have been allowed to continue as such and, therefore, Annexure-A/8 dated 12.7.1996 is illegal. It is the further submission of the learned counsel for the Applicant

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that the performance of the Applicant as Law Assistant has been quite satisfactory all through and, therefore, his services should have been regularized by the Respondents.

6. The learned senior counsel appearing for the Respondents strenuously contended as under :

- (i) The O.A. ipso facto is not maintainable inasmuch as the Applicant, soon after filing of his representation dated 02.05.2002, has rushed to the Tribunal on 26.6.2002 and, therefore, this O.A. is not maintainable, being hit by Section 20 of the A.T. Act, 1985.
- (ii) On the basis of the result of the written test, the Applicant and others were promoted as Law Assistant only on ad hoc basis, against existing vacancies till regular incumbents are posted. After publication of the result of the viva voce, the panel was notified on 27.9.1999 and as the Applicant was not empanelled, his services were not regularized by the order contained in Part A of the order dated 27.9.1999 and he was allowed to continue, along with others, as Law Assistant on ad hoc basis vide Part B of the said order. The Recruitment

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Rules do not provide for regularization of persons, like the Applicant, who are continuing as Law Assistant on ad hoc basis, they having not come out successful in the viva voce and their names having not found place in the select panel of Law Assistant.

(iii) In terms of the order of ad hoc promotion, dated 24.5.1996, the Applicant has no right to get regularized as Law Assistant and the Respondents are within their domain to initiate the process of selection for filling up the existing vacant posts of Law Assistant in accordance with the Recruitment Rules.

7. Admittedly, the written test for selection and promotion to the post of Law Assistant was held on 23.9.1995. The Applicant (and 22 others) qualified in the written test vide notification dated 19.1.1996 and were called upon to appear at the viva voce test; which took place on 6.2.1996. However, before the result of the viva voce came to be published and before the select list/panel could be prepared, on the basis of the result of the viva test, the Respondent-Railways, in the interest of the administration, promoted those 23 candidates, on ad hoc basis, against the existing vacancies till the regular incumbents are posted. The select panel of

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Law Assistants was finally published on 27.9.1999 under Annexure-A/6 empanelling 12 candidates and, accordingly, the services of those 12 candidates were regularized and the remaining 11 candidates, including the Applicant, were allowed to continue on ad hoc basis till further orders. The Applicant remained satisfied with the said order of his Ad-hoc continuance, along with 10 others, as Law Assistants on ad hoc basis and preferred not to challenge his non-empanelment and/or empanelment of the 12 candidates, who were regularized upon being qualified in the viva voce test. In order to fill up the remaining 13 vacancies, fresh steps were initiated (vide notification dated 13.10.1999) as per the extant rules and it is the case of the Respondents that the Applicant has also applied for the same. Soon thereafter, he had moved this Tribunal in O.A.864/99. As indicated earlier, the said O.A. No. 864 of 1999 was withdrawn on 18.04.2000. While the matter stood thus, by his representation dated 2.5.2002 (under Annexure-A/7) the Applicant made a prayer to the Chief Personnel Officer of S.E. Railway at Garden Reach of Kolkata (Res.2) to regularize his service as Law Assistant and, soon thereafter, within a span of two months, he approached this Tribunal in the present O.A. with a plea that the Respondent-Railways were proposing to revert him from the post of Law Assistant.

In the above backdrop of the case, we are of the considered view that this O.A., as submitted by the learned senior counsel for the Respondents, is not maintainable as it is hit by Section 20 of the A.T.Act,1985. Moreover, the applicant has not produced before us any authority to buttress his claim for regularization as Law Assistant. It is apparent from the record that the action of the Respondents in issuing fresh advertisement is not inconsistent with the rules and that they are within their domain to do so. We are also entirely in agreement with the learned senior counsel for the Respondents that there is no such provision of regularizing the services of the Law Assistants.

That- apart, it is the emphatic stand of the Respondents in their counter that regularization of the 12 candidates as Law Assistants was based on the outcome of the result of the viva voce test which has not been controverted by the applicant by filing any rejoinder.

Viewed from these angles, the Applicant does not have any indefeasible right to claim regularization, more particularly when he has not been declared successful on the basis of viva voce test, nor has he ever challenged his non-selection in the viva voce at any point of time. To add to this, it would be worthwhile to mention that the Applicant having applied for the post of Law Assistant in response to the fresh advertisement has,

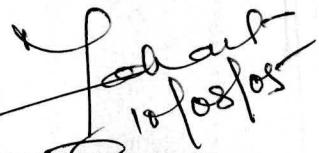
unhesitatingly, accepted his non-selection in the *viva voce*. It is also not the case of the applicant that some persons junior to him as Law Assistant on ad hoc basis (in Part B of Annexure-A/5) have been regularized in exception to him.

We would like to note that it has been settled by the Apex Court that Court/Tribunal cannot give direction for regularization of an ad hoc employee against an existing vacancy in the absence of any provision in the Recruitment Rules to the said effect and, if any such direction is issued by Court/Tribunal, such process would become another mode of recruitment to a post *de hors* the recruitment rules. The Applicant having not come out successful in the *viva voce*, has not been empanelled to be regularized as Law Assistant and, therefore, his services have rightly not been regularized. He has rightly been placed in Part B like the similarly situated persons to continue as Law Assistant on ad hoc basis till vacancies are filled up on regular basis in accordance with the Recruitment Rules. Therefore, the plea of the applicant to direct the Respondents to regularize his service as Law Assistant is nothing but an empty bluster.

8. Having regard to what has been discussed above, we hold that this O.A., besides being not maintainable, lacks in merit and, therefore, the same is dismissed.

9. In view of dismissal of the O.A., the stay order dated 2.7.2002 stands vacated. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)