

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:872/96, 870/96

DATE OF DECISION: 14th November 2000

Shri A.G. Pednekar and another Applicant.

Shri R.S. Tulaskar Advocate for
Applicant.

Versus

The Union of India and others Respondents.

Shri S.C. Dhawan. Advocate for
Respondents

CORAM

Hon'ble Shri B.N.Bahadur Member (A)

Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? yes

(3) Library.

yes

S.L.JAIN -
(S.L.JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 870/96 & 872/96

Pronounced the 1st day of November 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

U.B. Prabhakaran
Residing at
Parwati Nagar No.2,
Room No.5,
Near Vithal Mandir,
Vithalwadi (East)
Kalyan

...Applicant in
OA 870/96

A.G.Pednekar
Residing at
No. 8, Taryasso Building
Sitaladevi Temple Road,
Mahim, Mumbai.

A.C. Mourya
Residing at
Ramdeo Master's Chawl,
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J.V.P.D. Scheme,
Juhu, Mumbai.

...Applicants in
OA 872/96

By Advocate Shri R.S. Tulaskar.

V/s

1. Union of India through
General Manager,
Central Railway,
Chhatrapati Shivaji Terminus,
Mumbai.

2. Chief Personnel Officer,
Central Railway,
Chhatrapati Shivaji Terminus
Mumbai.

3. Chief Workshop Manager,
Signal & Telecommunication
Workshop, Central Railway,
Byculla.

...Respondents.

By Advocate Shri S.C. Dhawan.

SC.Dhawan ...2...

O R D E R

{Per Shri S.L.Jain, Member(J)}

As the same question of law is involved in the two O.As., though in OA 870/96 the applicant was appointed in 1985, while in O.A. 872/96, the applicants were appointed in 1984 as Junior Clerks, hence we proceed to decide the said O.As by the common order.

2. These are the applications under Section 19 of the Administrative Tribunals Act 1985 seeking the declaration that action of the respondents in denying the applicants' the right to be regularised as junior clerk against the existing vacancies after they have been duly selected and put to officiate for more than 18 months is illegal, and bad in law, with a direction to regularise the applicant as Junior Clerk with effect from 8.5.1984/85 when they were promoted as adhoc Junior Clerk in a cadre after proper written and suitability test and not to subject him for further test in regularisation along with all consequential benefits. They have further prayed the relief that the respondent be restrained from disturbing the present position of the applicant as adhoc junior clerk except their regularisation as Junior Clerk and a further promotion as Senior Clerk.

3. The applicant has in para 8(d) claimed the relief of declaration that the action in regularisation of four junior employee by giving seniority marks in a office order dated 9.4.1996 above the applicant who is senior in terms of officiating period resulting selection illegal and bad in law.

S.L.Jain

4. The applicants claim that they were initially recruited as Khalashi in signal and telecom. Workshop of Central Railway Byculla under respondent No. 3 on 1.7.1982 and 10.9.1982 respectively, their further prospects of promotion in technical category such as semi-skilled, skilled workman and supervisor after passing appropriate prescribed trade test exist. On or about 10.1.1984 applications were invited by respondents for conducting departmental examination for promotion of Group 'D' employees to Group 'C' against 33 1/3 quota in terms of Railway Board directions. The applicant applied for the same being eligible, appeared for suitability test held for selection to the post of Junior Clerk grade Rs. 260 - 400 from class IV staff in regular service in S & T Workshop Byculla, passed the same and were posted to officiate as Junior clerk with effect from 8.5.1984 against existing vacancy. The respondents on 4.12.1987 issued notification to fill up class III post of junior clerk in grade Rs. 950 - 1500, applicants had again given their willingness under protest, the written test in connection was held on 12.1.1988 and ~~viva-voce~~ test was held on 24.3.1988, qualified in the selection but result of the said selection was not declared. The respondents issued a fresh notification on 28.3.1988 in supersession of the earlier notification dated 4.12.1987 exhibit 'B'. On 8.7.1996 further departmental examination was notified by respondent No.2. Without prejudice to their rights the applicant appeared in the said examination and qualified the same.

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5. The grievance of the applicants is that as after due selection they are working as adhoc Junior Clerk since 1984, the respondents ought to have regularised them against the said post of Junior Clerk as they have completed more than 18 months of service satisfactorily. The action of the respondents in not considering them for regularisation, issuance of the notification dated 4.12.1987, further issuance of notification dated 28.3.1988 in supersession of notification dated 4.12.1987 which was protested by the applicants in a joint letter dated 8.4.1988 claiming regularisation, appeared for the same and was successful, still the respondent did not regularise them as Junior Clerk is in violation of the judgement pronounced in Jehatanand and others V/s Union of India wherein the respondents were the parties. The grievance was agitated vide joint letter dated 26.7.1993 which was forwarded to respondent No.2 by respondent No.3 under letter dated 16.9.1993 but not replied so far. The grievance was further agitated vide letter dated 15.12.1993 and 24.4.1995, but neither there is an acknowledgement nor reply for the same. The Union also took up the matter vide letter dated 7.9.1995. The action of respondents caused prejudiced to the applicant and is irrational. The respondents regularised employees much junior to the applicant and failed to regularise the applicant vide office order dated 9.4.1996. There exists 112 vacancies of Junior Clerk grade Rs.950 -1500 apart from 33 1/3 % quota and for the said vacancies notification dated 8.7.1996 is issued to fill up the said vacancies. Hence this OA for the above said reliefs.

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6. The respondents have resisted the claim and alleged that the application is misconcieved, and not maintainable in law, as the applicant were promoted purely on adhoc and Local officiating basis by Dy. CSTE(S) Byculla from amongst the class IV employees under him, hence cannot claim regularisation to the post of Junior Clerk which is a selection post and the selection is conducted by CPO (S & T) on the basis of combined seniority list of clerks of CSTS/CSTE(C) and CWM (B4) officers. The CPO (S & T) has not issued any orders for promotion of applicant on the basis of the selection held. It does not disclose any casue of action. The cadre controlling Authority of clerical staff is CWM(By) is CPO/S & T. The seniority of the clerical staff is maintained by the combined seniority of the staff of CSTE/CSTE(G) and CW / (By) officers. The selelction for the post of Junior Clerk is also conducted by CPO and S & T on the basis of aforesaid combined seniority against 33 1/3 quota in terms of Railway Board direction and rule of 189 of IREM. In June 1985 the CPO (S & T) did not conduct any selection and the applicant was never selected in such selection or empanelled or promoted to the post of Junior Clerk. It appears that the Dy/CSTE(S) By locally promoted certain class IV employees among the persons working under him to the post of Junior Clerk purely on adhoc and local officiating basis as a temporary measure and in exigency of service with clear understanding that reverting to their former post with the regular post for duty. Dy. CSTE (S) By, who is not the competent authority, without any permission of competent authority, conducted test from amongst the class IV employees

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working under him. The result is that the applicants cannot say that they have passed the selection for the post of Junior Clerk, as they have not passed the selection held by the competent authority at any time. Notification dated 23.8.1988 which was issued in supersession of earlier notification dated 4.12.1987. The applicants appeared in the said selection but were not selected by the duly constituted DPC and were not empanelled for promotion. The result of the said selection was notified. The applicant also appeared in selection of 1995 but were never duly selected as per rules. The Applicants have a lien in their parent cadre till date. The notification dated 8.7.1996 has been issued by CPOs office by General departmental competitive Examination which is open to all departments and pertains to 33 1/3 % departmental quota. The applicants has not appeared in the said selection . The repeated representation do not entitle them a fresh cause of action. The claim of applicant is barred by time. Hence prayed for the dismissal of the OA along with costs.

7. The applicants have filed the rejoinder affidavit denying the allegation levelled by the respondents and stated that the departmental examination was conducted by the Respondent No.3 with knowledge and permission of the Respondent No.2. The Respondent No.2 allowed the applicant to appear for selection to the post of Junior Clerk against 33 1/3 % Quota in the year 1987, 1988, 1995 but failed to regularise despite vacancies hence estopped to say that the applicants are not eligible/not entitled for selection. The promotion orders is issued with the knowledge and permission of the Respondent No.2 hence now they are estopped

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to contend against the same. The applicant continued a Junior Clerk for a period of about 15 years. The applicant agitated the matter i.e. representations marked as Exhibit 'C' 'F' 'G' 'H' 'I'. Even the respondent forwarded proposal 'K' 'L' 'M' to the Railway Board for regularisation which are still pending for orders. The Departmental Examination for the year 1985 was on the basis of combined seniority list. As the applicant was eligible and suitable, declared successful by the duly constituted D.P.C. appointed and continued till date without any break.

8. It is further alleged that the Respondents are under obligation to conduct selection regularly to fill up vacancies against 33 1/3% Quota as per provision of IREM and conducted selection in which the applicant qualified. The applicants were continued as adhoc. The Respondents have considered junior employees for regularisation. The result is that the employees who have appointed against direct quota and on compassionate grounds much after the promotion of the applicants are now working as Senior Clerks and Head Clerks. It is also alleged that the applicants have never denied/conveyed his unwillingness for promotion in the parent cadre or any promotional opportunity was provided to him in his parent cadre. The notification dated 8.7.1996 is not as per Rules in view of Chapter I Section 'B' of IREM Vol.I. The applicants are declared ineligible to compete vide letter dated 8/12.10.1998. The Respondents are adopting the policy of Hostile discrimination. The applicants are sought to be reverted vide letter dated 4.3.1999. The Respondents are raising new defences which are not available to them.

J.S.R.

9. The learned counsel for the applicants relied on Full Bench Judgement in the case of Jetha Nand and others V/s Union of India and others reported in 1989 (2) ATJ 361 which is as under:

"We, therefore, conclude:

(i) The right to hold the selection/promotion post accrues only to those employees who have undergone a Selection Test and empanelled for the promotion/selection post and continue as such for 18 months or more. An adhoc employee will also get the right if he has passed the Selection Test.

(ii) We hold that a test is mandatory before a Class IV employee can be promoted permanently to Class III post.

(iii) The mere recording of satisfaction or even good entries in CR of the employee is not enough to entitle the employee holding a promotional post in an adhoc capacity to claim that his services be regularised in the Class III post.

(iv) If the employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post. But he will be entitled to be given further opportunity to appear in the selection test.

(v) A Railway employee holding a promotional post in a adhoc capacity can be reverted to his original post at any time before the expiry of 18 months. Secondly, if he has not qualified in the selection test, he is liable to be reverted even after 18 months.

Further, we are of the view that all Class IV Railway employees who are holding adhoc posts in Class III are to be given several opportunities to qualify and are to be reverted if they do not qualify even after repeated opportunities".

10. On perusal of (i) it is clear that the right to hold the selection/promotion post accrues only to those employees who have undergone a Selection Test, and empanelled for the promotion /

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Selection post and continue as such for 18 months or more and adhoc employee will also get the right if he has passed the Selection Test. Thus the criteria laid down is, firstly, passing of the Selection Test, secondly empanelling for the promotion / selection post, thirdly continue as such for 18 months or more, Perusal of (ii) makes it clear that the test is mandatory before a Class IV employee can be promoted permanently to Class III post, Perusal of (iii) makes it clear that mere recording of satisfaction or even good entires in CR of the employee is not enough to entitle the employee holding a promotional post in adhoc capacity to claim that his services be regularised in the Class III post, Perusal of (iv) makes it clear that if the employee has failed in the selection his services cannot be regularised in the promotional post but he will be entitled to be given further opportunity to appear in the selection process. Perusal of (v) makes it clear that if the employee is not qualified in the selection test is liable to be reverted even after 18 months.

11. The learned counsel for the applicants relied on Tr. Application No. 102/86 decided by Mumbai Bench on 6.11.1989 in the case of K.A. Bagul and others V/s Union of India and others following the same ratio of the above referred authority.

12. The learned counsel for the applicants relied on 1986 ATI (CAT) 49 Narinder Chadha V/s Union of India and others. The said authority has been referred in the Full Bench judgement referred

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to above Jetha Nand and others V/s Union of India and others in para 4 of the order. Hence no further discussion on the said authority is necessary.

13. The learned counsel for the applicants relied on 1992 SCC (L & S) 667 Union of India and others V/s Pratap Narain and others which laid down the proposition that Adhoc promotees to posts in Grade IV continuing for 15 - 20 years direction issued in NarenderChadha case to treat them as having been regularly appointed to the posts and to assign them seniority from the date of their continuous officiation in the said posts. There is no distinction between officiation in cadre posts and ex-cadre posts. As stated above the case of Narender Chadha has already been discussed in the Full Bench case of Jetha Nand and others V/s Union of India and others referred above, hence further comments not necessary.

14. The learned counsel for the applicants relied on 1998(7) Supreme 231 State of Maharashtra and others V/s Vijay Vasantrao Deshpande which laid down the proposition that Adhoc Lecturer continued for 8 years without break - for regularisation and merit promotion. It is held that the impugned scheme was made for regular appointment and not for adhoc promotion. It is further held that direction for regularisation could have been granted. On perusal of the same authority we find that Apex Court has ordered that the State Government shall now consider the case of the respondents for regularisation within a period of three months from today.

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15. The learned counsel for the applicants relied on 1992 SCC (L & S) 954 N.S.K. Nayar and others V/s. Union of India and others which lays down the proposition that long continuance - seniority / promotion - Rule providing for direct promotion from Telegraph Engineering Service Class II to Senior Time Scale (STS) grade by passing the initial grade of Junior Time Scale (JTS) in Class I service to meet an administrative exigency of short term. Such promotees to STS allowed to continue in purely temporary/ Officiating/ adhoc capacity for 10 to 15 years without regularising their service and without considering them for further promotion to Junior Administrative Grade (JAG) whereas direct recruits with much lesser service already promoted to JAG. It was held that taking work from these promotees in the STS grade for 10 - 15 years and denying them the right of regularisation and consequent benefits in that grade wholly arbitrary and violative of Article 16. Rule 27 of the Indian Telecommunication Service Group 'A' was a subject matter for the decision which is as under:

"27.(a) Appointments to the Senior Time Scale in the Service shall be made by promotions of officers in the Junior Time Scale in the order of seniority subject to the rejection of the unfit. A directly recruited Assistant Divisional Engineer shall not ordinarily be promoted as Divisional Engineer unless he has put in five years service and has passed the prescribed departmental tests.

(b) Posts in the senior time scale, may however, be filled as a purely temporary measure, in an officiating capacity to hold charge by the promotion of permanent members of Telegraph Engineering and Wireless Service, Class II who are on the approved list for promotion to the Junior Time Scale.

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16. On perusal of the same we are of the considered opinion that Senior Time Scale in the Service shall be made by promotions of officers in the Junior Time Scale in the order of seniority subject to the rejection of the unfit. Thus it is a case where selection process was not involved. Hence the said authority is of no assistance to the applicants.

17. The learned counsel for the applicants relied on 1992 SCC (L & S) 825 State of Haryana and others V/s Piara Singh and others which lays down the proposition that Adhoc / Temporary Government employees , those eligible and qualified and continuing in service satisfactorily or long period have a right to be considered for regularisation. It is further laid down that long continuance in service gives rise to a presumption about need for a regular post. We agree to the submission of the learned counsel for the applicant.

18. The learned counsel for the applicants relied on 1998(4) (CAT) 65 Suparna Mukherjee V/s Union of India and others. Wherein CCS (TS) Rules, Rule 5 was subject matter for consideration and the case relates to recruitment and not promotion. Further it is held that continuance for long period could not be adhoc. In the present case the applicant was appointed on adhoc basis. Hence the said case is also of no assistance for the reason that nature of adhoc appointment is not in dispute and mere continuance as such cannot be treated regular in view of the Full Bench judgement referred to above which was decided on 5.5.1989.

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19. The learned counsel for the applicants further relied on 1998(4) Supreme 420 Secretary-cum-Chief Engineer Chandigarh V/s Hari Om Sharma and others which laid down the proposition that service agreement against public policy would be contrary to law and opposed to public policy and thus void, Stop gap arrangement to work on a higher post for a long time undertaking not to claim higher salary or attendant benefits. Question of selection post was not a subject matter in the case. Hence the said authority does not assist the applicant.

20. The learned counsel for the applicants relied on ATR 1988 (2) CAT 518 A.K. Khanna and others V/s Union of India and others which laid down the proposition that benefit of judgement whether can be extended to those who were not party to the judgement but were similarly placed as the petitioner therein. It was held that not extending similar benefit would amount itself to a discrimination violative of Articles 14 and 16 of the Constitution. We agree to the same but it does not help the applicant in any way for the reason that such benefit of regularisation is not extended by the respondents to any other employee.

21. The learned counsel for the applicants relied on AIR 1991 Supreme Court 295 H.C. Puttaswamy and others V/s Hon'ble Chief Justice of Karnataka High Court, Bangalore and others and argued that even in case of illegal appointment the Apex Court has directed to be treated as regularly appointed on humanitarian

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ground. The applicant is already Class IV employee, even on reversion he shall continue as such hence such humanitarian ground does not exist.

22. The learned counsel for the respondents relied on Full Bench judgement (CAT) Vol. III Ashok Mehta and others V/s Regional Provident Fund Commissioner and Another which deals with the case of promotion to UDCs on the principle of seniority subject to rejection of the unfit and promotion on the result of competitive examination. It is laid down that it constitute two different modes of promotion and not of direct recruitment. It is further laid down that initial adhoc promotions continued in posts until regularised as per the rules. It is held that benefit of continued officiation be given for seniority. In the present case, the applicant is not regularised, cannot be regularised due to his failure in the examination, hence this authority does not help the applicants.

23. The learned counsel for the respondents relied on JT 1996 (6) SC 725 Dr. Surinder Singh Jamwal and Another V/s the State of Jammu and Kashmir and others and argued that appellants had put in 13 years as adhoc employee and claimed regularisation directed to notify the vacancies to PSC the ratio appears to be that selection post to be filled in by PSC must be as per Rules.

24. The learned counsel for the respondents relied on AIR 1996 SC 3230 Hindustan Shipyard Ltd. and others V/s Dr. P. Sambasiva Rao and others alongwith Dr.S. Prasada Rao which deals with

regularisation of service under Industrial Disputes Act Schedule 2 Item 6. The facts of the said case are that recruitment rules providing appointment on post only after selection by duly constituted Selection Committee. Direction for regularisation of Medical Officers working on adhoc basis giving go bye to procedure prescribed by Recruitment Rules which was set aside. In our considered opinion the said authority applies to the present case.

25. The learned counsel for the respondents relied on AIR 1991 SC 284 Kehsav Chandra Joshi and others v/s Union of India and others which laid down the proposition about the seniority and it is held that adhoc appointment not according to Rules and was made as stop gap arrangement cannot be considered for continuous service. We agree to the said proposition of law. The question of seniority is not before us. The point before us is for regularisation of adhoc service of an employee who has failed in written test for selection post twice.

26. On the basis of Rule 189 (a)(i)(1) the learned counsel for the applicants argued that the Railway Servant in Grade 'D' Cadre are entitled to be promoted to their quota 33 1/3 % of the vacancies in the lowest grade of Commercial clerks, Ticket Collectors, Train Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typists and Stores Clerks etc. should be earmarked for promotion. He further argued the that this being a

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selection post, written test should consist of one paper of 3 hours duration divided into two parts. Part A to test the working knowledge of the railway servant of the English language and part B his general standard of intelligence and proficiency through questions in Arithmetic, General Knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. It is further mentioned that in drawing up the questions it must be ensured that they are not set as such a standard as to make it impracticable for a Group 'D' Railway servant of average intelligence and normal standards of efficiency to qualify in the test. In addition to it oral test is also prescribed.

27. The learned counsel for the respondents argued that Rule 189 of IREM has no application to the present case for the reason that according to him the applicant has promotional avenues such as Semi-skilled workers, Skilled workers and Supervisors after passing proper trade test. In such circumstances Rule 189 does not help the applicant. On perusal of the said Rule we are inclined to agree with the learned counsel for the respondents in this respect. Hence the applicant is not entitled to seek any relief on this account.

28. The learned counsel for the applicants argued that in view of notification dated 8.7.1996, educational qualification is Matriculate or its equivalent which is against the provisions of Rule 189 (a) (i) (1). We agree with the submission of the learned counsel for the applicants that in part (A) paper only working knowledge of the Railway Servant of the English language is

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specified, while the notification dated 8.7.1996 specifies Matriculation or its equivalent examination condition is prescribed for appearing in the said test. IREM prevails and hence notification dated 8.7.1996 to that extant is being against IREM. The result is that the said qualification being against IREM which cannot prevail. Even after the conclusion, the applicants' case has no better place for the reason that they are not eligible to appear in the said selection in view of having regular avenue of promotion.

29. Apart from that the applicants have appeared in the departmental examination held in 1988 and 1995 but were not declared successful hence not empanelled. We are not inclined to agree with the learned counsel for the applicants that the result of the examination held in 1988 and 1995 was not declared for the reason that we have perused the result sheet and found that the applicants were not empanelled.

30. One of the grievance of the applicants is also that Dy. CST Byculla conducted the departmental examination with the consent/ knowledge of the CPO (S & T) on the basis of combined seniority list of CSTS, CSTE(C) CWM Byculla and the adhoc appointment as Junior Clerk was with his knowledge. We see no reason to hold as such in absence of there being no basis to arrive to the said conclusion. In addition to it promotion orders were not issued by CPO (S&T).

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31. The applicants' grievance is that juniors have been given seniority marks while respondents have stated that they have not given any seniority marks to the juniors of the applicants. There is also nothing on record to arrive to the said finding as claimed by the applicant. Hence this ground also fails.

32. It appears that the Dy. CST (S) Byculla illegally promoted certain Class IV employees amongst the person working under him to the post of junior clerk purely on adhoc basis. It is true that such local officiating arrangement continued years together, by the said fact it can be inferred that there existed posts.

33. An error/ irregularity committed by Dy. CST(S) Buculla in allowing the applicant to appear in the departmental examination though not eligible or an error or irregularity by the respondents in allowing the applicant to appear for the said departmental examination cannot create right in favour of the applicant by appearing in the said examination again in which they could not succeed which also does not create a bar/ estoppel against the respondents. Had it been a case of the applicant being successful in departmental examination conducted in 1988, the refusal of the respondents to promote them in grade 'C' must be created estoppel against the respondents. But when the applicants' who have failed in the said examination cannot claim a bar against the respondents in allowing the applicant in further examinations.

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34. The applicants have continued on the said post of junior clerks since long, may be for about 10 years or so but in view of the fact that they were not successful in the examination, the authority appointing the applicants on adhoc basis was not competent one to held the examination or promote the applicants on the said post, the applicant is not entitled to any relief. After filing of the OA the applicants are continuing on the same post in view of the interim relief granted by this Tribunal. Such orders also do not create any right in favour of the applicant.

35. It is worth mentioning that the applicants have denied that they have refused their further promotional avenues in their parent cadre, but as a fact we find it that the plea of denial of the applicants' is false one to their knowledge.

36. In the result we do not find any merit in the OA, it is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.Jain
(S.L.JAIN)
Member(J)

B.N.Bahadur
(B.N.BAHADUR)
Member(A)

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