

VIII

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH  
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Original Application No. 188 of 1986.

Date of decision: November 3, 1988.

1. A. Behera, son of N. Behera.
2. B. B. Patra, son of J. Patra.
3. K. Bhagirathi Rao, son of K. Narayan Rao.
4. Sk. Kayamuddin, son of Sk. Iddu.
5. M. Jaga Rao, son of M. Chandra sekham.
6. L. V. Rao, son of L. Sanyashi.
7. Md. Anwar, son of Md. Abdul Khaum
8. A. N. Rao, son of A. Surya Rao.
9. K. Jagadeswar Rao, son of K. Milaya.
10. P. Kusi Raju son of P. Narayan.
11. Arujun Bari son of Udayanath Bari.
12. P. K. Sahu, son of Chintamani Sahu.
13. Bijay Nayak son of Mina Nayak.
14. R. Pappa Rao, son of R. Bhagavathi.
15. S. B. Rowlo son of late Jagabandhu Rao.
16. S. C. Dakua, son of Gangadhar Dakua.
17. Abdul Rajak, son of Abdul Rahman.

Class IV employees of South Eastern Railway,  
Khurda Division, Dist- Puri.

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Applicants.

Versus

1. Union of India, represented by  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta- 43.

2. Divisional Railway Manager,  
South Eastern Railway, Khurda Road.
3. Divisional Personnel Officer,  
South Eastern Railway, Khurda Road.

..... Respondents.

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M/s Ganeswar Rath & P.K.  
Mohapatra, Advocates ... For Petitioners

Mr. Ashok Mohanty,  
Standing Counsel  
(Railway Administration) ... For Respondents.

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C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P.ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be permitted to see the judgment ? Yes .
  2. To be referred to the Reporters or not ? ☒
  3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the order passed by the competent authority cancelling the result of the examination vide Annexure-3 is under challenge.

2. Succinctly stated, the case of the petitioners, seventeen in number, is that they were initially appointed as Class IV employees on regular basis under South Eastern Railway and stationed at Khurda Road. Under the rules for promotion to the post of Ticket Collectors 33½ % was reserved for the departmental candidates from the category of Class IV employees who are to be selected for promotion and for the said purpose a written test was held. 17 petitioners along with many others appeared at the written test held in July, 1985 and result was published as per Annexure-2. The qualified candidates were required under the rules to appear at the viva voce test but before the viva voce was conducted complaints were received by the Divisional Railway Manager alleging certain irregularities of the mal practice to have been committed in the examination. The Divisional Railway Manager caused an inquiry and on receipt of the report, result of the examination was cancelled on 21.11.1986 i.e, practically one year after the declaration of the result of the examination. The competent authority further ordered that a second examination should be held and after such an order was passed, the present petitioners came up with this application with the aforesaid prayer.



On the prayer of the petitioners we had stayed publication of the result of the second examination but we are told that the second examination was not held.

3. In their counter, the Opposite Parties maintained that no illegality has been committed by the competent authority in cancelling the result of the first examination as the report of the Inquiry Committee was that irregularity and mal practice had been adopted in the examination in question and hence the order of cancellation was bound to be passed and therefore it should not be interfered with.

4. We have heard Mr. Ganeswar Rath, learned counsel for the petitioners and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration at some length. Mr. Rath submitted that the order of cancellation is bad on question of law and fact because no opportunity was ever given to any of the examinees to have their say in the matter and without calling for any explanation from the examinees and without any report from any invigilator that mal practice had been adopted in the examination, the order of cancellation passed by the Divisional Railway Manager is against all canons of justice, equity and fair play. Mr. Rath further submitted that it would immensely jeopardise the interest of the petitioners who are examinees in the examination if this order of cancellation is sustained because for no fault of these petitioners, the examination has been cancelled

and ultimately many will be suffering from age bar and would be deprived of their sustenance of livelihood. On the other hand Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration vehemently urged before us that there was no option left for the Divisional Railway Manager but to cancel the result of the examination because the report of the Committee was that mal practice had been adopted and therefore in order to give due justice to all concerned the Divisional Railway Manager rightly ordered that the result of the examination be cancelled and a second examination should be held. Therefore from the point of view of fairness to all concerned, the Divisional Railway Manager rightly ordered cancellation of the result of the examination in question. It was submitted by Mr. Mohanty that in case the petitioners had not adopted any mal practice then it is not understood as to how their interest would be jeopardised if they would appear in the second examination because their brilliance in the same manner would be exhibited in the second examination. We have given our anxious consideration to the arguments advanced by counsel for both sides and we have carefully considered the report of the Committee and the different orders passed by the Divisional Railway Manager in the file which was called for and produced by learned Standing Counsel. For the interest of administration, we would not like to divulge the contents of the reports forming subject matter of the file but on a perusal of the report and the observations of the Divisional Railway Manager and after giving our careful consideration to the same, we find

Mr,

that there is no report from any of the invigilator stating that mal practice had been adopted. So far as the report of the Committee is concerned though we donot want to divulge the contents of the same but we are of opinion that inat the report nothing has been specifically stated that mal practice had been adopted and therefore it was not warranted to cancel the result of the examination especially because no explanation was ever called for from any of the examinees relating to this particular examination. No opportunity having been given to any of the examinees to explain regarding the allegation of mal practice having been adopted, it is not warranted under the law to take an adverse view against them. Therefore we say that due to these reasons and other reasons which we donot like to divulge for the interest of administration, the cancellation of the result of the examination was not warranted and therefore we do hereby quash the order of the concerned authority, vide Annexure-3 cancelling the result of the examination held during the year 1985. We further direct that the result of the examination be given effect to after compliance with the directions given in Annexure-2 and we further direct that the viva voce test be held as soon as possible.

5. Thus, the application stands allowed leaving the parties to bear their own costs. Stay order passed by this Bench stands automatically vacated .

B.R. PATEL, VICE CHAIRMAN, *g agree.*

*[Signature]*  
..... 3.11.88  
Member ( Judicial )

*[Signature]*  
..... 3.11.88  
Vice Chairman.

Central Administrative Tribunal  
Cuttack Bench.  
November 3, 1988/Roy, Sr.P.A.

