

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH CUTTACK.

Original Application No.198 of 1987.

Date of decision : February 28, 1990.

C.R.Das ... Applicant.
Versus
Union of India and others ... Respondents.

For the applicant ... M/s. Dr. S. C. Dash,
B. K. Patnaik,
R. Ch. Rout, Advocates.

For the respondents ... Mr. Ashok Mohanty.
Standing Counsel (Railways)

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C O R A M :

THE HON'BLE MR. P. S. HABEEB MOHD., MEMBER (ADMN.)

AND

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N. SENGUPTA, MEMBER (J) The case of the applicant herein is that he was initially appointed as a Clerk and joined as such on 13.7.1954 and in due course he came to officiate in the rank of Office Superintendent Grade I with effect from 1.1.1984 followed by his confirmation in that grade with effect from 18.2.1985. The Office Superintendents belong to Group C i.e. Class III service and from amongst them promotions are made to the posts

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of Assistant Personnel Officer(A.P.O.) and Assistant Welfare Officer(A.W.O.). The Chief Personnel Officer invited applications on 12.9.1985 from willing candidates to sit at a written examination for the selection but on the allegation that many of the willing candidates could not apply in time, a second notice was issued on 14.1.1986, copy of which forms Annexure-1 to the application. He (the applicant) in response to the first notice filed his application and sat at the written examination held on 9.3.1986 and then appeared at a viva-voce test held on 5.2.1987. A panel of selected candidates was published on 9.3.1987 in which his name did not appear. Copy of the panel is Annexure-2 to the application. It is alleged by the applicant that with some oblique motive, the rules for selection underwent changes from stage to stage and those changes were made with the motive of pushing in some candidates to the liking of the administrative officers. Copies of the circulars of the Railway Board with regard to the norms of selection are given in Annexures-4 series to the application. After the issue of circulars, Annexures-4 series, two more circulars, copies of which are Annexures-5(a) and 5(b) to the application, were issued on 19.12.1984 and 2.4.1985. These two circulars provide that the seniority of a person was dependent on his performance in the written examination and those circulars contain absurd provision that the marks of seniority will differ in accordance with the number of candidates called for selection and that left much scope for manipulation and was

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in the nature of excessive delegation, and as such the circulars are invalid. His case further is that seniority is a valuable right and it cannot be changed without a valid provision of law and the circulars relating to seniority as embodied in Annexures-5(a) and 5(b) being arbitrary, the whole process of selection was vitiated. It is further averred that according to the rules framed, the Chief Personnel Officer was to be a member of the Selection Board but when the selection was made, there was no Chief Personnel Officer, Chief Electrical Engineer was in routine charge of the duties of the Chief Personnel Officer and a person in such charge cannot discharge the statutory functions of the Chief Personnel Officer, on that ground also the selection was vitiated. It is stated that the person who took part in the selection process being in routine charge of the Chief Personnel Officer, ceased to hold charge of that post by the time the viva-voce test was held inasmuch as the President of India had appointed one Shri R.A.Krishnan on 15.1.1987 as the Chief Personnel Officer, South Eastern Railway and as Shri Krishnan did not take part in the process of selection, the selection was vitiated. He has also averred that no seniority list was published before holding the examination. Therefore, one of the essential criteria for selecting a person was not determined and for that ground also the selection made was bad. Making these allegations, the applicant has prayed for the publication of the seniority list, constitution of a fresh Selection Board in accordance with Rule 204 in terms with Indian Railways Establishment Manual

and for quashing Annexures-4 & 5 series and the consequential reliefs of publication of a revised list of selected candidates, quashing Annexure-2 i.e. the panel.

2. The respondents in their counter do not dispute issue of the circulars nor do they dispute the allegation of the applicant that the posts of Assistant Personnel Officer and Assistant Welfare Officer, are promotional posts belonging to Group 'B' and the promotion is to be made from amongst employees belonging to Group 'C'. With regard to the allegations of the applicant relating to the changes made to the circulars issued, it is alleged that they were necessary for obviating practical difficulties. Initially a notice was issued on 31.7.1984 inviting willingness from the eligible candidates to appear at the selection test for Group 'B' and on account of the restructuring of the cadre another letter was issued on 12.9.1985 indicating the increase in the vacancies. A written examination was held on 9.3.1986 to adjudge the professional ability and there was a supplementary examination on 2.8.1986 and another test on 15.11.1986 followed by a viva-voce test for the candidates who passed the written examination. With regard to the absence of the name of the applicant in the panel prepared after the tests, it is stated that his name did not find place in view of his position in the integrated seniority list. They have also made some averments with regard to the reasons for the changes made by different circulars but they need not be stated here, they would be dealt with while discussing the annexures to the application and to the counter. In short, the case of the respondents is that there was no illegality or irregularity in making or publishing the panel of

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selected candidates.

3. We have heard Dr.S.C.Dash, learned counsel for the applicant and Mr.Ashok Mohanty, learned Standing Counsel for the Railway Administration. Dr.Dash has urged that from Annexure-1 it would be evident that there was something fishy and he has referred particularly to paragraph 2 of Annexure-1. In paragraph 2 it has been stated that names of certain willing candidates could not be included in the list for want of service particulars from the Divisions where their liens were being maintained. Dr.Dash has urged that the ^{expected} service particulars were to be available in the Office and it is not understood how they could not be procured. We are not prepared to go to the extent as Dr.Dash wants us to, it is well-known that having regard to the present standard of proficiency, it may not have been possible to collect all the detailed service particulars of the candidates.

4. Before going to discuss different annexures, it would be worthwhile to refer to the contention of Dr.Dash relating to the publication of seniority list. Two persons i.e. Shri P.K.Biswas and Shri R.C.Chatterjee filed O.A.242 of 1987 and O.A.394 of 1987 in the Calcutta Bench of this Tribunal. In these cases, the panel challenged in this original application was for consideration. Shri P.K.Biswas in the application filed by him in that Bench of the Tribunal urged that even though he successfully passed a written test as well as viva-voce test, as the gradation list was not published, he believed, ~~when~~ his seniority position had not been maintained so he prayed that his seniority was to be settled and thereaft

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his case was to be considered. Shri R.C.Chatterjee also complained of non-publication of the gradation list. The Calcutta Bench gave direction to the respondents i.e. the Railway Administration to fix the seniority of the two applicants before it and ofcourse they gave other direction to enlarge the panel taking into consideration the anticipated vacancies which would arise within two years from the date of approval of the panel i.e. 3.3.1987. One thing is certain from the copy of that judgment in the two original applications before the Calcutta Bench, that At found that no gradation list was really prepared.

In the present case, one of the reliefs that the applicant has asked for is a direction to publish the seniority list i.e. the gradation list. To those applications before the Calcutta Bench the Union of India was a party; even though it may not come within the strict rules of resjudicata but yet it will amount to finding staring at the face of the Union of India that no seniority or gradation list was either prepared or published.

5. Now a reference to the particular circulars, ^{Copies} copy of which form different annexures to the application and the counter, may be made. From Annexure-4(a) which is dated 29.4.1963 it would be found that those persons who secured 80 per cent of marks or above were put in the list as 'outstanding' and they were to be placed above all others. This circular was modified in December, 1966, that the successful candidates were to be arrayed in three groups i.e. 'Outstanding', i.e. those who get 80 per cent and above, 'Very good'- those who get between 70 per cent to 79 per cent and those who get 60 per cent ^{were} to 69 per cent - 'good' and the names in each group ^{were} to be

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arranged in order of seniority. That principle was also reiterated in the circular dated 18.1.1967 copy whereof is Annexure-4(c). In 1979 another letter was issued by the Railway Board, copy of which is Annexure-4(e), that those categorised as 'outstanding' should not be allowed to supersede more than 50 per cent of the total in the field of eligibility. As disputes arose as to what was meant by the total in the field of eligibility, another letter was issued on 30.10.1979 which explained what was meant by 50 per cent of the total field of eligibility. Examples were given and they were, if the 13th man was categorised as outstanding then he will gain half of 12 i.e. 6 places in seniority, and if he would be the 24th man then he would gain 11 places. On 19.12.1984, a circular, copy Annexure-5(a) was issued and that provided that the Ministry of Railways decided that 60 per cent of the total of the marks prescribed for written examination and for seniority should also be the basis for calling candidates for viva-voce test (interview) instead of 60 per cent of the marks for the written examination only as then prevalent. On 2.4.1985 another letter was issued which provided that eligibility of the candidates in a selection to be called for viva-voce test was to be decided on the basis of his obtaining 60 per cent of the total of the marks prescribed for written examination and seniority taken together instead of 60 per cent of marks for written examination only as then prevalent.

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From paragraph 2 of that letter dated 2.4.1985 it would be found that the mode of awarding marks for seniority was where 10 candidates or less were called for selection the seniormost was to be awarded 15 marks while the juniormost 5 marks and the candidates in between should be awarded marks on prorata basis and where more than 10 candidates are called, the seniormost was to be awarded 15 marks while the juniormost, $2\frac{1}{2}$ marks and the candidates in between should be awarded marks on prorata basis. We have underlined the word 'seniority' in each of the circulars to emphasise the fact that for selection seniority was ^q the very important factor. If seniority had not been determined, no proper selection could be made. It has already been found that infact no seniority or gradation list has been published nor is there any allegation that the employees had any opportunity to have their say in the matter of awarding marks on the basis of seniority. Since the applicant was deprived of the opportunity to know his position in the gradation list and making a representation in that regard, the panel, copy whereof is Annexure-2 to the application, cannot be sustained.

6. Since we have come to this conclusion, it is not necessary to enter into the discussion as to whether the panel was vitiated on account of non-participation in the selection process of the Chief Personnel Officer, however in passing it may be observed that if by the time of viva-voce, as alleged by the applicant, a regular

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Chief Personnel Officer had been appointed and as he did not participate in testing the candidates, there appears to be some substance in the contention of Dr. Dash.

7. In view of the discussions made above, we would quash the panel, Annexure-2 and direct publication of the seniority list and after properly determining the seniority to consider the case of the applicant for promotion, if he is found entitled to on his performance in the written and viva-voce test and the marks to be awarded in determining the seniority, he may be promoted from the due date. Since the applicant would be retiring in about a month, we would direct that the required be done before 25th of March, 1990. Copies of this order be sent to the respondents immediately. There would be no order as to costs.

....., Member (Administrative)

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Member (Judicial)



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.198 OF 1987
Cuttack, this the 20th of February, 2002.

Chittaranjan Das. Applicant.
-Versus-
Union of India & Others. Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *NO*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL)
20/02/2002

Ar
(S.A.T.RIZVI)
MEMBER(ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.198 OF 1987
Cuttack, this the 20th day of February, 2002.

C O R A M:-

THE HONOURABLE MR.S.A.T.RIZVI, MEMBER(ADMINISTRATIVE)
A N D
THE HONOURABLE MR.MANORANJAN MOHANTY, MEMBER(JUDL.)

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Chittaranjan Das, Aged about 54 years,
S/o. Souri Das, At present Office Supdt.
Divisional Personnel Office, South Eastern
Railway, Khurda Road Division, PO: Khurda
Road, District-Puri.

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APPLICANT.

By legal practitioner: M/s. B.K. Patnaik, R.C. Rout, Advocates.

-VERSUS-

1. Union of India represented by the Secretary
to Government, Ministry of Railways, Rail Bhawan,
New Delhi.
2. The Railway Board represented by the Secretary,
Railway Bhawan, New Delhi.
3. General Manager, South Eastern Railway,
Garden reach, Calcutta.
4. The Chief personnel Officer,
South Eastern Railway Headquarters,
Garden reach, Calcutta.
5. The Divisional Railway Manager,
South Eastern Railway, Khurda Road Division,
At-Khurda Road, PO: Jatni, Dist. Puri.
6. Sri Y.M. Rao,
7. D.V. Parvateesam,
8. Ch. Subba Rao,
9. Y.D. Patre,
10. S. Narayanan,
11. K.S. Acharyulu,

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12. M.Pydiraju,

13. G.Papa Rao,

All are Assistant personnel Officers,
S.E.Railway, their addresses for the
purpose of service of notice is C/o.
Sri C.M.K.Murty, Advocate, Beparisahi,
Cuttack-1.

... RESPONDENTS.

By legal practitioner: M/s. Ashok Mehanty,
C.M.K.Murty,
S.K.Rath,
Advocates

For Respondents 6 to 13.

M/s. B.Pal, O.N.Ghosh,
Senior Counsel (Railways)

For Respondents 1 to 5.

O R D E R

MR. S.A.T.RIZVI, MEMBER(ADMINISTRATIVE) :-

Heard Mr.B.K.Patnaik, learned Counsel for the
Applicant, Mr.Ashok Mehanty, learned Counsel appearing
for the Respondents 6 to 13 and Mr.B.Pal, Learned Sr.
Counsel appearing for the Respondents 1 to 5 and have
also perused the records.

2. This is the third round of litigation in this
case. *d*

3. Initially appointed as a Clerk on 13-7-1954, the Applicant started officiating as Office Superintendent, Grade-I from 1-1-1984, and on that post he was confirmed with effect from 18-2-1985. Office Superintendent, Grade-I is the feeder cadre for promotion to the next higher posts of Assistant personnel Officer(A.P.O.) and Assistant Welfare Officer (A.W.O.). On vacancies arising in the posts of A.P.O. and A.W.O., applications were invited for the same on 12-9-1985. A supplementary notice was thereafter issued on 14-1-1986 to enable some others also to file applications for the same. The applicant appeared at the written test held on 9.3.1986 and thereafter appeared at the viva-voce test on 5-2-1987. A panel of selected candidates was subsequently published on 9.3.1987. The aforesaid panel did not contain the applicant's name. Aggrieved by the non-inclusion of his name in the select panel, the applicant ^{2/} filed an original Application which got decided on 28.2.1990. A number of averments have been made in the original Application challenging the procedure followed for making the said ~~selection~~ selection. A specific contention was made, however, in respect of seniority list by saying that the selections should be made only after the seniority list has been published. After a detailed consideration of the matter with reference to the provisions made in the various circulars, relied upon by the Applicant as well as Respondents, in respect of the selection procedure, and without arriving at definite conclusions regarding the validity or otherwise of the aforesaid circulars, the Tribunal disposed of the Original Application by quashing the select panel(Annexure-2) and by giving a direction to the

to the Respondents to publish the seniority list. The Tribunal further directed that after determining his seniority, the claim of the Application for promotion should be considered and if he is found entitled to promotion on the basis of his performance in the written and the viva-voce tests and the marks to be awarded, for determining seniority, the applicant may be promoted from the due date. It will be worthwhile to produce the aforesaid directions which are as under:

"We would quash the panel, Annexure-2 and direct publication of the seniority list and after properly determining the seniority to consider the case of the applicant for promotion, if he is found entitled to on his performance in the written and viva-voce test and the marks to be awarded in determining the seniority, he may be promoted from the due date".

4. It will be worthwhile to note at this very stage that the challenge in the original Application is not directed against only some of the candidates in the select panel but against all those empanelled by the Official Respondents. 31 candidates had been empanelled and the challenge was accordingly directed against all of them. It is clear from this that what is in dispute is not the inter-se-seniority but the selection procedure itself. In any case, the applicant has not impleaded any of the candidates on the select panel whose rights in the matter are likely to be affected by a final determination of the matter in the present original Application. We notice, therefore, that the present original Application is bad due to non-joinder of necessary parties. J

5. The aforesaid decision of the Tribunal was challenged by the Official Respondents as well as some of the private Respondents, who had been empanelled by the Official Respondents as a result of completion of the selection process. The Review Application filed by the Official Respondents being R.A.No.28/1990 had been filed on the ground that an error apparent on the face of record existed which needed to be rectified by recalling the order passed on 28th of February, 1990. The aforesaid private Respondents in R.A.No.12/1992 filed by them had on the other hand challenged the Tribunal's order on the ground that they had not been impleaded by the Applicant. After hearing, both the Review Applications were allowed and the judgment dated 28th February, 1990 was cancelled and the present Original Application was restored to file for further hearing by an appropriate Division Bench. However, the Original Application got dismissed for default on 23-7-1993 and was restored once again on 16-11-1995.

6. After the present Original Application was initially restored to file, an additional counter-affidavit was filed on behalf of the Official Respondents on 29.6.1993. Time was given, therefore, to the Applicant to file a rejoinder affidavit, if so advised. The matter was taken up thereafter on 6th March, 1997 when time was sought and given to the Learned Senior Counsel for the Official Respondents to file documents pertaining to the written examination and the Selection process. It was agreed that the extract of the marksheets in respect of the written test, viva-voce test and the marks given, if any

for seniority will be made available to the Tribunal, and a copy of the same will be supplied to the Learned Counsel for the Applicant. On receipt of the same, the Learned Counsel for the Applicant was to file his written submissions with a copy to the Learned Senior Counsel for the Respondents. After the aforesaid order was made on 6th March, 1997, the matter came up before us after a lapse of five years on 15th February, 2002 and after granting a hearing to the parties on 20th February, 2002, we had passed orders dismissing the original Application. We now proceed to record our reasons in support of the dismissal of the Original Application.

7. For rendering a decision in the matter, we have before us, not only the pleadings available on record, but also a short note of argument submitted on behalf of the Respondents on 21.3.1997, a copy of which has been supplied to the Learned Counsel for the Applicant. We have also before us a Memo on the same date i.e. 21.3.1997 filed on behalf of the Official Respondents enclosing therewith xerox copies of the documents which were required to be produced. A copy of the said memo together with the xerox copies of the documents has been made available to the Learned Counsel for the Applicant. Learned Counsel for the Applicant has thereafter, filed a reply to the short note of argument, on 9.4.1997 with a copy to the Learned Senior Counsel for the Official Respondents. We have also perused the judgment rendered by this Tribunal on 28th of February, 1990 and also the judgment rendered by the Calcutta Bench of the Tribunal on 21st of November, 1989 in OA No. 242 of 1987 on which ~~reference~~ ^{reliance} was placed by this

Tribunal in passing orders on 28th of February, 1990.

8. On going through the short note of argument submitted on behalf of the Official Respondents, we find that of the several circulars discussed in the Tribunal's order dated 28th of February, 1990, some were not at all applicable to the facts and circumstances of the case, while some others were subjected to incorrect interpretation on behalf of the Applicant. In the said note, the Official Respondents have proceeded to discuss each and every circular in some detail - high-lighting the provisions made therein. No attempt has been made by the Applicant in the reply to the aforesaid short note of argument filed, on his behalf, successfully to meet the issues raised in respect of the various circulars. Sweeping and vague remarks have, however, been made which take us nowhere.

9. In a nut-shell by relying on the relevant circulars, applicable to the facts and circumstances of the case, the Official Respondents have pointed out clearly and convincingly that since the promotions were to be made purely and exclusively on the basis of merit as determined by the selection process, inter-se-seniority had no role to play at all except to the extent that ~~not~~ of these found 'outstanding' at the end of the selection process, were required to be listed in the order of their inter-se-seniority. Similarly, those found 'good' were also to be placed separately in the order of their inter-se-seniority. Those graded as 'good' were to be placed below those graded as 'outstanding'. *2*

10. The Selection process consisted of a written test (professional ability marks 50, qualifying mark-30), appraisal of service record/Confidential reports (maximum mark-25, qualifying mark-15) and a viva-voce test (maximum mark-25, qualifying mark-15). Each candidate was required to ~~clear~~^{clear} each of the aforesaid tests separately by securing qualifying marks. In other words, in the written test, those securing less than 30 marks were to be excluded. Similarly those securing less than 15 mark in the appraisal of service record/Confidential reports were also to be excluded. Like-wise, those failing to qualify in the viva-voce test, by securing at least 15 marks were also to be excluded. Those securing in the aggregate 80% or more marks were to be placed in the 'outstanding' category. Those securing marks between 60% and 79% were to be graded as 'good' and placed enblock below the 'outstanding' category. The relevant Rules do not provide for any kind of consideration for the length of service or for seniority in the matter of promotion as above. In other words, the basis of selection was purely on merit and not meritcum seniority nor merit with due weightage to seniority. In the circumstances, a senior in Gr.C who fails to secure even 60% marks is bound to miss the bus altogether, while his juniors who succeed in making the grade as above, may figure in the list of 'outstanding' category candidates or in the next below list of 'good' category candidates. Those placed in the list of 'good' category candidates, even if senior compared to those listed in the 'outstanding' category, will be treated as junior in Gr.B. The xerox copies

of the documents filed by the Official Respondents show that the Applicant in the present Original Application namely Shri C.R.Das, had failed to make the grade in the appraisal of service record/Confidential reports well as in the viva-voce test. In both these tests, Shri Das, the applicant, had secured 12 marks each against the qualifying mark of 15 in each case. He had, thus, failed in the selections and it is on this basis that his name does not figure in the select panel. There is nothing wrong with the selection process. At any rate, we have not been able to discover any deficiency or mala fide in the selection process under challenge. In so far as the compilation of integrated seniority list (Annexure-R/1) is concerned, the Respondents have in the aforesaid short note of argument stated that since the candidates came from different divisions, the divisional lists have been interpolated to compile an integrated seniority list. The aforesaid integrated list is, according to the Respondents, wholly in order.

11. In the reply to the short note of argument filed on behalf of the Applicant, considerable capital is sought to be made by asserting that the fact of the applicant's failure in the viva-voce test and in the appraisal of the service record/Confidential reports was not highlighted when the matter was considered by the Tribunal earlier ^{and whether,} _{prejudiced his case.} We do not find any force in this argument. Nothing worthwhile has been stated in the aforesaid reply to create a genuine suspicion as regards the correctness and authenticity of the selection process and ^{the} compilation of the integrated seniority list.

It is worth pointing out that in the aforesaid reply, the Applicant has not made any point at all in relation to the averments clearly and unambiguously made on behalf of the Respondents that the Selection process was entirely and exclusively merit based in which seniority did not play any role at all except as already stated to the limited extent that the names of those finally selected on merit basis were required to be arranged in the order of inter-se-seniority with outstanding category followed by the good category.

12. In the background of the above discussions and for the various reasons brought out in the preceding paragraphs, we find no merit in the present original Application. The same stands dismissed. However, there shall be no order as to costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL) 20/02/2002

S.A.T.Rizvi
(S.A.T.RIZVI)
MEMBER(ADMINISTRATIVE)

KNM/CM.