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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.170 of 1988.

Date of decision : November 15,1988.

Surendranath Samantaray,  
aged about 47 years, son of Prankishore  
Samantaray, at present working as Gr.II Teacher,  
South Eastern Railway Mixed Higher Secondary  
School, Khurda Road, P.O.Jatni, District-Puri.

... Applicant.

Versus

1. Union of India, represented by the  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta.
2. Divisional Personnel Officer-cum-  
Controlling Officer of Schools,  
At Khurda Road, P.O.Jatni,  
District- Puri.
3. Chief Personnel Officer,  
South Eastern Railway, Garden Reach,  
Calcutta.
4. Rohitesh Pradhan,  
at present Gr.IV.Teacher,  
Chakradharpur Mixed Primary School,  
At/P.O.Chakradharpur, Bihar.
5. Gunanidhi Rath,  
at present working as Gr.II Teacher,  
Mixed Higher Secondary School,  
Khurda Road, P.O.Jatni, Dist.Puri.
6. Narahari Satapathy, at present working  
as Gr.IV Teacher, Mixed Primary School,  
At/P.O.Bandhamunda ( Bihar).
7. Dasarath Parida, at present working as  
Gr.II Teacher, Mixed Higher Secondary  
School, Khurda Road, P.O.Jatni, Dist.Puri.

... Respondents.

For the applicant ... M/s. Deepak Misra, R.N.Naik,  
A.Deo, Advocates.

For the respondents .... M/s.Bijay Pal &  
B.N.Ghosh, Advocates (Railways)

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.

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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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J U D G M E N T

K.P.ACHARYA, MEMBER (J)      The applicant in this application under section 19 of the Administrative Tribunals Act, 1985, challenges the order passed by the Competent authority regularising the services of respondents 4 to 7 in the Grade II Teachers post in the Mixed Higher Secondary School of Khurda Road under the South Eastern Railway.

2.              Shortly stated, the case of the applicant is that he was appointed as Primary School Teacher on 22.9.1973 and was categorised as Grade IV Teacher. On 13.3.1985, vide Annexure-1 the applicant was promoted to the cadre of Grade II Teacher for a temporary period of three months and on 10.1.1986 vide Annexure-2 the applicant was promoted as Grade II Teacher on officiating basis. In the gradation list published in the year 1985, the applicant was shown as senior to Respondents 4 to 7. On 22.3.1988 a panel of names was published selecting certain incumbents to the post of Grade II Teacher on regular basis and in the said panel

contained in Annexure-3 the name of the applicant does not appear whereas the services of Respondents 4 to 7 in the Grade II Teacher posts appear to have been regularised. The applicant feels aggrieved on this question and seeks quashing of Annexure-3.

3. In their counter, the respondents maintained that no illegality has been committed in the matter of empanelling Respondents 4 to 7 in preference to the applicant because the applicant did not qualify himself in the selection test and it is further maintained that there being no allegation of malafide in the application, empanelment should not be unsettled.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. B. Pal, learned Senior Standing Counsel for the Railway Administration at some length. It was vehemently pressed by Mr. Misra that grave illegality has been committed in the matter of selection and regularisation of different incumbents to the post excluding the case of the applicant and therefore, Annexure-3 should be quashed and the appropriate authority should be directed to reconsider the matter. This submission was opposed by Mr. Pal with equal vehemence on the ground that there being no illegality in the matter of selection, such a submission advanced on behalf of the applicant should not be accepted and on the contrary it should be rejected in limine. While considering the arguments advanced at the Bar we feel tempted to say admittedly the post is a selection post for which a selection test is required to be conducted.

VIII

Admittedly, the applicant, Respondents 4 to 7 along with others had appeared at the selection test. The dispute between both sides creeps up at this stage. The case of the applicant is that selection of Respondents 4 to 7 excluding the applicant from empanelment is illegal whereas the case of the respondents is that the applicant not having turned out successful in the selection test, the competent authority had no other option but to eliminate the name of the applicant from the selection list. Mr. Misra vehemently pressed before us that the marksheet etc. should be called from the appropriate authority and should be gone into by this Bench. We have given our anxious consideration to this argument advanced by Mr. Misra and we feel that no fruitful purpose shall be achieved if the request of Mr. Misra is acceded to. The applicant's name could never have been excluded from empanelment if he would have obtained higher marks than Respondents 4 to 7. Conceding for the sake of argument that there was any malafide behind the screen to select Respondents 4 to 7 we could not lay our hands for interference because the applicant must have secured lesser marks than Respondents 4 to 7 otherwise the name of the applicant cannot be excluded. There being no allegation of malafide we do not feel inclined to go into that question and further-more the apprehension of Mr. Misra that the applicant would have got higher marks than Respondents 4 to 7 and yet excluded from the panel does not carry any weight with us. In these circumstances, we feel that on the judicial side we would not be able to

interfere in this matter. We have particularly mentioned "judicial side" because we are told that a representation filed by the applicant on the self same grievance vide Annexure-4 is still pending consideration of the Chief Personnel Officer (Education), South Eastern Railway, Garden Reach, Calcutta (Respondent No.3) and we would direct that the representation be disposed of within 60 (sixty) days from the date of receipt of a copy of this judgment. We are sure the Chief Personnel Officer would deliver a reasoned and speaking order in disposing of the representation.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs. The stay order passed by this Bench stands automatically vacated.

*By order of*  
15/11/88  
.....  
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

*I agree.*

*By order of*  
15.11.88  
.....  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
November 15, 1988/S.Saranghi,