

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 387 of 1988.

Date of decision: May 1, 1991.

Ch. Rama Joga Rao and others ... Applicants.

Versus

Union of India and others ... Respondents.

For the applicants ... M/s. C. V. Murty,
C. M. K. Murty,
S. K. Rath, Advocates.

For the respondents 1 to 3: M/s. B. Pal,
O. N. Ghosh, Advocates.

For the respondents 4 to
C O R A M: 13 & 16 to 19: M/s. S. Misra, 1,
S. N. Misra, Advocates.

THE HONOURABLE MR. B. R. PATEL, VICE-CHAIRMAN

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THE HONOURABLE 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) This is an application by 11 persons who are working as Goods Guards under the Khurda Road Division of the South Eastern Railway.

2. The case of the applicants is that there are 47 posts of Passengers Guards in the Khurda Road Division.

Meo Ep The Good Guards are to be promoted to Passengers Guards.

Respondents 1 to 3 have made a 40 point roster chart for reservation of posts for persons belonging to the Scheduled Caste and Scheduled Tribe. By the roster chart

Respondents 1 to 3 gave promotions which resulted in having more than 22½ per cent of the total number of promotional posts manned by persons belonging to the category of Scheduled Castes and Scheduled Tribes. The applicants have also averred that an examination was scheduled to be held in November, 1988, for testing the Goods Guards who are eligible and come within the zone of consideration. The total number of posts of Passengers Guards being 47, the total number of posts to be reserved for scheduled castes and scheduled Tribes would be only 10. Already there are 7 persons in the cadre of Passengers Guards those who belong to those two categories, therefore, only three more such persons ought to have been considered for promotion. The respondents 1 to 3 instead of going to limit their choice to three scheduled caste and Scheduled Tribe candidates were going to consider persons much in excess of that number. These are the main allegations upon which the reliefs aforesaid have been claimed by the respondents.

3. The respondents 1 to 3 in their reply have averred that the applicants are labouring under a mistake and that the reservation for the Scheduled Caste and scheduled Tribe candidates is to be made of the vacancies available on a particular time and in this regard they have referred to Railway Board's letter dated 20.4.1970 and another dated 29.4.1970 which are Annexures-R/2 and R/3 to their counter.

4. The applicants in their application also have questioned the propriety of calling the Railway Goods

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Guards to take examination in batches to test their fitness for promotion to the rank of Passengers Guards but that part of the ~~case~~ test has not been pressed at present, ^{case} So facts relating to this aspect need not be set out. Respondents 1 to 3 have further pleaded that the case filed by one J.C. Mallick for validity of the 40 point roster is under consideration of the Supreme Court, and has not been disposed of, therefore, the present application is premature.

5. We have heard Mr. C. V. Murty, learned counsel for the applicants and Mr. B. Pal, learned Senior Standing Counsel (Railways) for the respondents 1 to 3. Respondents 4 to 19 though filed a separate counter, no separate arguments have been addressed on their behalf at the hearing of the case. During the course of argument Mr. Murty has drawn our attention to a judgment of this Bench in T.A. 77 of 1987 in which the question whether the reservation would be of the number of posts in the cadre or would be of the vacancies available at the particular time came up for consideration. In that judgment an elaborate discussion about the orders passed by Allahabad High Court, in a writ filed by Guards Grade B & C and interlocutory orders passed by the Hon'ble Supreme Court and of the Madhya Pradesh High Court was made. Such discussions made in that judgment all cover the arguments which have now been advanced by the learned counsel for the parties. We do not deem it

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necessary to repeat those reasonings in this judgment.

In that judgment we expressed that we were in agreement with the views of the Madhya Pradesh High Court in the case reported in 1986(1) SLR 588 (G.C.Jain and others v. Divisional Rail Manager, C.Rly, Jabalpur and others) which was to the effect that reservation in the promotional grade was to be based on the number of posts and not on the number of vacancies available at any particular time. We further held that the circular letters of the Railway Board dated 20.4.1970 and 29.4.1970 were invalid to the extent they were repugnant to the ~~number~~^{extent} of having reservation at any particular point of time more than the permissible limit of 22½ per cent, ~~of~~ of the total number of posts. We would dispose of this application by saying that respondents 1 to 3 would adjust the rights of the parties in accordance with the observations made above.

6. This application is accordingly disposed of.

No costs.

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Vice-Chairman

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Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 1, 1991/Sarangi.

