

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 98 of 1988

Date of Decision : 14.2.1992

Versus

Union of India & Others Respondents

For the applicant M/s.C.V.Murty &
C.M.K.Murty,
Advocates

For the respondents Mr. Ashok Mohanty
Standing Counsel
(Central Government)

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HONBLE MR. K. P. ACHARAYA, VICE-CHAIRMAN

AND

HON'BLE MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

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

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JUDGMENT

MISS USHA SAVARA, MEMBER (ADMINISTRATIVE)

This original application has been filed by 4 applicants against the promotion of Respondent Nos.4 to 11 to the post of Station Superintendents in the scale of Rs.2000-3200/-.

2. The applicants are employed as Deputy Station Superintendents (D.S.S. in short) in the S.E.Railway in the scale of Rs.1600-2660/- per month. In 1983 the Railway Board issued a letter dated 29.7.1983 (Annexure-1) for restructuring the Group C & D Cadres on revised percentage basis, and laying down the policies for promotions to be made. Promotions to a higher grade were to be confined to incumbents in the next lower grade. As per Para 3.2 of Annexure-1, the existing selection procedure stood modified for the purpose of promotion. The selection was to be based only on scrutiny of service records without holding any written test or viva-voce. Promotions were made in accordance with directions in Annexure-1 in 1983 (Annexure 2 and Annexure-3).

But in 1987, the applicants were given a call to appear for a written test. Though, there were only 4 vacancies, instead of taking only 36 eligible candidates into consideration, 69 candidates were called for a written test, and some of the candidates were two steps below the lower grade.

3. According to the plaint, the petitioners appeared in the written test and were declared successful (Annexure-5) By annexure-6 dated 16.12.1987, the provision ^{al w} panel for promotion to the post of Station Superintendent was published

but the applicant's names were not on the panel. On the same day promotion orders were issued and 10 persons were appointed and 4 were kept in the panel for future promotions. The learned counsel for the applicants, Mr. Murty, submitted that the applicants should have been promoted as per modified procedure, that is, only on scrutiny of their service records without subjecting them to a written test or viva voce. Reliance was placed on para 32 of Annexure-1 to support his contention that the modified procedure of promotions by scrutiny of service records should have been followed by the respondents. Reliance was also placed on the judgment of Orissa High Court in case No. 3112 of 1988 - Bichitrananda Swain vrs. Orissa State Electricity Board & others. The learned counsel contended that in view of the facts stated above, the orders in Annexure-6 and 7 be quashed as these orders of promotion were in contravention of law and in violation of the directions issued by the Railway Board laying down the promotion policy. It was also prayed that directions be issued for fresh selection to the post of Deputy Station Superintendents, reconsidering the cases of the applicants in accordance with the guidelines issued in Annexure-1.

3. Shri Ashok Mohanty, learned counsel for the respondents submitted that in pursuance of restructuring of SM/ASM category on revised percentage basis in pursuance of Annex.1 30 posts of Station Superintendent were available, but of which 29 were required to be filled up. Out of these, 26 were filled up vide Annexure-3. The remaining 3 were filled

up by separate order. The applicant's claim that 4 posts were vacant is totally wrong. The fact is that there were no promotions till 22.1.1987, when the writ filed by SM/ASM were finalized by the C.A.T., Calcutta Bench, though vacancies arose between 9.12.1983 to 22.1.1987. Shri Mohanty drew our attention to Annexure-1 para 3.2. The last line reads thus:

"It is reiterated that the normal rules governing promotion to selection and non-selection posts will apply to vacancies in the aforesaid categories arising after 1st August, 1983" (Underlining ours).

Shri Mohanty categorically stated that the vacancies which were filled in 1987 had arisen after 9.12.1983, and therefore, according to Para 3.2 of Annexure-1, the normal rules governing promotion would be applicable to these vacancies. The learned counsel went on to state that 18 vacancies had already occurred in the post of Station Superintendent and these were 5 anticipated vacancies during the year. Following the ratio of 3:1, 69 staff members were called for selection for 23 vacancies. 18 persons were promoted against existing vacancies, and 4 names were kept in the panel against anticipated vacancies. The applicants did not qualify in the viva voce test and therefore, their names did not figure in Annexure 6 and 7.

4. It was conceded by the learned counsel that Respondent Nos. 4 to 11 were juniors to the applicants, but the promotion was on the basis of selection and the applicants did not qualify so their seniority is immaterial. The applicants' contention that persons who were two grades below the grade for which selection was made could not be

considered and therefore the selection of Respondent Nos. 4 to 11 is illegal was not sustainable, according to the learned counsel, because the circular in question (Annex.8) came into force only from 23.11.1987 and is not retrospective. The process of selection was started in April, 1987 and was completed in August, 1987. Similarly, the averment that Respondent Nos. 4 to 11 had not completed 2 years of service in the lower grade making them eligible according to letter dated 4.11.1987, Shri Mohanty explained that at the time of selection, there was no such condition. Finally, Shri Mohanty learned counsel summed up his reply that the applicants having failed in the test in which they had appeared of their own free will were barred from questioning its propriety.

5. We have heard the learned counsel for both sides, We have also perused with great interest the Annexure-1 on which both the counsel are building their cases. We may also refer to para-3 of the Annexure which states succinctly that "In respect of the vacancies arising after 1.8.1983, promotions to posts in the various grades in terms of revised classification will be made in accordance with normal procedure for filling in 'Selection' and 'non-selection' posts as obtaining at present". (Underlining ours). The same point is reiterated in para 3.2 as well. The modified selection procedure, on which the applicants pin their entire case, had been decided by the Ministry of Railway as 'one time exception' by way of

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a special dispensation in view of the numbers involved, with the objective of expediting the implementation of the orders. In view of this, the judgment cited by the learned counsel Shri Murty is not at all applicable to the facts of this case. Incidentally, it may be mentioned that the respondents claim that all the vacancies arose after 1.8.1983 has not been contested by the applicants.

6. The entire case of the applicants is built on misreading of Annexure-1 to suit their purpose since they failed to qualify in the viva-voce test. We are unable to grant their prayer for quashing Annexure-6 & 7, and are constrained to dismiss their application as being devoid of any merit. In the circumstances, there will be no order as to costs.

h.s.s
14.2.92
VICE-CHAIRMAN

J. Sarangi
14.2.92
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench, Cuttack
14.2.1992/Sahoo///

