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Date of decision: 18th June, 1993

Shri P.K.Routray and others Applicants
Versus
Union of India and others Respondents

For the Applicants ... Mr. G. A. R. Dora, Advocate
For the Respondents ... Mr. Ashok Mohanty,
Standing Counsel
(Railways)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
AND

THE HONOURABLE MR. K. J. RAMANA, MEMBER (ADMN.)

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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(16)
J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioners (22 in number) pray to quash the SWM Selection test and direct the Opposite Parties to fillup SWM posts by T.P. 'A' and IM 'A' to the extent of cent percent if necessary by holding viva voce test in which applicants should be allowed to answer in their own language. and in case the quota for matric T.Ps is held valid, then direct to hold two separate fresh tests and 6th standard candidates should be allowed to answer in their own language and their questions should be confined to their actual work and thereby quash Annexures R/1, A/1 and R/2 as violative of Articles 14 and 16 of the Constitution.

2. ~~Shorn of unnecessary details, it would be~~ suffice to state that the petitioners were appointed as temporary substitutes initially in the Signal Department of Khurda Road Division under the South Eastern Railway. They were appointed as regular token porters (T.Ps) at different times beginning from 13-8-1974 to 2-4-1978. According to the petitioners for the purpose of promotion from T.P. to T.P. (B), the petitioners were subjected to a viva-voce test in which they came out successful and were promoted. They were also subjected to a viva-

voce test in which they came out successful and were promoted as LM(A) corresponding to T.P.(A) in which post they have worked for several years.

3. The grievance of the petitioners relate to Annexure 1 on the basis of which Opposite Party 2 had called for applications from L.M. (A)/Cabin Man/TPM'A' etc. having VI standard qualification for filling of 50 % of the posts of Switch Man (SWM). The remaining 50% and unfilled vacancies were to be filled up by Group 'C' and 'D' Staff and below of the operating Department with minimum five years experience with Matriculation qualification and one securing 60% and above was eligible to appear for viva-voce test. Written test was held in June, 1990 in which about 76 candidates had appeared. There are about 50 IM'A' candidates including the petitioners. Only 42 persons have been called to the viva voce test as per Annexure A/2. None of the Petitioners were called and therefore, this application has been filed with the aforesaid prayer.

4. In their counter, it is maintained by the Opposite Parties that Annexure 1 is in terms of Railway Board's letter No. E(NG)1-83-PM2-10 dated 30th December, 1985 and therefore, the actions of the Opposite Parties cannot be called into question. It is further more stated by the Opposite Parties that the petitioners did appeared in the written examination and since they did not turn out


successful, they were not entitled to ^{be} called ~~to~~ for the viva voce test. The minimum qualification prescribed being matriculate, petitioners were not eligible to appear ⁱⁿ the said test and since no eligible candidate is available from amongst LM'As and TP'As and persons found unsuccessful and ineligible in the written test cannot be accommodated in the promotional posts of L.M. 'A' and T.P. 'A'. Hence it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

5. We have heard Mr. G.A.R. Dora learned counsel appearing for the Petitioner and Mr. Ashok Mohanty learned Standing Counsel (Railway) for the Opposite Parties. In the averments finding place at paragraph 5 of the counter, it is stated as follows:

"That the averments made in paragraph 4 (vi) of the application are true to the extent that all the applicants were called to sit in the written examination and the applicants having appeared and failed in the written examination were not entitled to call for the viva voce test".

6. In the rejoinder filed on behalf of the Petitioners, there is no averment made on behalf of the Petitioner that the petitioners could not turn out successful in the written examination. Once a particular official has failed in the written examination he has no right to demand that he should be allowed to appear ⁱⁿ the viva voce test.

7. During the course of argument, Mr. Dora learned counsel appearing for the petitioners urged that the standard of examination for matriculates should ~~defer~~^{diff} so far as the present petitioners are concerned, because they have passed the standard 6th and therefore, accordingly direction should be given. We are unable to accept the contention of Mr. G.A.R. Dora learned counsel appearing for the petitioners because examination for all candidates for a particular post must be one and the same. There cannot be a differential treatment in regard to the nature and manner of question for the said post. We therefore, find no merit in the aforesaid contention of Mr. Dora learned counsel appearing for the petitioners. Since the petitioners should not turn out successful in the written examination, we find that their grievance has no legs to stand on and therefore, the case is devoid of merit. Hence dismissed. No costs.


MEMBER (ADMINISTRATIVE)


18/6/93
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/