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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No. 452/90

Date of Decision: 13/11/90

Surjya Kumar Hansda and
others : Applicants.

vs.

Union of India and others : Respondents.

For the applicants : M/s. S. Misra -1
S.N. Misra
G.P. Mohapatra
S.K. Nayak

For the respondents : Mr. Ashok Mohanty,
Standing counsel (Railways)

CORAM:

The Hon'ble Shri K.P. Acharya, Vice Chairman
and

The Hon'ble Shri K.J. Raman, Administrative Member.

1. Whether the reporters of local news papers
may be allowed to see the judgement? YES
2. To be referred to reporters or not? YES
3. Whether their Lordships wish to see the
fair copy of the judgement? YES.

LDR

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Mr. K.J. Raman,
Member (Admn.)

(10)

JUDGEMENT

This application under Sec. 19 of the Administrative Tribunals Act, 1985, has been filed by the applicants praying that the select list dated 31.10.1990 (Annex. 3) for appointment of persons included in it as Group 'D' staff in the Khurda Division of the South Eastern Railway, be quashed, and the respondents be directed to make selection according the rules. The applicants were all Scheduled Tribe candidates for selection in pursuance of an employment notice dated 1.8.1990 exclusively for recruitment of ST candidates for Group 'D' posts in the said division, to make up ST short-fall in the vacancies. In the selection, the applicants were not selected and the candidates whose names figure in the impugned select list dated 31.10.1990 were selected. The applicants are aggrieved with the selection of those persons in the panel and their own non-selection.

2. A reply has been filed by the respondents resisting the claim of the applicants.

3. The learned counsel for the applicants referred to the employment notice dated 1.8.1990 and pointed out that the educational qualification

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prescribed was that the candidates should be able to read and write and should have preferably Class VIII, and that they must possess good physique and should be able to do hard manual labour. The learned counsel further referred to the procedure prescribed by the Railways, to be followed in the recruitment of Group 'D' staff, and stated that the said recruitment, physical fitness of a candidate should be the deciding factor. The learned counsel stated that during the selection process consisting of interview held from 4.9.1990 to 30.10.1990, selection was not made according to the rules, but persons with much higher qualification than the prescribed one, were preferred and given weightage and physical fitness was not given any importance. The result was that the impugned select list contained three M.A. Degree holders, three graduates, one 'engineer', 11 intermediates and several with ITI qualifications with matriculation. The applicants are ST candidates and they have studied upto class 9 & 10 and satisfied the minimum requirements. The learned counsel alleged that at the time of selection, the physical fitness of the petitioners was not considered, nor their athletic sport activities were taken into account. The learned counsel stated that persons like the applicants only could apply for the group 'D' posts, which did not

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require higher educational qualifications, whereas persons with higher educational qualifications had more avenues of appointment. The learned counsel reiterated that the selection was made without giving due importance to physical fitness and undue weightage was given to higher educational qualifications. In these circumstances, it was contended that the impugned select list should be quashed. In support of his contentions, the learned counsel for the petitioners cited the following judgement of the Patna High Court:

Udit Rai Sharma

vs.

1974 LAB I.C. 94

The State of Bihar
and another

4. The learned counsel for the respondents firstly submitted that the present application was not maintainable in as much as the qualified candidates included in the impugned select list were not parties to this application. The panel in question had already been put into operation; a number of empanelled candidates had already been given appointment.

5. The learned counsel for the respondents further submitted that no separate selection was required for different categories in group 'D' posts, since these posts

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were being classified as one grade with one scale of pay.

The learned counsel stressed that, under the rules, there was no prohibition of appointment of persons with higher qualifications than the minimum prescribed. He stated that, indeed, it would be wrong to disqualify such persons. The learned counsel referred to the reply filed on behalf of the respondents and reiterated that no preference at all was given for higher qualifications in the selection. He strongly denied that physical fitness was not given due importance and that undue stress was laid on higher educational qualification. He asserted that the selected candidates had been found physically fit in accordance with the prescribed standards. He urged that no weightage had been given to higher educational qualifications.

6. On a very careful consideration of the rival contentions in this case, we are of the opinion that there is merit in the contention of the learned counsel for the respondents as recorded above. Even according to the applicants, the only qualification prescribed was that candidates should be able to read and write and should have preferably passed Class VIII. Neither in the employment notice nor in the rules reproduced in Annex. II is there any stipulation that candidates with

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higher educational qualifications should not be considered or that they were disqualified for the selection. Only the minimum standard has been prescribed. It would, therefore be unfair, unjust and illegal to exclude the educational candidates with higher/qualifications only because they are over-qualified.

7. There is no basis for the contention of the learned counsel for the applicant that undue weightage was given for higher educational qualifications. It is seen all from the list of candidates selected that the degree holders did not occupy the top position. There are several candidates who had passed just 9th standard but placed higher in the merit list than graduates and even persons with M.A. degree. Persons who had not even passed the matriculation examination figure very high in the merit list when compared to persons with higher qualifications. We, therefore, feel that the respondents are right in their averment that no undue weightage was given for higher educational qualifications.

8. In accordance with the employment notice, the physical standard should be that the candidates must possess good physique and should be able to do hard manual labour. They should also be of the medical standard of B.1 to A.1. In the rules at Annexure. I to the application, it is stated that there are different categories of group 'D' staff, some requiring minimum standard of

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literacy, and others/ do not require such standard. It is stated that the minimum standard need not be the same for all class IV staff. In respect of that class of Group 'D' staff in whose case literacy has not been prescribed, it is stated that the physical fitness of a candidate should be the deciding factor for employment.

The learned counsel for the applicants relied on this portion of the rules without showing that the present selection was in respect of only that clause of Group 'D' staff who / not required to be literate. The applicants have not challenged the validity of the requirement of the standard prescribed in the employment notice. Indeed / they cannot do so since they / acquiesced in the same and submitted themselves to the test and selection. They cannot challenge the validity of the standard prescribed only because they were not selected.

9. The respondents have ~~not~~ clearly averred that the selected candidates had been subjected to proper physical tests and they had been found fit according to the standard prescribed. The standard, we may repeat here, was that the candidates must possess good physique and should be able to do hard manual labour. There is nothing in the application to show that any of the selected candidates did not satisfy this standard. The learned counsel for the applicants could not point out/any specific case among the

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selected candidates, where the physical standard was not ascertained and found fit. There is no basis for the insistence of the learned counsel for the applicants that physical standard should be given over-riding importance since there is no such requirement in the rules. Just because a candidate has ✓ qualification it does not follow ipso facto that he is a weakling.

10. Contrary to the allegations in the application, it is observed that the sporting activities of the candidates had been taken into account. Against a very large number of selected candidates, it is indicated in the last column of the panel that they had attainments in sports, as well as in other fields like stenography, typing, motor driving etc.

11. The decision of the Patna High Court in the case of Udit Rai Sharma vs. The State of Bihar and another (supra) learned counsel for relied on by the applicants has no application in this case. In that case, an order was issued by the Government directing that trained graduates and other better qualified candidates should not to be recommended for appointment to the posts meant for ✓ trained matriculates, and this order was challenged. The High Court upheld the order of the government and dismissed the writ petition, essentially on the ground that the change of policy was within the jurisdiction of the State Government.

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and it was not for the court to decide what should be the policy of the State Government. It was also found that the policy has some rational basis. In the present case, the applicants are not challenging any policy or direction. What is more important is that there is no rule or direction in this case barring consideration of candidates with higher qualifications for appointment in group 'D' posts.

12. We uphold the contention of the learned counsel for the respondents that the present application is not maintainable since the selected candidates have not been impleaded as respondents, even though they are necessary parties to this case. No relief can be given to the present applicants against the selected candidates in the absence of such impleadment. There was no motion before us during the hearing for any amendment of the application in this regard. In this connection we may also refer to the observations of the Supreme Court in

Mohinder Singh
vs.
State of Haryana

1989(3) SLJ-SC-61,

On this ground this application is liable to be rejected.

13. In Dalpat Apasaheb Solunke etc. vs. Dr. B.S. Mahajan etc.

AIR-1990 SC 434, the Supreme Court observed that it is not the function of the Court to hear appeals over decisions of select committees and scrutinise relative

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merits of candidates and decision on
comparitive merits of candidates of select committees
cannot be interfered with by courts. This observation
fully applies to the present case, in the circumstances discussed
above. The Supreme Court again in the case of Kum. Neelima
and others
Misra vs. Dr. Harinder Kaur Paintal (AIR- 1990 SC- 1402)
held that there should be no interference by the Court
in the decision of selection committees in the absence of
of proof of mala fide or contravention of statutory or
binding rule, and that the Courts should be slow to interfere
with the opinion of experts in the field. It is also
well established that Courts cannot give direction to
concerned authorities as to the policy of
recruitment to be adopted.

14. In the result, the application fails and is
dismissed with no order as to costs.



(K.J. Raman)
Administrative Member


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(K.P. Acharya)
Vice Chairman.

jsv.