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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO: 458 of 1990

Date of decision: 5.1.93

Gandhi Behera and others ... Applicants

Versus

Union of India and others ... Respondents

For the Applicants ... Mr. G.A.R.Dora, Advocate

For the Respondents ... Mr. D.N.Mishra, Standing
Counsel (Railway).

....

CORAM:

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

AND

THE HONOURABLE MR. C.S.PANDEY, MEMBER (ADMN.)

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? *Ans*
3. Whether Their Lordships wish to see the fair copy of the judgment?

JUDGMENTK.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioners (31 in number) pray for a direction to the Opposite Parties to appoint the petitioners with consequential benefits.

2. Shortly stated, the case of the Petitioners is that they were working as Casual Labourers under the Divisional Signal TelecomEngineer(D.S.T.E.) (Development) South Eastern Railway, Khurda Road. They were retrenched because the project reached its completion. New Developmental works were undertaken and the office of the Opposite Party No.3 i.e. D.S.T.E.(Development), South Eastern Railway, Khurda Road were revived and vide Annexure A/1 dated 24th November, 1987 notice was issued inviting applications from retrenched Casual Labourers for re-engagement. All the Petitioners alongwith other similarly circumstanced applied for re-engagement. 27 (twenty seven) retrenched casual labourers similarly circumstanced filed an application under section 19 of the Administrative Tribunals Act, 1985 praying to quash Annexure 4 forming subject matter of Original Application No.330 of 1988 in which notice was given inviting applications of casual labourers of other Departments who possess minimum educational qualification of 8th standard. According to the Petitioners by its judgment dated 11th April, 1989 passed in Original Application No.330 of 1988, this Bench directed the Opposite Parties to prepare a seniority list of all the Casual labourers who had worked under the Opposite Party

No.3 and as and when vacancy arises, appointment should be made in favour of the candidates according to their seniority. Since the Opposite Parties in the said Original Application did not implement the judgment, a Contempt Petition was filed as a result of which the Petitioners were absorbed in July, 1990. The Present petitioners filed applications before the competent authority vide Annexures A/2 and A/3 for awarding similar benefits and there being no response, this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties, maintained that out of these 31 petitioners, only 22 persons applied for reengagement and in compliance with the directions given in the judgment passed in Original Application No.330 of 1988, applications were invited from the retrenched casual labourers of this unit for re-engagement and out of the present petitioners only 15 persons had applied/filed their applications and out of these 31 petitioners, who had applied, 21 persons were found to be suitable and 10 petitioners did not turn up on the day on which Screening Test was conducted and accordingly the seniority list vide Annexures 6 and 8 were prepared. As the Opposite Parties had followed the directions contained in the judgment passed in Original Application No.330 of 1988, in strictest terms the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. G.A.R.Dora learned counsel appearing for the petitioners and Mr. D.N.Mishra learned Standing Counsel (Railway Administration) for the Opposite Parties at a considerable length.

5. From the counter, it is found that in

compliance with the directions contained in the judgment passed in the Original Application No.330 of 1988 a Screening Test was conducted on 9.7.1989 for re-engagement of retrenched candidates and 27 candidates were selected by the Committee who had been subsequently appointed. It is further maintained that out of these 31 candidates, who have filed this case, 21 candidates were found to be not suitable and 10 candidates did not turn up on the date on which this screening test was conducted.

4. During the course of argument, advanced by Mr. G.A.R.Dora learned counsel appearing for the Petitioners, it was submitted that no screening test is required to adjudge the suitability of the different candidates but we cannot make a departure from the view already expressed in Original Application No.330 of 1988. In the said judgment, it is stated as follows:

"If that be so, then steps should also be taken to issue appointment letters to those incumbents according to their seniority and after giving them temporary status provided that such incumbents are found suitable". (Emphasis is ours).

The Bench once having held that suitability must be adjudged, at the cost of repetition, we may say that we cannot take a different view. The employer must be satisfied regarding the suitability of the employee. Suppose a particular person does not appear to be capable of doing the Project work or does not qualify the eligibility criteria as laid down in the rules, or is found to be otherwise incompetent, he is bound to be eliminated. The examples cannot be exhaustive. They are

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illustrative. However, we find no illegality to have been committed by the competent authority in holding a screening test but we find that no reasons have been mentioned in the counter as to why and on what basis 21 persons are found to be not suitable. Therefore, we would direct that all these 31 petitioners be noticed to appear once again before the Screening Committee and those who do not appear their non-~~not~~ appearance would be at their own risk. Those who would appear, their suitability be adjudged by the Screening Committee, giving detail reasons for which certain candidates are found to be not suitable and thereafter those who are found to be unsuitable, they may be kept in the list on seniority basis and be given temporary status and appointment be made according to their seniority against existing post, if any or as and when vacancy arises in future order of appointment be issued according to seniority.

5. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.

G. Mohanty
MEMBER (ADMINISTRATIVE)

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5/1/93
VICE CHAIRMAN

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

