

(5) III

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 248 of 1991

Date of Decision 27.4.1992

P.K.Mohanty & others Applicants

Versus

Union of India & Others Respondents

For the applicant

M/s. A.K. Mohapatra,
S.K. Dash,
P.R. Panda,
B.N. Mohapatra
D. Satpathy,
Advocates

For the respondents

M/s. Ashok Mohanty
D.N. Mishra,
Standing Counsel
(Central Government)

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HON'BLE MR .K.P .ACHARYA, VICE-CHAIRMAN

AND

HON'BLE MR .C.S .PANDEY, 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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(6) IV

JUDGMENT

MR .K.P .ACHARYA, VICE-CHAIRMAN, In this application under Section, 19 of the Administrative Tribunals Act, 1985, the petitioners (51 in number) pray for a declaration that roster point for appointment of scheduled tribe and scheduled caste candidates in the reserve quota should be made applicable to posts and not to vacancies and therefore the circular issued by the Railway Board on 29.4.1970 be held to be illegal and inoperative under the law.

2. Shortly stated the case of the petitioners is that they are members of the staff constituting the Civil Engineering Department of South Eastern Railway who belong to general category. The Railway Board vide letter dated 25.4.1970 laid down that the reservation quota in respect of scheduled caste candidates should be 15 per cent and for scheduled tribe candidates $7\frac{1}{2}$ percent and 40 point roster accordingly would be applicable to the promotional posts . On 29.4.1970 the Railway Board issued another letter bearing No.E(SCT) 70 CM-15/10 dated 29.4.1970 ^{in which it was} laid down that the promotion/appointment would be made on the basis of vacancies and not on the basis of posts. On the basis of this circular some of the members of the staff were called upon to appear in a written test for selection to the promotional posts. The petitioners feel aggrieved that on the basis of the circular issued on 29.4.1970, certain general candidates who were bound to come within the list of candidates to sit in the written test were excluded because number of vacancies were taken into consideration and not number of posts for which this anomolous position arose and the petitioners feel

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aggrieved and have prayed to quash Annexure-1 containing the list of candidates who are required to appear ⁱⁿ the written test.

3. In their counter the opposite parties maintain that the case is bad from nonjoinder of the necessary parties and the view expressed in Transferred Application No. 77 of 1987 has no application to the facts of the present case and further more the guidelines laid down in the circular of the Railway Board dated 29.4.1970 has a statutory force and should not be disturbed. It is further maintained that the views expressed in the earlier judgments have no application to the facts of the present case and therefore the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. S.K. Dash, learned counsel for the petitioner and Mr. D.N. Mishra, learned Standing Counsel for the Railway Administration. Mr. Mishra urged that the case is bad from non-joinders of the necessary parties, because names of those who appeared in the list contained in Annexure-1 have not been made parties and therefore their interests should not be affected without hearing those persons. It is needless to be stated that law makes it clear that a person who may be affected should be heard and no judgment cannot be passed behind his back. Here in the present case the candidates whose names have been mentioned in the list in annexure-1 have not been issued with any order of appointment. They are only being asked to sit for the examination and out of them the successful candidates would be appointed.

5. This Bench vide its order dated 9.8.1991 stated

that the examination should be conducted, but the result shall not be published. There is no grievance from the side of the petitioners ~~that~~ this interim order has been disobeyed therefore we presumed that the examination has been conducted but the results are not being published. In view of such circumstances it can be verywell held that no order has been passed in favour of any successful candidate~~s~~ for occupying the promotional post and hence no civil right has now vested with any of the candidates mentioned in Annexure-1. Result of such examination being subject to the result of this application, it cannot be said that a civil right has vested with any of the persons mentioned in Annexure-1. In such circumstances we find no merit in the aforesaid contention of Mr.D.N.Mishra, learned Standing Counsel.

6. In this connection it may be stated that in the judgment ^{passed} passed in T.A. 77 of 1987/by this Bench on 29.1.1991 ~~it~~ has taken into consideration the judgment of Allahabad High Court and that of the Madhya Pradesh High Court and the interim orders passed by the Hon'ble Supreme Court in relation to an identical issue. To-day in a similar ~~matter~~ forming subject of of O.A. 378/91, we have respectfully adopted the view taken in T.A. 77 of 1987 and in OA 378 of 1991. We have already held that roster point will be made applicable to the posts and not to vacancies. Adopting the same reasons assigned in the judgment passed in O.A. 378 of 1991, we find no justifiable reason to make a departure from the view expressed in the said judgment. Therefore we would hold that in the present case

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the roster points are to be made applicable to posts and not to vacancies and further we hold that Railway Board's Circular dated 29.4.1970 is illegal and inoperative under the law to the above limited extent viz. applications of 40 point roster to posts and not to vacancies. Thus we would quash- annexure-1 and we would direct that the concerned **officers** may workout the roster point in the promotional posts in accordance with the directions contained above and take further action in the matter according to rules. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

Stanley
 MEMBER (ADMINISTRATIVE)
 27.4.92

[Signature]
 27.4.92
 VICE-CHAIRMAN

Central Administrative Tribunal
 Cuttack Bench, Cuttack
 dated the 27th April, 1992/Sahab

