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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 378 OF 1991

Date of decision: April 27, 1992.

Trilochan Saman and others ..... Petitioners

-Versus-

Union of India and others ..... Opp. Parties.

For the Petitioners : M/s Ganeswar Rath, R.K. Mohapatra,  
J.C. Sahoo, Advocates.

For the Opp. Parties : Mr. R.C. Rath, Addl. St. Counsel.  
(Railway Admn).

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CORAM:

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

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

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

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JUDGMENT

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner (38 in number) pray to direct the Opposite Parties to make reservation in the promotional grades according to availability of posts and not according to the vacancies and it is further prayed to declare the Railway Board's Circular dated 29th April, 1970 as invalid and inoperative under the law and to direct the Opposite Parties to promote the Petitioner to the higher post.

2. Shortly stated the case of the Petitioner is that they are employees in the Engineering Department under the South Eastern Railway. Some of the Petitioners are working as Head Train Examiner and some of them are functioning as CWI and Wagon Foreman in Khurda Road Division. Further case of the Petitioners is that according to the instructions contained in Railway Board's Circular dated 29th April, 1970, the Opposite Parties are reserving 15 per cent of the vacancies in favour of the Scheduled Castes and  $7\frac{1}{2}$  per cent in favour of the Scheduled Tribes. According to the Petitioners, 9(nine) days thereafter, Railway Board issued another Circular vide letter No.E(SCT)-70-CM-15/10 dated 29th April, 1970 laying down that the promotions/appointments should be done according to 40 point roster and this roster will be applied to promotions for the post of reserved categories. Further more, for the purpose of clarification, it was stated therein that the reservation policy according to the aforesaid circular is being made applicable to the vacancies and not to the posts in the

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in the promotional grade for which the Petitioners feel aggrieved and this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that since a similar issue is pending determination by the Hon'ble Supreme Court, action taken by the Opposite Parties in following the roster point on the basis of vacancies and not on the basis of posts in promotional grade should not be disturbed and it is further maintained that the judgment of the Allahabad High Court can have no application to the case of the present petitioners and further more it is maintained that there ~~is~~ being no cause of action in favour of the petitioners to have accrued, the application is liable to be dismissed in limine. Further more it is maintained that the case is barred under section 20 and 21 of the Administrative Tribunals Act, 1985.

4. We have heard Mr. Ganeswar Rath learned Counsel appearing for the petitioners and Mr. R.C. Rath learned Standing Counsel appearing for the Railway Administration.

5. At first, Mr. Rath learned Standing Counsel contended that without permission having been accorded by the Petitioners to jointly file this application, this case should be dismissed in limine.

6. In this connection, it may be stated that the petitioners had filed an application on 7th October, 1991 praying for permission to jointly file the application. This forms subject matter of Misc. Case No. 356 of 1991. True it is, specific order

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on this application has not been passed, on 10th October, 1991 when this case came up for admission. Presumption is that the Court passed an order on 10th October, 1991 admitting the case for hearing, perusing all the relevant records including Misc. Case No. 356 of 1991. Even though specific orders have not been passed, the Court having admitted the case for hearing, impliedly it permitted the petitioners to prosecute this case jointly. Thus, we find no merit on the aforesaid contention of Mr. Rath.

7. As regards, the contention of Mr. Rath learned Standing Counsel that this case is barred under section 20 of the Administrative Tribunals Act, 1985 because other remedies were not exhausted by the Petitioners, it can be well said that the word 'ordinarily' vests a discretion with the courts to waive impediment in suitable cases and in emergent situations. By virtue of the fact that the court admitted this case for hearing, necessarily this defect has been condoned by the court. Hence we cannot sit over the judgment of the Division Bench which impliedly waived this impediment by admitting this case for hearing. Hence we find that the case is not barred under section 20 of the Administrative Tribunals Act, 1985.

8. As regards, the question of limitation mooted by Mr. Rath, we find that the grievance of the Petitioners is a continuing cause of action. Therefore, limitation does not operate against the Petitioners. Hence the application is not barred under section 21 of the Administrative Tribunals Act, 1985.

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9. Mr. Rath learned Standing Counsel further submitted that since similar issues are pending before the Honourable Supreme Court for determination, the procedure adopted by the authorities should be allowed to continue without being disturbed till the Apex Court delivers its decision which would make every son of the soil to be bound by the order. On the other hand, Mr. Ganeswar Rath learned Counsel appearing for the Petitioner submitted that in view of the fact that the Hon'ble Supreme Court has passed an interim order against the judgment of the Allahabad High Court and similar issues having been decided by the Madhya Pradesh High Court, having been adopted by this Bench in T.A. 77 of 1987 disposed of on January 29, 1991, this Bench should adopt the same nature of judgment and in case the Hon'ble Supreme Court passes a order contrary to the interim order, then automatically, the judgments of the Allahabad High Court, Madhya Pradesh High Court, Cuttack Bench of the Central Administrative Tribunal would be deemed to have been set aside.

10. The substantum of the case setup by the both sides is as follows.

11. On behalf of the Petitioner, it is submitted that the roster point is being observed by the Railway Authorities is not according to the number of posts but according to the number of vacancies which is against all canons of justice, equity and fairplay and further more <sup>it</sup> is against the norms laid down by the Honourable Supreme Court in the interim order which would be discussed hereunder.

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12. On the other hand, the case of the Opposite Parties is that they are perfectly justified in applying the roster point in regard to the promotional posts on the basis of the number of vacancies and this is inconsonance with the instructions issued by the Railway Board in their Circular dated 29th April, 1970. In order to determine this controversial issue, it is worthwhile to mention the judgment passed by the Cuttack Bench in T.A. 77 of 1987 taking into consideration the interim orders passed by the Hon'ble Supreme Court, judgment of the Allahabad High Court and that of the Madhya Pradesh High Court. In page 3 of the judgment, the Cuttack Bench observed as follows:

" Against the judgment of the Allahabad High Court the Union of India on behalf of all the Railway zones preferred an appeal to the Hon'ble Supreme Court. The Hon'ble Supreme Court in the appeal i.e. C.A.No.2017 of 1976 passed an interim order that while promoting the posts beyond 22½% should be filled up on consideration of merits".

In paragraph 8 of the judgment it has been mentioned as follows:

" In this connection, it would be pertinent to refer to the letter dated 22/23.9.1988 of the Chief Personnel Officer, South Eastern Railway which is at Annexure-4 to the plaint and the same is also made Annexure-E to the reply of the defendants. In that letter it was stated that the Hon'ble Supreme Court some High Courts and the Central Administrative Tribunals passed interim orders and judgments directing the reservation quota to be worked out on the basis of the number of posts and not on the basis of the number of vacancies which arise from time to time."

13. Thereafter the Cuttack Bench considered the view expressed by the Madhyapradesh High Court in an identical

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question. It further held that such identical question arose before the Madhyapradesh High Court and was answered in accordance with the dictum laid down by Their Lordships of reported Hon'ble Supreme Court in AIR 1981 SC 298 (Akhil Bharatiya Shoshit Karmachari Sangh Vs. Union of India and others). After discussing the judgment of the Allahabad High Court, Madhya Pradesh High and the case reported in AIR 1981 SC 298, the Hon'ble Judges of this Bench came to the following conclusion:

"Since we are in agreement with the views of the learned Judges of the Madhya Pradesh High Court deciding the case reported in 1986(1)SLR 511, it is not necessary for us to repeat these reasons over again. Accordingly, we would say that the reservation must be in the promotional grades of the posts and not of the vacancies and to that extent the Railway Board's Circular letter dated 29.4.1970 is invalid and the Plaintiffs succeed to this extent".

14. We are in respectful agreement with the views of the Madhya Pradesh High Court and the findings arrived at by the Hon'ble Judges of the Cuttack Bench in T.A. No. 77 of 1987 and we further hold that <sup>the</sup> ~~the~~ principles laid down in those cases would apply in full force to the facts of the present case when the judgment in TA 77 of 1987 has not been set aside. Therefore, in the present case, we hold that while applying the roster point number of posts are to be taken into consideration and not vacancies and we further hold that the Railway Board's Circular dated 29th April, 1970 to the above limited extent is invalid and inoperative under the law. In view of the aforesaid findings, the Opposite Parties would now work out the consequential service benefits namely promotion <sup>etc.</sup> ~~of~~ <sup>the</sup> ~~of~~ the Petitioners according to rules and according to the opinion expressed as above.

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15. Thus, the application stands allowed leaving the parties to bear their own costs.

K. Mohanty  
MEMBER (ADMINISTRATIVE)  
27/4/92



K. Mohanty  
27-4-92  
VICE CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench/K. Mohanty/27.4.92