

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 326 OF 1992

Cuttack, this the 27th day of July, 2000

Maheswar Mishra and others Applicants

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)

MEMBER (JUDICIAL)



Somnath
(SOMNATH SOM)

(SOMNATH SOM)

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VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

.....

1. Maheswar Mishra,
son of late Purna Chandra Mishra,
at present working as Khalashi/Helper, Office of
the Chief Inspector of Works, South Eastern Railway,
Cuttack, P.O-College Sqwuare,
Town & District-Cuttack.
2. Golekha Charan Swain,
son of Fagu Charan Swain,
at present working as Gangman,
Office of P.Way Inspector,
South Eastern Railway, Baranga,
PO-Baranga, Dist.Cuttack.
3. Md.Fozle Rabbi, son of Md.Gulam Rasul,
at present working as Senior Gangman,
Office of P.Way Inspector,
South Eastern Railway,
Baranga,
P.O-Baranga, Dist.Cuttack.
4. Achyutananda Naik, son of Lochan Naik
at present working as Senior Gangman,
Office of P.Way Inspector,
South Eastern Railway,
Kalupada, P.O-Kalupada,
Dist.Puri.
5. Sayed Hedayat Alli, son of Sayed Monan Ali,
at present working as Khalashi/Helper,
South Eastern Railway, Bhadrak,
P.O-Charampa, Dist.Balasore.
6. Bhagaban Sahoo, son of Bankanidhi Sahoo,
at present working as Senior Gangman,
Office of P.Way Inspector,
South Eastern Railway, Jajpur-Keonjhar Road,
PO-Jajpur-Keonjhar Road, dist.Cuttack.
7. Dheeraj Patanaik, son of late C.R.Patanaik,
at present working as Senior Gangman,
Office of the P.Way Inspector,
South Eastern Railway, Cuttack,
PO-College Square, Town & Dist.Cuttack.



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8. G.Balabantaray, son of R.C.Balabantaray, at present working as Khalasi/Helper, Office of the Inspector of Works, South Eastern Railway, Bhubaneswar, PO-Bhubaneswar, Dist.Puri.
9. Lokanath Sahu, son of Basudev Sahu, at present working as Khalasi/Helper, Office of the Inspector of Works, South Eastern Railway, Bhubaneswar, PO-Bhubaneswar, Dist.Puri.
10. Biranchi Narayan Das, son of L.N.Das, at present working as Khalasi Helper, Office of the Inspector of Works, South Eastern Railway, Bhubaneswar, PO-Bhubaneswar, Dist.Puri.
11. Muralidhar Sahoo, son of Ghana Sahoo, at present working as Senior Gangman, Office of P.Way Inspector, South Eastern Railway, Khurda Road, Jatani, PO-Jatani, Dist.Puri.
12. L.Adinarayan, son of L.Sankaracharya, at present working as Senior Gangman, Office of the P.Way Inspector, South Eastern Railway, Gorakhanath, Dist.Cuttack Applicants.

Advocates for applicants - M/s S.K.Dash,
P.R.Pana,
B.N.Mohapatra.

Vrs.

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1. Union of India, represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta-43 (West Bengal).
2. Divisional Railway Manager, South Eastern Railway, Khurda Road, At/PO-Jatni, Dist.Puri.
3. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/PO/PS-Jatani, Dist.Puri..... Respondents

Advocate for respondents- Mr.Ashok Mohanty

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O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Aministrative Tribunals Act, 1985, the twelve petitioners have prayed for quashing the panel published in order dated 20.11.1991 (Annexure-1) for the post of Office Clerk Grade II and the order dated 25.6.1992 (Annexure-4) issuing a revised panel for promotion of departmental candidates to the post of Office Clerk, Grade-II, superseding the earlier panel date 20.11.1991 at Annexure-1. There is also a prayer for a direction to the respondents to publish a panel in accordance with the procedure laid down in Railway Establishment Manual and to give all benefits to the persons whose names may be published in the new panel from the date of publication of the first panel at Annexure-1.

2. The facts of this case, according to the applicants, are that for filling up of the post of Junior Clerk in the 33.33% quota for departmental candidates, respondent no.3 invited applications from various categories of staff in letter dated 2.3.1990. In this letter, it was mentioned that persons eligible to be considered against the 33.33% departmental promotion quota are regular Group-D staff who have completed three years of continuous service including the service as substituted/casual labour. The aplications were required to reach the office of responent no.3 on or before 25.4.1990. The present petitioners applied for the post. In the letter dated 2.3.1990 it was indicated that 22 posts were vacant against the promotion quota. The applicants along with other Class IV staff appeared at a written test in April 1991 and 119 persons were called for viva voce test held in October 1991. After the written test and viva



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voce, in letter date 20.11.1991 (Annexure-1) a provisional panel of candidates was published. This panel had 21 names out of which only a few staff got posting orders. After publication of the panel, some of the applicants submitted representations raising their grievance that promotion from Class IV to Class III is to be done on the basis of seniority-cum-suitability and many of the senior staff have been ignored. Some of these representations are at Annexures 2 and 3. It is submitted by the applicant that without proper appreciation of the representations made at Annexures 2 and 3 and the several oral representations of Class IV staff through trade union, Senior Divisional Personnel Officer (respondent no.3) published another panel in letter dated 25.6.1992. In this panel, 41 names were mentioned and these 41 names included the twenty-one names already empanelled in letter dated 20.11.1991. The applicants have stated that the Railway Administration should have assessed the vacancies in Class III posts on yearly basis and after conducting suitability test, should have prepared panel on yearly basis, but this was not followed. It is also stated that while publishing the panel at Annexure-4, the positions of those persons who were previously enlisted in the panel under Annexure-1 have been altered and the departmental procedure has not been followed. That is how the applicants have come up in the petition with the prayers referred to earlier.

3. Respondents in their counter have pointed out that in 1990 a notice was issued calling for applications from eligible Group-D staff of all Departments of Khurda Road Division to fill up the vacancies of Office Clerk Grade II against 33.33% departmental quota. The number of vacancies was intimated as 22. Selection was done



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strictly in accordance with Establishment Serial No. 95 of 1988, dated 20.4.1988, which is at Annexure-A. A panel of 21 suitable candidates was published pending review by duly constituted Selection Committee comprising of Divisional Personnel Officer, D.O.S. and D.C.O. and the persons in the panel were posted to different Departments. Subsequently, the vacancy position and the assessment principles were reviewed considering the representation made by recognised trade unions. On assessment, the panel was raised from 21 to 41 and after obtaining approval of appropriate authority, a list of 41 empanelled candidates was published in order dated 25.6.1992. All these 41 candidates have been promoted and posted in available vacancies. The respondents have denied the allegation of the petitioners that the empanelled candidates are much junior to the applicants. In any case, it has been asserted by the respondents that the vacancies are not to be filled up on the basis of seniority-cum-suitability inasmuch as the candidates before being empanelled have to pass the written test and viva voce. The respondents have stated that the applicants did not qualify in the written test. Subsequently, an assessment was made about the vacancies and it was found that more vacancies were available. Therefore, according to the marks obtained in the written test and viva voce, another 20 candidates were included in the panel. The respondents have further stated that the selection procedure contained in Section 110 of Chapter II of Indian Railway Establishment (Annexure-B) Manual has been strictly followed. The respondents have further stated that during the period from 1983 to 1988 no selection could be made due to administrative reasons and in 1990 the number of vacancies was increased and the panel was finalised through selection and this could not be said

illegal. The respondents have, therefore, urged that the petition is without any merit and should be rejected.

4. The applicants have filed a rejoinder in which they have stated that the post of Office Clerk in Group-C is the normal avenue of promotion from Group-D. As such departmental promotion should have been made on the basis of selection-cum-suitability as per Sections 216 and 217 of Indian Railway Establishment Code, Vol.I read with paragraphs 188 and 189 of Indian Railway Establishment Manual, Vol.I (revised Edition 1989). The procedure adopted by the respondents in this selection has infringed the above provisions as also Establishment Serial No.95/88 which also speaks of promotion on the basis of seniority-cum-suitability. The applicants have further stated that they are much senior to the empanelled candidates and this has not been specifically denied by the respondents. The applicants have further stated that some of them appeared at the viva voce test, in support of which they have filed documents at Annexure-5 series which show that out of the 12 applicants, six attended the interview. The applicants have further stated that Section 110 of Chapter II of Indian Railway Establishment Manual is not applicable to this selection. It is also stated that the panel finally drawn up is also incorrect because it has not been drawn up on the basis of seniority of empanelled employees. On the above grounds, the applicants have reiterated their prayer.

5. In the O.A. it was prayed by way of interim relief that further action on the panels at Annexures 1 and 4 should be stayed till the disposal of the O.A. In order dated 21.7.1992 it was directed that the result of the application would govern the future service



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benefits of the petitioner and if any appointment is made out of the two panels, the appointee should be specifically informed that his appointment will be subject to the result of this application.

6. On MA No.172 of 1996 filed by the applicants it was ordered on 11.3.1996 that the respondents should produce the file relating to this particular selection test at the time of hearing. Accordingly, File No.P3/20 has been produced.

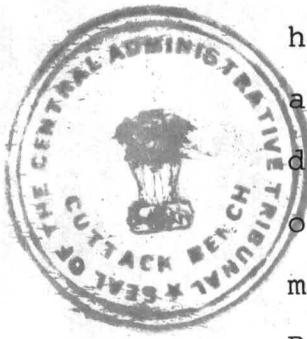
7. We have heard Shri S.K.Das, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned counsel appearing for the respondents and have also perused the records. The learned counsel for the petitioners had earlier filed a written note of submission which has also been taken note of.

8. Before considering the submissions made by the learned counsels of both sides, the factual aspects as revealed from the Selection File (No.P3/20/Jr.Clerk/33.33%/DPO/90), it seems that notice inviting applications was issued on 2.4.1990 and not on 2.3.1990 as mentioned by the applicants. This is at 12/C of the file. The last date of application was indicated as 25.4.1990. The written test was held sometime in April 1991 and a list of 119 candidates who were called to the viva voce test was published. This list is at 152/C of the file. From this list it appears that all the 12 applicants qualified in the written test and were called to the viva voce. Apparently, they did not qualify in the viva voce or may be in the aggregate and that is how their names are not there in either of the two panels, the smaller one of 21 names and the larger one of 41 names.

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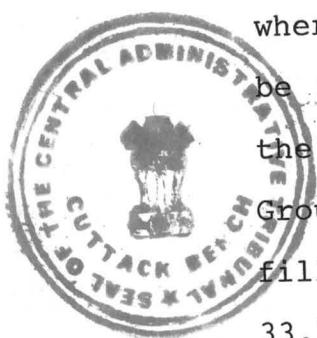
9. It has been submitted by the learned counsel for the petitioners that the selection should have been done on the basis of seniority-cum-suitability. But this principle has not been adopted by the respondents while holding the selection. In support of his submission that the selection should have been made on the basis of seniority-cum-suitability, the learned counsel for the petitioners has relied on Sections 216 and 217 of Indian Railway Establishment Code and Section 188 of Indian Railway Establishment Manual, Vol.I (Revised Edition 1989). These provisions have been extracted by the learned counsel for the petitioners in his written note of submissions. We have carefully gone through these provisions. Sections 216 and 217 of Indian Railway Establishment Code do not lay down that promotion from Group-D to Group-C would be done on the basis of seniority-cum-suitability. Section 216 merely lays down that Group-C and Group-D posts in Indian Railways and in other Railway Administrations shall be filled in accordance with the relevant recruitment rules or other extant orders, if any, by direct recruitment, by promotion, or by transfer of suitable staff, if necessary, from other Government offices. It is further laid down that direct recruitment of Group-C staff shall be made through the agency of Railway Recruitment Board unless otherwise specially authorised by the Railway Board. This Rule 216, therefore, does not in any way speak of selection on the basis of seniority-cum-suitability. Rule 217 merely lays down that rules relating to recruitment of Group-C and Group-D staff are contained in Indian Railway Establishment Manual. Learned counsel for the petitioners has submitted that the relevant rule in the Indian Railway Establishment Manual is Rule 188. This Rule 188 deals with promotion to lower grades in Group-C posts like Junior Clerk, Material



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 Checker, etc., in the scale of Rs.825-1200/- It is laid down in Rule 188 that these posts should be wholly filled by promotion from Group-D Railway servants who have put in 5 years service. It is further laid down that in the case of posts which are in the normal avenue of promotion to Group-D Railway servants, promotion should be made in each promotion unit on the basis of seniority-cum-suitability after holding such written and/or practical tests as may be considered necessary. On the basis of the above Rule 188, it has been contended that the promotion is on the basis of seniority-cum-suitability. It is to be noted in this connection that this rule deals with promotion to lower grades of Group-C posts in the scale of Rs.825-1200/- whereas the promotion in Group-C post which was sought to be filled in through the selection test before us was in the scale of Rs.950-1500/-. Moreover, Rule 188 speaks that Group-C posts in the scale of Rs.825-1200/- are to be filled up 100% by promotion. In the instant case, only 33.33% of the posts in Office Clerk Grade II in the scale of Rs.950-1500/- were to be filled in through promotion from amongst the Group-D staff. It cannot, therefore, be held that on the basis of Rule 188, such promotion should be done on the basis of seniority-cum-suitability. This contention of the learned counsel for the petitioners is, therefore, held to be without any merit and is rejected.

10. Even granting for argument's sake that the principle of seniority-cum-suitability would be applicable in the case of filling up of Office Clerks, Grade II, Rule 188 clearly speaks of holding of written test and/or practical test as may be considered necessary. The respondents have relied on Establishment Serial No.95/88. The applicants in their rejoinder have also mentioned in

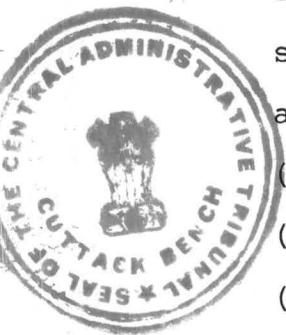


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paragraph 1 that Establishment Serial No.95/88 has been violated. This Establishment Serial is at Annexure-A of the counter. This Establishment Serial has thus been relied upon by both sides. In this Establishment Serial it has been laid down that in the earlier Establishment Serial No.130/60 it was clarified that competent authority ordering the selection can adjudge the suitability of the staff either by a written test or written and viva voce (both). In Establishment Serial No.95/88 it has been laid down that in order to have uniform policy in this regard it is laid down that wherever the suitability of the candidate is adjudged solely on the written test, the staff should obtain minimum 50% marks for being placed in the panel. It is further laid down that wherever the suitability of the staff is decided basing on both written test and viva, the apportionment of marks will be as follows:

(a)	Written Test -	60 marks
(b)	Viva voce -	25 marks
(c)	Record of Service -	15 marks
	Total -	100 marks

It has also been laid down that the staff should obtain minimum 50 marks in the written test for being eligible to be called for viva-voce test. For being placed on the panel, the staff should necessarily secure 50% marks also in viva-voce test as qualifying marks and also 50% marks in the aggregate. Therefore, from Establishment Serial No.95/88, it is clear that the suitability has to be adjudged by written test or through written test and viva voce as per the decision of the competent authority. In the instant case, in the notice dated 2.4.1990 it was clearly mentioned that a written test would be followed by a viva-voce. The twelve applicants, as earlier noted, had qualified in the written test and were called for the viva



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voce. Their names appeared in the list of 119 persons who were called to the viva voce. As the applicants failed to qualify either in the viva voce or in the aggregate in total, their names have not come in the panel. Even granting that the selection is on the basis of seniority-cum-suitability, as suitability has to be determined through written test and viva voce in this case, the person who does not qualify in the test has no claim to be included in the panel. The contention of the learned counsel for the petitioners that the selection has not been made in accordance with Establishment Serial No. 95/88 is also held to be without any merit and is rejected.

11. Another point raised by the learned counsel for the petitioners is that the panel, as has been drawn up in order date 25.6.1992 (Annexure-4) is not on the basis of seniority and as such it is bad. The applicants are not in the panel and therefore, it is not for them to question the order in which the names of 41 candidates have been placed in this panel. In any case, none of the 41 selected candidates in the panel at Annexure-4 has come in this application challenging the interse position in the panel and therefore, this contention has no relevance so far as the prayer of the applicants in this petition is concerned.

13. The learned counsel for the respondents has, on the other hand, urged that in the notice dated 2.4.1990 it was clearly mentioned that the written test would be followed by a viva voce. The applicants appeared at the written test, qualified for viva voce and also appeared at viva voce. After having failed to get selected and empanelled, they are estopped from challenging the process of selection. In support of his contention, the learned counsel for the respondents has relied on the



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decision of the Hon'ble Supreme Court in the case of Om Prakash Shukla v. Akhilesh Kumar Shukla and others, AIR 1986 SC 1043. We need not go into facts of this case which deal with competitive examination held by the District Judge of Kanpur for selection and appointment to the vacancies in Grade III of ministerial staff in the subordinate courts in the district of Kanpur. Their Lordships of the Hon'ble Supreme Court in paragraph 23 of the judgment have observed that the writ petitioners should not have been granted relief by the Hon'ble High Court. Their Lordships noted that the writ petitioner had appeared at the examination without any protest and he filed the petition only after he had perhaps realised that he would not succeed in the examination. This principle has been followed subsequently by the Hon'ble Supreme Court in the case of Madan Lal and others v. State of Jammu and Kashmir and others, AIR 1995 SC 1088, another decision relied upon by the learned counsel for the respondents. In **Madan Lal's case (supra)** the petitioner had challenged the process of selection of Munsifs in the State of Jammu & Kashmir undertaken by Jammu & Kashmir Public Service Commission. Their Lordships in paragraph 8 of the judgment observed that in **Om Prakash Shukla's case (supra)** it has been clearly laid down by a Bench of three Judges of the Hon'ble Supreme Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in the examination, he filed the petition challenging the said examination. In such cases, the High Court should not have granted any relief to such a petitioner. It was further observed in paragraph 9 that the result of interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.

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Their Lordships also note that the Court does not sit as a court of appeal and cannot re-assess the relative merits of the concerned candidates who had been assessed at the oral interview. In the instant case, we find that the twelve petitioners sat for the written test and were called for the viva voce, but ultimately their names were not in the panel of the selected candidates. The applicants have stated that some of them appeared at the viva voce. It is, therefore, not open for them now to challenge their non-selection on the basis of the selection process in which they participated at every stage.

14. In consideration of all the above, we hold that the application is without any merit and the same is dismissed but, under the circumstances, without any order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)



Somnath Som.
(SOMNATH SOM)

27.7.2010
VICE-CHAIRMAN

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