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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS: 173/1993 & 180/1993.

DATE OF DECISION: NOVEMBER 17, 1993.

O.A.No.173/93

M. Venkat Rao

...

Applicant

Versus

Union of India & Others

...

Respondents

O.A.No.180/1993

K. Ganesh

...

Applicant

Versus

Union of India and others

...

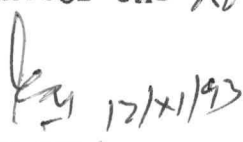
Respondents

(FOR INSTRUCTIONS).

1. Whether it be referred to the reporters or not? *NO*
2. Whether it be circulated to all the Benches of the *NO*  
Central Administrative Tribunals or not?

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

17 Nov 93

  
(K.P. ACHARYA)  
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

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Date of decision: 17th November, 1993

O.A.No.173 of 1993

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O.A.No.180 OF 1993

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...

Respondents

For the Applicants  
(In both the cases)

... M/s . B.L.N.Swamy,  
N.K.Barik  
S.Dash,  
Advocates

For the Respondents  
(In O.A.No.173/93)

... M/s.Bijoy Pal,O.N.Ghosh,  
Senior Standing Counsel  
( Railway ).

For the Respondents  
(In O.A.180/93)

... Mr.D.N.Mishra, Standing  
Counsel( Railway ).

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C O R A M;

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

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

J U D G M E N T

M.P.ACHARYA, V.C.

In both these cases, petitioners were appointed as substitute Khalasis and they were required to pass a trade test under the Apprenticeship Act, 1961. Since they did not turn out successful in the trade test their services were dispensed with by a termination order contained in Annexure 3 dated 23rd March, 1993 so far as the Original Application No.173 of 1993 is concerned and Annexure 3 dated 23rd March, 1993 so far as Original Application No.180 of 1993 is concerned. Hence both these

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applications have been filed with a prayer to  
order  
quash the termination~~on~~ dated 23rd March, 1993 and  
direct the Opposite Parties not to terminate their  
services and allow them to join in their duties  
and to appear in the Trade Test Examination.

2. In their counter, the Opposite  
Parties maintained that since the petitioners in  
both these applications did not turn out successful  
in the Trade Test, under the Rules, their continuance  
as Substitute Khalasis was not permissible and  
therefore, very rightly their services were terminated  
by the competent authority which should not be  
unsettled - rather it should be sustained.

3. Since common questions of fact and  
law are involved in both these cases, we have heard  
both these cases one after the other from the counsel  
appearing for both sides and we direct that this  
common judgment will govern both these cases mentioned  
above.

4. In Original Application No. 173 of  
1993, we have heard Mr. B.L.N. Swamy learned counsel  
for the petitioner and Mr. B. Pal learned Senior Standing  
Counsel (Railway) for the Opposite Parties.

5. In Original Application No. 180 of  
1993 we have heard Mr. B.L.N. Swamy learned counsel  
appearing for the petitioner and Mr. D.N. Mishra learned  
Standing Counsel (Railway) for the Opposite Parties.

6. The admitted position is that in both the cases, the Petitioner did not turn out successful in the trade test. Turning out successful in the trade test, is a necessary requirement for further service prospects in Railway Service. Since the termination order was under challenge this Bench vide order dated 6th April, 1993 passed in O.A.No.173 of 1993 and 12th April, 1993 passed in Original Application No.180 of 1993 stayed operation of both the orders of termination passed in both these cases and therefore, the petitioners are still continuing. It was told to us by the counsel for the Petitioners Mr.B.L.N.Swamy that in a subsequent trade test, the Petitioners have turned out successful. Learned Standing Counsel Mr.B.Pal and Mr.D.N.Mishra have no instruction in the matter. Therefore, we cannot come to a conclusion that the petitioners in both these cases have, as a matter of fact, turned out successful in the subsequent trade test. In case both of them have turned out successful in the subsequent trade test, they should be considered for engagement as substitute and for regularisation against future vacancy if any arises in future provided that they are found to be suitable. We would make it clear that the validity of the termination order cannot be open to challenge because under the rules, the competent authority had to terminate the services of the petitioner because they had not turned out successful in the trade test.

Those termination orders will be deemed to be inoperative

provided that the petitioners have actually turned out successful in the subsequent trade test.

7. Thus, both these applications are accordingly disposed of. No costs.

  
Member (Administrative)  
17 Nov 93

  
17.11.93  
Vice-Chairman

Central Admn. Tribunal,  
Cuttack Bench/K. Mohanty  
17th November, 1993.

