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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 367 OF 1993.

Cuttack, this the 10th day of September, 1999.

Prahallad Behera.

....

Applicant.

-Versus-

Union of India & 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 Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
10.9.99

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 367 OF 1993.

Cuttack, this the 10th day of September, 1999.

CORAM;

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

...

PRAHALLAD BEHERA, S/o. Bhima Behera,  
At-Samal, PO. Rambha, PS. Khalikote,  
Dist. Ganjam, at present working as  
L. R. R. C under S. S., SE Railway,  
Talcher, At/PO. Ps. - Talcher, Dist. Dhenkanal.

... Applicant.

By legal practitioner: Mr. P. C. Mohapatra, Advocate.

-VERSUS-

1. Union of India represented through  
its General Manager, South Eastern  
Railway, 11, Garden Reach Road,  
Calcutta-43.
2. Divisional Personnel Officer,  
South Eastern Railway,  
Khurda Road,  
At/PO./Dist. Jatni,  
Dist. Khurda.

... Respondents.

By legal practitioner: M/s. B. Pal, O. N. Ghosh, Senior Counsel  
(Railways).

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Som.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for setting aside /quashing the message at Annexure-3 directing the superior authorities of the applicant not to send the applicant for the selection test for Guard. Second prayer is for a direction to the Divisional Personnel Officer, South Eastern Railway, Khurda Road to hold fresh suitability test for the post of Goods-guard after giving a chance to applicant to appear at the test. On the date of admission of this Original Application on 23-7-1993, by way of interim relief, it was ordered that one post of Goods-guard should be kept vacant till the disposal of the Original Application. This order has continued till date.

2. The case of applicant is that he belongs to SC community and he joined as Shed Khalasi in Loco Deptt. on 04-02-1975. Later on by way of mutual transfer, he changed his department and joined as Box carrier in the Operating Department on 10-04-1984. In due course, applicant was promoted to the post of Commercial Clerk and at the relevant point of time, he was posted as L.R.R.C (Leave Reserve <sup>Reservation</sup> relieving Clerk), at Talcher. Departmental Authorities <sup>A Som.</sup> issued notice dated 20-4-1993 (Annexure-1) calling for applications from certain categories of staff by 10.5.1993 for sitting at the suitability test for selection to the post of Goods Guard in the scale of Rs. 1200-2040/- against 85% promotion quota. Applicant has stated that he was

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eligible to be considered for the post and accordingly, he submitted his application within the last date. In letter dated 25-6-1993 (Annexure-2), 31 persons including applicant, were called to sit at the written examination to be held on 17th and 18th of July, 1993 at DRM's Office Khurda Road. Even though applicant was called to sit at the written test, a message was issued by the Chief Commercial Controller, Khurda Road on 16.7.1993 (Annexure-3) to the Station Superintendent, Talcher, under whom, applicant was working, directing the station superintendent not to spare the applicant to attend the selection. Applicant has stated that even though many of his juniors were called to attend the written and did appear at the written test on the above two dates, applicant was deprived of taking the test. Applicant filed a representation before the Res. No. 2 on 19.7.93 praying that he should be allowed to sit at the selection test by holding a supplementary selection test but no action was taken. Applicant has stated that coming to know that result of the said selection test is going to be published shortly, he has come up in this Original Application with the prayers referred to earlier.

4. Respondents have filed counter opposing the prayer of applicant. They have stated that for the purpose of selection and promotion to the post of Goods guard an examination was proposed to be conducted in 1993. There were 46 vacancies against 85% Departmental quota and the posts were to be filled up on quota basis amongst different categories of staff who are to be considered for the posts. In para-4.1, Respondents have indicated the category-wise

breakup of the quota and for the purpose of deciding this Original Application, this has to be indicated:

Sl.No.	Eligible categories	Scale of pay	Percentage of intake
(1)	(2)	(3)	(4)
(a)	(a.1) Jr. Trains Clerk/ Rlg. Clerk.	Rs. 950-1500/-	33%
	2) Sr. Trains Clerk/ Rlg. Clerk.	Rs. 1200-2040/-	
(b)	b.1) Jr. Control & Telephone Roster, Station & Muster Clerk.	Rs. 950-1500/-	15%
	b.2) Sr. Control & Telephone Roster, Station & Muster Clerk.	Rs. 1200-2040/-	
(c)	Asst. Guards.	Rs. 950-1500/-	17%
(d)	d.1) Switchman	Rs. 1200-2040/-	10%
	d.2) Shunting Jamadar.	Rs. 1200-1800/-	
(e)	e.1) Jr. Ticket & Collector.	Rs. 950-1500/-	10%
	e.2) Jr. Comm'l. Clerk.	Rs. 975-1540/-	
			85%

Respondents have stated that under Category 'e' for Junior Ticket & Collector and Jr. Commercial Clerk, which is the Commercial group, 10% of the 46 vacancies comes to 05 and accordingly under the instructions, three times the number of vacancies i.e. 15 persons should have been called but from the Commercial Category, 23 persons were called as per their seniority in order to make good the short-fall in other category where the response was less than the actual requirements. Later on 05 Senior persons from Switchman and Shunting Jamadar category in Operating Department, under the category 'd' in the tabular statement given above, filed a complaint stating that even though they have applied for

sitting at the examination, their names have not been included. On the mistake being found out, those five persons were included in the list of candidates to be called for the suitability test and from amongst the excess persons called from the Commercial Gr., five junior most persons were deleted. Applicant was one of them. Respondents have also stated that even after deletion of five persons from the commercial category, including the applicant, the number of commercial staff appearing in the selection was more than the three times the number of their quota. Respondents have also stated that Switchman and Shunting Jamadars are in the scale of Rs- 1200-2040/- and 1200-1800/- respectively and Commercial Clerks and Ticket Collectors are in the scale of Rs.975-1540/- and Rs.950-1500/- respectively. So it is obvious that Switchman and STM are definitely higher category than the Jr. Ticket Collector and Jr. Commercial Clerk and therefore, the Switchman and Shunting Jamadars were adjudged senior in the inter se seniority list of excess candidates. Respondents have further stated that the applicant was not the only person who was indicated not to appear at the test. Four other persons of which K. Bhanja, and M.K. Das, who were senior to applicant, were also not allowed to appear at the test. Respondents have also opposed the averments of applicant that he being a member of SC should have been called for sitting at the test against reserved quota. Respondents have stated that amongst the vacancies, there were two SC posts against which 20 SC candidates were called to attend the written examination.

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On the above grounds, Respondents have opposed the prayers of applicant.

5. This 1993 matter which came up for hearing on 11.8.1999 from the warning list. On that date, learned counsel for applicant was absent and no request was also made on his behalf seeking adjournment. As this was a 1993 matter where pleadings have been completed long ago, it was not possible to drag on the matter indefinitely. We have, therefore, heard Mr. B. Pal, learned Senior Counsel appearing for the Railways and have also perused the records and concluded the hearing on that date. The matter was posted to 23.8.99 to enable the learned Senior Counsel for the Respondents to file written note of submission. On 23.8.1999, learned counsel for the applicant submitted that he had lost the file and he wanted to reconstitute the file and make his submission. In view of this, the matter was posted to today for hearing the submission to be made by learned counsel for the petitioner. Today when the matter was called, learned counsel for the petitioner was absent nor was any request made on his behalf seeking adjournment. In view of this, it is not possible to drag on the matter any further.

6. Learned Senior Counsel appearing for the Respondents have filed written note of submission and indicated that as the learned counsel for the petitioner had not attended the court he has not been able to serve a copy of this on the other side. We have also taken note of the written submissions filed by the Respondents.

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7. Prayer of applicant is for a direction to the Respondents to hold fresh suitability test for selection and appointment to the post of Goods guard after giving a chance to applicant to appear at the test. He has also prayed for quashing the message at Annexure-3 directing that the applicant should not spare to appear at the test. From the pleadings of the parties, it is clear that for filling up of the post of 85% promotional quota in the posts of Goods Guard, selection is made through a number of different categories of staff enjoying different scales of pay. The Circular provides grouping of different categories of staff and fixing quota, percentage wise for each category of staffs, details of which have been indicated above. From that it is clear that the Commercial clerks and Switchman and Shunting Jamadar together, came under two different categories. For Switchman & Shunting Jamdar the quota is 10% and for Jr. Ticket Collector and Jr. Comm. Clerk the quota is another 10%. Taking the total vacancies 46, apart from other groups, five vacancies were meant for Switchman and Shunting Jamdar and five vacancies were meant for Commercial Clerks. Respondents have stated that even though for the five posts of Goods guard to be filled up by promotion from the post of Commercial Clerks and Ticket Collector, three times the number of vacancies i.e. 15 persons should have been called but a large number of candidates i.e. 23 persons from the Commercial Group were called to take the written examination. This was for the purpose of making up the shortfalls in other categories. Subsequently, five Switchmen and Shunting Jamdars, gave a representation

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stating that even though they have applied for the post, they have been left out for being called to the test. Considering their representation and considering the fact that Switchman and Shunting Jamadar enjoy higher scale of pay than Ticket Collector and Commercial Clerk, Switchman was considered to be more senior and those five persons were called to the written test and the junior most five persons from amongst the Commercial group were deleted. Under the Rules, candidates equally <sup>5</sup> three times the number of vacancies were to be called for sitting at the test and persons who are beyond this number have no right to be called to the written test. Thus, applicant and four others who were beyond the number have no right to be called to the written test. The five Switchmen who were later on called to take the written test were also beyond the number of fifteen in the Switchmen category because even though they have applied earlier, they were not called to the test. They have also no right as such, to be called to the written test since they were also beyond the number of fifteen in the switchmen and shunting Jamadar group but while excess numbers were called from the Commercial category, excess numbers were not called from the Switchmen and Shunting Jamadar category. Considering the representation of five Switchmen and shunting Jamadars and considering the fact that the Switchmen and Shunting Jamadars enjoy a higher scale of pay, respondents, included those five SMS and SJMS who had applied in time and deleted the last junior most persons from the Commercial Category. We find that the Respondents have followed an objective approach and criteria in including five Switchmen and shunting

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SJMS

SJMS

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Jamadars and in deleting the five junior most persons from the commercial category and no fault can be found with the departmental authorities and their action can not be faulted on the ground of arbitrariness. The action taken by the Departmental Authorities is also logical because when excess persons have to be called because of short-fall in the number of candidates in some other category of the excess persons <sup>it</sup> why/should have been called <sub>from</sub> for only Commercial Group/category and therefore, their action in this regard can not be faulted.

8. In the result, therefore, we hold that the applicant has not been able to make out a case for the reliefs claimed by him. The application is therefore, held to be without any merit and is rejected but in the circumstances of the case, without any order as to costs.

(G. NARASIMHAM)  
MEMBER(JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN  
10.9.99

KNM/CM.