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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 607 OF 1993.

Cuttack this the 20th day of April, 1998.

SHRI PINCHU CHARAN GHOSH.

....

APPLICANT.

- VERSUS -

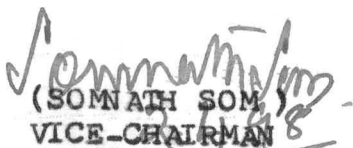
UNION OF INDIA & OTHERS.

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RESPONDENTS.

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not ?.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?.


(SOMNATH SOM)
VICE-CHAIRMAN


(S.K. AGARWAL) 21/4/98
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK.

ORIGINAL APPLICATION NO. 607 OF 1993
Cuttack this the 2nd day of April, 1998.

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

&

THE HONOURABLE MR. S.K. AGARWAL , MEMBER(JUDICIAL)

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In the matter of;

Shri Panchu Charan Ghosh,
C/o. Shri Parsuram Rout,
Aged about 51 years,
At-Shaktinagar,
Po. Arundhaya Market,
Ps: Madhupatna,
PIN- 753 012.


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Applicant.

By legal Practitioner : M/s. S.K. Padhi, S. Parida,
Advocates.

-Versus-

1. The Secretary, Ministry of Labour, Govt.
of India, Shrama Shakti Bhawan,
Rafi Marg, New Delhi-1.
2. The Director, Central Board for Workers,
Education, 1400 West High Court Road,
Gokulpeth, Nagpur-440010.
3. The Regional Director, (E.S.),
Workers Education Centre,
Sankarpur Dasa Sahi,
Cuttack-753 102.

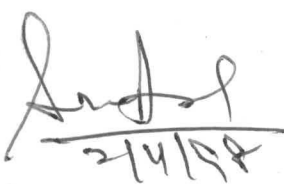

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4. Miss. Krishna Saha, Indian Institute for Workers Education, Shramik Shikshan Bhawan, L. B. Shastri Marg, Kurla(W), Bombay-400070.
5. Shri R. B. Chowdhury, Indian Institute for Workers Education, Shramik Shikshan Bhawan, L. B. Shastri Marg, Kurla(W), Bombay-400070.
6. Shri B. S. Mishra, Indian Institute for Workers Education, Shramik Shikshan Bhawan, L. B. Shastri Marg, Kurla(W), Bombay-400070.
7. Shri D. Bishayee, Indian Institute for Workers Education, Shramik Shikshan Bhawan, L. B. Shastri Marg, Kurla(W), Bombay-400070.
8. Shri C. Bhattacharjee, Indian Institute for Workers Education, L. B. Shastri Marg, Kurla(W), Bombay-400070.

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RESPONDENTS.

By Legal Practitioner : Mr. Akhaya Kumar Mishra, Additional Standing Counsel (Central).


2/4/98

O R D E R

MR. S. K. AGARWAL, MEMBER (JUDICIAL) :-

In this Original Application, Under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents 1 to 3 to

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appoint the applicant in the post reserved for departmental candidates and to quash the appointment of Respondents 4 to 8 to the post of Education Officer.

2. In brief, the facts of the case, as stated by the applicant, are that the applicant was appointed under the Central Board of Workers' Education, under the Ministry of Labour as a Projectionist in May, 1964. The applicant is a qualified person of B.Com., LL.B., and had acquired additional qualification of T.V. Technology and Cinematography. He has been confirmed in the same post with effect from 30.1.1992 and crossed the Efficiency Bar vide order dated 3.3.1992. It is stated that the applicant though had been appointed as Projectionist, but he had been allowed to carry out the responsibility of an Education Officer. It is stated that Central Board of Workers Education issued an advertisement for appointment of 36 Vacancies of Education Officer in the Central Board of Workers Education out of which 12 posts are reserved for departmental candidates. Out of the 36 vacancies, 5 vacancies were for Bengali Language and the applicant belongs to Bengali Language group. Out of the 5 vacancies for Bengali Language group, 2 posts should have been filled up by departmental candidates or atleast one.

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The applicant was called upon for written test and interview as a Departmental candidate and he appeared in the same. Thereafter, the Departmental Authorities decided to appoint 45 candidates for education Officers Course out of which 7 candidates were departmental candidates, and remaining 38 were direct candidates. But none of the Departmental candidates were selected in the Bengali Language and the Respondents 4 to 8 were selected in Bengali Language as direct recruits candidates. Therefore, in this Original Application, the applicant has challenged the appointment of Respondents 4 to 8 saying that these appointments are in contravention of the reservation made for the Departmental candidates and as such, are liable to be quashed. The applicant, has also prayed that Respondents be directed to appoint the applicant to the post of Education Officer as a Departmental candidates.

3. Counter was filed on behalf of Respondents 1, 2 and 3. In the counter filed by the Respondents, it is stated that the Board had issued advertisement for filling up of the post of Education Officer (direct recruits) only. As far as departmental candidates are concerned, separate instructions were issued to the Regional Directors and applications were invited from them. Shri Ghosh (applicant) had applied for the post of Education Officer as a Departmental candidate and not in response to the advertisement


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issued by the Board. Although his case was recommended by the Regional Director, Cuttack, the selection of candidates was done by the Selection Committee of the Board, on merit and also taking into account the performance of the candidates in the written test and personal interview. As such the applicant can not claim any legal right to the post of Education Officer. It is also stated that vide Office letter dated 8.1.1991, the Regional Director, Cuttack was asked to state the reason for not repairing the Projector since 1988 and for allowing the Projectionist to deliver talks in training programme. However, no reply was received by the Director, inspite of reminder dated 20.8.1991. It is further stated that according to the Recruitments Rules for the post of Education Officer in the Board, 1/3rd posts are filled up by promotion through Limited departmental Examination from among Group C employees who are graduates and have put in at least eight years regular service in the scale of L.D.C. or its equivalent and above in the Board failing which ~~the~~ direct recruitment. It is, therefore, not obligatory on the part of the Board to fill up the entire quota of 1/3rd posts from among departmental candidates. Further the 1/3rd quota reserved for departmental candidates, is not based on any language group. In the instant case, since no departmental candidate under 'BENGALI' language

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group was found suitable by the Selection Committee, the posts were filled up from among direct candidates which was as per the Rules. It is further stated that it is for the Selection Committee to decide the suitability of the Departmental Candidates on merit by judging their performance in the written test and personal interview alongwith the entries in their confidential reports and thereafter, the Selection Committee will select those Candidates who are more meritorious having better performance in the written and personal test. It is stated that in the written test and interview, Shri Ghosh (Applicant) obtained extremely poor marks and as per the Confidential Reports, the applicant was not fit for promotion as laid down in the Recruitment Rules for selection to the Post of Education Officer. Therefore, the Selection Committee has rightly selected respondents 4 to 8 who have secured more marks in the written test and personal interview, as awarded by the selection Committee. It is also stated by the Respondents that there is no basis to hold the action of the Respondents as arbitrary and mala fide. Moreover, the applicant has not submitted any representation regarding his non-selection to the Post of Education Officer in the Board after his interview. Therefore, the applicant is not entitled to get the relief as claimed by him in paras 8 and 9 of the Original application and the Original application is liable to be dismissed with costs.

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4. We have heard Mr. S.K. Padhi, learned Counsel for the Applicant and Mr. Akhaya Kumar Mishra, learned Additional Standing Counsel appearing on behalf of the Respondents and perused the whole records.

5. The grievance of the applicant is mainly that according to Recruitment Rules, 1/3rd posts of Education Officer must have been filled up through limited Departmental Examination from among the Gr. C employees of the Board but the Direct Recruits and the Departmental Employees were made to appear in the same examination by the Respondents, which was not proper. It has also been argued that Respondents 4 to 8 have been appointed in excess of reservation as provided in the Recruitment Rules.

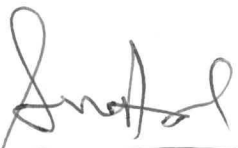
On the other hand, learned Additional Standing Counsel appearing on behalf of the Respondents strongly objected all the arguments put forward by the learned Counsel for the Applicant and has argued that the candidates for direct recruit are also graduates likewise Gr. C employees of the Department. He has also argued that the applicant had secured only 22 marks out of 100 marks and that is why, he could not be selected for the training course for education officers.

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6. We have given our thoughtful consideration

to the rival contention of both parties. An affidavit has also been filed by the applicant to establish the fact that all the Direct recruits and Departmental Employees were made to appear in one and the same examination held on 06-07-1993. In the said examination same papers were set both for direct recruits and departmental candidates. This fact has been admitted by the Respondents by filing a counter affidavit stating that as per rules 2/3rd by direct recruitment and 1/3rd by promotion through limited Departmental Examination from among Group C employees of the Board who are graduates and have put in atleast eight years regular service in the scale of Lower Division Clerk or its equivalent and above in the Board, failing which by direct recruitment. Following are the rules which has been circulated vide Letter No. A-12018/1/88-ESA(WR) dated 21.12.1988 by the Ministry of Labour, Government of India, New Delhi :

"2/3rd by direct recruitment and 1/3rd by promotion through limited Departmental Examination from among Group C employees of the Board who (i) are graduates and (ii) have put in atleast 8 years regular service in the scale of Lower Division Clerk or its equivalent and above in the Board, failing which by direct recruitment".


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The eligibility criteria to appear in the said test for direct recruitment has also been provided in the rules which runs thus:

"Essential :- (a) A second Class Master's Degree in Economics, Social Work, Sociology, Political Science Adult Education or Commerce with atleast 50% marks.

OR

b) A second class M.Sc (Extension in Rural Areas) with at least 50% marks;

OR

c) A second class Bachelor's Degree with one of the subjects with) atleast 50% marks and with not less than three years field experience in labour and social welfare matters;

OR

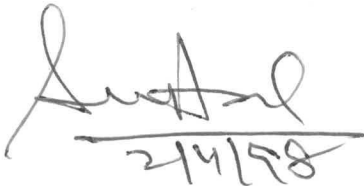
d) A second class Masters' degree in Social Work with specialisation in Rural Work or Tribal Welfare with atleast 50% marks.;

OR

e) A second class B.Sc Agriculture (Extension) from any of the recognised Universities or Colleges, with at least 50% marks and not less than three years field experience in Rural Labour and Social work;

OR

f) Bachelor's Degree with at least 40% marks in aggregate with three years' experience as an Officer of registered Trade Union or a worker Teacher under the Central Board for workers Education;


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Desirable :- First hand knowledge and experience of trade unionism or journalism, industrial relations labour laws, labour welfare, teaching experience, work in rural areas etc."

The essential eligibility criteria for Gr.C employees of the Board, as per Rules is that a candidate must be (1) a graduate; (2) has put in at least eight years regular service in the scale of Lower Division Clerk or its equivalent and above in the Board failing which by direct recruitment.

7. According to the above Rules, it becomes abundantly clear that direct recruits are also eligible for the Training course for the post of Education Officer. Therefore, it is not proper to say that the combined examination for direct recruits and Gr.C employees of the Board, in any way, is in contravention of the rules particularly, when there is no specific prohibition in the rules.

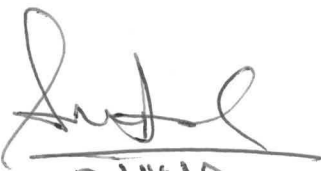
8. The letter dated 24.2.1993 addressed to the Deputy Director (Trg.), Zonal Director and the Regional Director is also important for just decision of this case. This letter provides as follows:-

* Subject:- Promotion of Group C employees of the Board as Education Officer.

Sir/Madam,

As per the decision of Governing Body of CBWE at the time of recruiting Education Officers, 1/3 posts to be filled by promoting group C employees of the CBWE who:-

1. are graduate;
2. Have put in at least eight years service in the Board and


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3. have satisfactory performance.

The Board further decided that the employees who are eligible and wish to be considered for such promotion will have to appear for the test before they are selected for Education Officers training course.

(emphasis supplied)

You are therefore, requested to get the enclosed form filled in by the willing and eligible employees of your centre and forward the same duly endorsed and certified so as to reach us latest by 31.3.1993.

While forwarding the applications please see that applications of only eligible candidates- Graduates with 8 years service-are sent to this Office.

If no application is received from your centre by this date it will be presumed that there is no eligible/willing group C employee at your Centre*.

9. The applicant, pursuant to this letter, filled up the application form which was also duly forwarded by the Competent Authority to CBWE and accordingly, the applicant appeared in the written test and viva voce test but he was unsuccessful. On the perusal of the Affidavit filed by Respondent No.3, it appears that the applicant secured only 22 marks out of 100(12 marks in written test and 10 marks in personal interview). Therefore, the applicant was not considered for admission to the Training Course for Education Officers.

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10. In OM PRAKASH SHUKLA VRS. AKHILESH KUMAR SHUKLA AND OTHERS reported in AIR 1986 SC 1043 Their Lordships' of the Hon'ble Supreme Court have held the petitioner that/having appeared for examination without protest and filed petition only after realisation that he would not succeed in the examination should not have been granted any relief in the petition.

11. In MADAN LAL AND OTHERS VRS. STATE OF J & K AND OTHERS reported in (1995) 3 Supreme Court Cases 486 Their Lordships of the Hon'ble Court observed as follows:-

"It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he can not turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted".

12. In J. ASHOK KUMAR VRS. STATE OF A.P. AND OTHERS reported in (1996) 3 Supreme Court Cases 320, the Court refused to grant the relief to the petitioner on the ground that the selection had already been over and the candidates were selected and appointed to the said post.

13. In the case of University of Cochin Vrs. N. S. Kanjoo Jamma and Others etc. reported in 1997 (2) SLR 606 the Hon'ble Supreme Court pointed out that the first Respondent also had applied for and sought selection but remain unsuccessful; Hence, the Court held that having

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participated in the selection, she was estopped to challenge the correctness of the procedure adopted by the Selection Committee.

14. The same view has been taken by the Hon'ble Himachal Pradesh High Court (Division Bench) in C.W.P. No. 312 of 1989 decided on 22.5.1997 which runs thus:


"A person who had participated in the process of selection for promotion and having failed therein can not challenge the promotion policy-principle of estoppel applicable- validity of the procedure adopted for the purpose of granting promotion can not be challenged".


15. In the instant case, the vires of the Recruitment Rules, has not been challenged by the applicant and he has come with the prayer that he was made to appear in a combined written test held for direct recruits and Gr.C employees of the Board. As per the letter dated 24.2.1993 it becomes very clear that the applicant voluntarily on his own will without any protest had appeared in the written test as also personal interview before the Board. Therefore, looking to the law laid down by the Hon'ble Supreme Court as well as the Hon'ble Himachal Pradesh High Court, the applicant can not challenge the procedure adopted by the Board only because he was declared unsuccessful.

Sudhanshu
24/98

16. As regards the appointment of Respondents 4 to 8, it is not in dispute that these respondents have been declared successful as direct recruits after written test and personal interview. These respondents submitted their application form in response to the advertisement which is at Annexure-5, meant for direct recruits only and have been selected for Bengali Language group. The spirit of the rules as provided in the letter dated 21.12.1988 reveals that if departmental candidates are not available or came out successful in the test according to the ratio fixed, then the posts can be filled by direct recruits. In the instant case, the applicant had only secured 22 marks out of 100 and that is why, he could not be selected for the training course for Education Officers.

17. We are, therefore, of the view that the applicant has utterly failed to prove his case and therefore, he is not entitled to any relief sought for by him. We, therefore, reject the Original Application but in the circumstances no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(S.K. AGARWAL)
MEMBER (JUDICIAL)

KNM/CM.