

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 724 OF 1993
Cuttack, this the 23rd day of November, 2000

R.W.Rebeiro 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 SOM)
VICE-CHAIRMAN

23.11.2000

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CORAM:

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

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1. R.W.Rebeiro, aged 49 years,
son of L.A.Rebeiro,
Qr.No.E/16A, Traffic Colony,
Khurda Road, District-Khurda..
 2. K.F.Hussain, aged 51 years,
son of late Md.Hussain,
Qr.No.G-66-E, Khurda Road, DistKhurda.
 3. E.Venkata Rao, aged 48 years,
son of E.Jogi Rao,
c/o C.N.Murty, Raja Bazar,
At/PO-Jatni, District-Khurda.
All at present working as T.T.E., South Eastern
Railways,
Khurda Road,
District-Khurda
- Applicants

Advocates for applicants - M/s M.M.Basu
S.D.Swain
D.Choudhury
D.Dey
A.K.Mohanty

Vrs.

1. Union of India, represented by General Manager, South
Eastern Railway, Garden Reach, Calcutta-43..
2. Senior Divisional Commercial Manager,
South Eastern Railways, Khurda Road,
District-Khurda.
3. Senior Divisional Personnel Officer,
South Eastern Railways, Khurda Road,
District-Khurda.

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Respondents

Advocate for respondents-M/s B.Pal
O.N.Ghosh

ORDER
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the applicants have

prayed for a direction to the respondents to fill up the vacancies as on 1.3.1993 following the prescriptions of Establishment Serial No. 13/93 (Annexure-3). They have also prayed for a direction to the respondents not to conduct any selection test. They have also prayed that the results of the examination held on 4.12.1993/5.12.1993 should be stayed during the pendency of the O.A.

3. Facts of this case, according to the petitioners, are that the three petitioners are working as T.T.E. and their next promotion is to the rank of Head TTE/TC. The Railway administration in their letter dated 5.6.1992 (Annexure-1) called upon the three applicants and 52 others, in total 55 persons, to appear at a written test to be held on 14.7.1992. Accordingly the applicants along with others appeared at a written test, but the results of the written test were not declared. Ultimately on 24.9.1993 the examination was cancelled as in terms of Establishment Serial No.13/93 the results of the written examination held on 14.7.1992 and 10.8.1992 could not be finalised by 1.3.1993. Copy of the order dated 24.9.1993 is at Annexure-2. The applicants have stated that according to Establishment Serial No.13/93 the existing selection procedure has been modified and it has been laid down that the selection will be based only on service records and confidential reports without holding written test and viva voce. It is also laid down that the vacancies existing as on 1.3.1993 except those falling in direct recruitment quota and those arising on

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1.3.1993 because of restructuring of the cadre including chain/resultant vacancies should be filled up from panels approved on or before 1.3.1993 and the balance should be filled up in the manner indicated in paragraph 4 of the Establishment Serial No.13/93. It was also indicated that the selection which was not finalised by 1.3.1993 should be cancelled and all vacancies arising from 2.3.1993 would be filled up by normal selection procedure. Copy of this order is at Annexure-3. On 17.9.1993 the respondents issued an order (Annexure-4) in which 120 persons including the applicants were called upon to appear at a written test on 4.12.1993 and 5.12.1993. The applicants have stated that these forty posts, for filling up of which 120 persons have been called to the written test in the letter at Annexure-4 have fallen vacant prior to 1.3.1993 and therefore these posts are to be filled up by way of promotion from amongst the candidates who were due to be promoted through the modified form of selection procedure without written test and viva voce. In the context of the above facts, the applicants have come up with the prayers referred to earlier.

4. The respondents in their counter have opposed the prayers of the applicant. They have stated that for preparing a panel of 19 candidates for the post of Head Ticket Collector "A"/ Train Ticket Examiner "A"/Conductor in the pay scale of Rs.1400-2300/-, written test/supplementary written test was held on 14.7.1992 and 10.8.1992. The promotional posts were to be filled up by way of selection and the zone of consideration was three times the number of vacancies.

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Out of 55 eligible candidates, 53 appeared at the written test which was held on 4/5.12.1992 but the results could not be published till 1.3.1993. In the meantime the Chief Personnel Officer, South Eastern Railway issued instructions for restructuring of the cadre under revised percentage/procedure in Establishment Serial No..13/93. The respondents have quoted paragraphs 4 and 4.1 of Establishment Serial No.13/93 according to which the existing classification of the posts covered by restructuring order as selection and non-selection posts would remain unchanged. However, for the purpose of implementing these orders an individual Railway servant who has become due for promotion to a post classified as selection post, the selection procedure will be based only on scrutiny of service records and confidential reports without holding any written test or viva voce. Similarly, for the post classified as non-selection post, similar procedure will be followed. This modified selection procedure has been decided by the Ministry of Railways as a one time exception in view of the principles involved with the objective of expediting implementation of these orders. Establishment Serial No.13/93 also laid down that the vacancies existing on 1.3.1993 except direct recruitment quota and those arising on that date due to cadre restructuring including chain vacancies and resultant vacancies shall be filled up in the following sequence. Firstly, the posts should be filled up from panels approved on or before 1.3.1993 and which were current on that date, and secondly the balance should be filled up in the manner indicated

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earlier, i.e., through scrutiny of service records and confidential reports without holding any written test or viva voce. It was further laid down that such selection which had not been finalised by 1.3.1993 should be cancelled. All the vacancies arising after 2.3.1993 shall be filled up by normal selection procedure. Subsequently, the Chief Personnel Officer issued further instructions under Establishment Serial No.48 of 1993 wherein it was mentioned that doubts have been raised that in cases where percentage has been reduced in the lower grade and new posts become available as a result of restructuring but existing vacancies are available as on 1.3.1993 whether such vacancies also will be filled up by modified selection procedure. It has been clarified that in such cases the vacancies existing as on 1.3.1993 should not be filled up by modified selection procedure. The respondents have indicated the existing and revised vacancies of ticket checking staff in different scales and have pointed out that because of revised percentage of restructuring there has been reduction in the strength in the grades of Rs.1400-2300/- and Rs.1200-2040/- and increase in the strength in the grades of Rs.1600-2660/- and Rs.2000-3200/-. The Chief Personnel Officer had clarified in Establishment Serial No. 48/93 that where posts are getting decreased, existing procedure of selection will have to be followed. The respondents have stated that in the light of the above instruction, written test held in 1992 was cancelled in order dated 24.9.1993 at Annexure-2. It is further stated that after

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restructuring 40 vacancies were assessed in the rank of Head TC"A"/TTE "A"/Conductor in the scale of Rs.1400-2300/- and for filling up of these forty posts, 120 candidates were called to appear at a written test. This notice dated 17.11.1993 is at Annexure-4 and the written test was fixed on 4.12.1993 and 5.12.1993. But out of 60 persons called to appear on 4.12.1993 only four persons appeared at the written test and others did not attend the written examination. In view of the above the Railway authorities decided that a single selection with verification of service records/character rolls followed by viva voce can be held for completing long selection procedure. Accordingly, a notice was issued on 25/28.1.1994 (Annexure-R/3) to all concerned for holding viva voce on 21.2.1994 and 22.2.1994. The Railway authorities have stated that because of non-attendance of all except four persons out of 120 persons called to the writtentest and because of mass disobedience of orders a stalemate was created. All action was taken from the side of the Railway administration for holding the selection test. Ultimately due to non-cooperation of the staff, the Railway administration had to take a decision not to conduct any written examination but agreed to form a panel of 40 persons (33 UR + 7 SC) of TTE "A"/Head T.C./Conductor in the scale of Rs.1400-2300/- by holding a single selection on verification of service records/character rolls followed by viva voce. In the context of the above facts, the respondents have opposed the prayers of the applicants.

5. We have heard Shri M.M.Basu, the learned counsel for the petitioners and Shri B.Pal, the

learned Senior Panel Counsel for the respondents and have also perused the records. The learned Senior Panel Counsel for the respondents has filed Establishment Serial No.13/93 dealing with restructuring of the cadre. The learned counsel for the petitioners wanted to file written note of submission for which time was also allowed, but no written note of submission has been filed.

6. The prayer of the applicants is for filling up of the vacancies as on 1.3.1993 following the prescriptions of Establishment Serial No.13/93. In this Establishment Serial it was provided that even for promotional posts which are to be filled up by way of selection, as a one-time measure the usual procedure of written test and viva voce need not be followed and the posts should be filled up by verification of service records and character rolls. The applicants have stated that instead of following this, the departmental authorities have called upon 120 persons including the applicants to appear at a written test and viva voce in the notice dated 17.11..1993 at Annexure-4. Their prayer is to fill up the vacancies on the basis of verification of service records and character rolls. The respondents have pointed out that even though in the notice dated 17.11..1993, 120 persons were called to appear at a written test on two days in batches of 60 for each day, only four persons out of first batch of 60 appeared on the first day and others did not appear on that day or on the next day. Because of mass disobedience of order a stalemate was created and ultimately the Railway authorities have decided to fill

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up the forty posts which have been assessed, after restructuring, to be vacant through verification of service records and character rolls followed by viva voce. To this effect orders have been issued on 25/28.1.1994 at Annexure-R/3. Thus the respondents have conceded the prayer of the applicants not to hold written test for fillingup of the posts. The Railway authorities have decided to fill up the posts through verification of service record and character rolls followed by viva voce. The applicants have prayed that the posts should be filled up through verification of service records and character rolls without written test and viva voce. Thus, the sole point for consideration is whether in pursuance of notice at Annexure-R/3 holding of viva voce is correct. The applicants have relied on Establishment Serial No.13/93 which provides that as a one-time exception, instead of written test and viva voce, promotional posts to be filled up by way of selection should be filled up through verification of service records and character rolls. Establishment Serial No.13/93 does not mention that besides verification of service records and character rolls, a viva voce should be conducted. The respondents have pointed out that the Chief Personnel Officer in his instruction conveyed in Establishment Serial No.48/93, the relevant portion of which has been extracted in the counter, has clarified that where percentage has been reduced in the lower grade and new posts have become available as a result of restructuring, but existing vacancies were available as on 1.3.1993,

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such vacancies should not be filled up by modified selection procedure. In this case, at the grade of Rs.1400-2300/- the number of vacancies has gone down from 29 to 25 and therefore in accordance with the Chief Personnel Officer's instructions in Establishment Serial No.48/93, these posts could not have been filled up by the modified selection procedure. That is why the respondents had called to the written test and viva voce 120 candidates in their letter dated 17.11..1993 (Annexure-4) for filling up of 40 vacancies in the scale of Rs.1400-2300/-. But because none of the candidates called to the written test and viva voce appeared at the written test except four persons, the Railways had to adopt a revised procedure. Adoption of this revised procedure is ^{not} beyond the mandate of Establishment Serial No.13/93 and therefore it is open for the departmental authorities to go by verification of service records and character rolls and viva voce. The applicants have not brought out how by holding of viva voce they would be adversely affected. We, therefore, find that the action of the Railway authorities to fill up these 40 posts through the revised procedure is not in violation of the Establishment Serial No.13/93 because in respect of these posts the procedure prescribed as a one-time exception would not be applicable when Establishment Serial No.13/93 is read with Establishment Serial No.48/93. This contention is therefore held to be without any merit and is rejected

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7. The second submission of the learned counsel for the petitioners is that even though the first written test was held on 14.7.1992 and 10.8.1992, the results were not published till 1.3.1993 for no fault of the applicants and therefore that process of selection should not have been cancelled. It is to be noted that the normal process of selection involved not only written test but also viva voce and in this case the result of written test was not published and viva voce was not held. Therefore, the selection procedure was not completed and in accordance with Establishment Serial No.13/93, such selection, which had not been finalised by 1.3.1993, was rightly cancelled. This is in terms of instructions laid down in paragraph 4.2 of Establishment Serial No. 13/93 and no fault can be found with this. Had it been the case that before 1.3.1993 viva voce would have also been held, then the applicants could have a grievance that because of no fault on their part, the departmental authorities have not published the result of the written examination. But in this case the viva voce was not held and therefore, the selection process was only half done and was rightly cancelled in terms of Establishment Serial No.13/93.

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8. In any case, the prayer of the applicants that the selection procedure should be taken to be without following the written test has already been conceded by the departmental authorities and we have already dealt with the action of the departmental authorities for insisting on viva voce test.

9. In consideration of all the above, we

hold that the applicants are not entitled to the reliefs claimed by them. The application is, therefore, held to be without any merit and is rejected, but without any order as to costs.

(G.NARASIMAHM)
MEMBER(JUDICIAL)



Somnath Som
(SOMNATH SOM)
23.11.2020
VICE-CHAIRMAN

23rd Nov. 2000/AN/PS