

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 139 OF 1994.

Cuttack, this the 27th day of September, 1999.

NI TYANANDA NAYAK & Others

APPLICANTS.

-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
 27.9.99
Som

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 139 OF 1994.

Cuttack, this the 27th of September, 1999.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

....

1. Nityananda Nayak,
Aged about 38 years,
Son of Laxmannath Nayak,
At/PO-Kalai, Dist. Bhadrak,
at present working as T. T. E.,
S. E. Railway, Town & Dist. Puri.
 2. Sudhansusekhar Das,
Aged about 38 years,
Son of Radhashyam Das,
At-Pabitrapara,
PO. Ashureswar, Dist. Kendrapara,
at present working as T. T. E. SE Railway,
Puri.
 3. Smt. Basantilata Behera,
Aged about 36 years,
Wife of late Gouranga Behera,
Railway Colony, Bhubaneswar,
Dist. Khurda, at present working as
Sr. T. C. SE Railway, Bhubaneswar.
- ... APPLICANTS.

By legal practitioner: M/s. A. Deo, B. S. Tripathy, P. Panda, D. K. Sahoo,
P. K. Misra, Advocates.

-Y E R S U S -

1. Union of India represented by the
General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Chief Personnel Officer,
South Eastern Railway, Garden Reach,
Calcutta.
3. Divisional Railway Manager,
S. E. Railway, At/PO. Khurda Road,
Dist. Khurda.
4. Senior Divisional Personnel Officer,
S. E. Railway, Khurda Road, Dist. Khurda. ... RESPONDENTS.

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

...

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the three applicants have prayed for a direction to the Respondents to quash the viva-voce test and the consequent selection made pursuant to the order dated 28-1-1994, at Annexure-3. The second prayer is for a direction to the Respondents to hold fresh selection.

2. The case of the applicants is that they were initially appointed as Ticket Collector and were promoted to the post of Travelling Ticket Examiner/Senior Ticket Collector. Their next promotion is to the post of Head Ticket Collector/TTE-Grade 'A'. The posts are to be filled up in accordance with the instructions of the Railway Board at Annexure-4 which provides that a written test followed by a viva-voce. On 1-3-1993, 40 posts in the cadre of Head Ticket Collector/TTE-A came up and Senior Divisional Personnel Officer, Khurda Road (Respondent No. 4) called 119 candidates to appear at a written test on 4.12.1993 and 5.12.1993. In this list of 119 candidates, names of these three applicants were at Sl. Nos. 109, 116 and 108 respectively. Applicants' grievance is that no written test was actually held and later on in the impugned notice dated 28.1.1994, all the 119 candidates were called to appear at a viva-voce test to be held on 21-2-1994. Applicants have stated that in pursuance of earlier notice for written test & viva-voce test, a viva-voce test had already been held but the result of the test had not been published. It is stated by applicants that the Departmental

S. Som.

-3-

Authorities have cancelled the earlier selection i.e. written test and viva-voce and adopted the process of only viva-voce to favour candidates who have become Ticket Collectors and TTEs through promotion from class IV service. In the context of the above facts, applicants have come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the three applicants are in the grade of Senior Ticket Collector/TTE in the scale of Rs.1200-2040/- and their next grade of promotion is Head Ticket Collector/TTE-A in the scale of Rs.1400-2300/-. For filling up of the 40 posts of Head Ticket Collector/TTE-A, 120 persons were called to a written test and viva-voce. This included these three applicants. But out of 120 candidates, only 4 persons took the written test. The three applicants did not appear at the written test. No viva-voce test was also held after the written test of the four persons. Because of this, the process of selection, through written test and viva-voce was cancelled and all the 120 candidates were called for a viva-voce only. In this viva-voce test, petitioners appeared but they could not come within the list of 1st 40 candidates to be selected for promotion to the next higher grade/rank. Respondents have stated that the applicants having committed wrong ~~in not~~ appearing at a written test and having wilfully taken part in the viva-voce test in the second selection, can not be allowed to question the process of selection. On the above grounds, they have opposed the prayer of applicants.

SJM. *SJM.* *in not* *Viva.*

4. This 1994 matter has come up for hearing from the warning list notified a few weeks ago. Today, when the matter was called, learned counsel for applicants and his associates, were absent nor was any request made on their behalf seeking adjournment. In view of this, it was not possible to drag on the matter indefinitely. We have, therefore, heard Mr. B. Pal, learned Senior counsel appearing for the Respondents and have also perused the records.

5. The admitted position between the parties is that for filling up of the 40 posts, a number of persons including applicants were called to the written and viva-voce test. In the written test, only four of the 119 persons (120 according to Respondents) appeared. Applicants did not appear in the written test. In their Original Application, they have suppressed the facts. They have also wrongly averred that after the written test and viva-voce was held, result of the viva-voce test was not published. Respondents have pointed out that as only four persons out of 120 candidates, took the written test, no viva-voce test was held. In any case, applicants could not have appeared at viva-voce test because, they have not taken the written examination. Therefore, their averments that the result of the viva-voce test held after the written examination was withheld is absolutely without any basis. As most of the candidates called to the written test did not appear, Respondents decided to fillup the posts by holding the viva-voce test only. This has been challenged by the applicants on the ground that the Departmental Authorities have decided to hold viva-voce test only in order to show favour to certain group of employees. Applicants themselves not having

S. Jam

15
taken the written test, can not be allowed to challenge the holding of the viva-voce test as the sole method of making selection. Moreover, in this case, applicants have willingly appeared in the viva-voce test and after becoming unsuccessful in the selection through that viva-voce test, they have come up in this petition challenging the viva-voce test. It has been held by the Hon'ble Supreme Court in the case of UNIVERSITY OF COCHIN VRS. N. S. KANJOONJAMMA reported in 1997 SCC (L & S) 976 that a candidate having participated in a selection process, can not be allowed to challenge the method of selection after he has become unsuccessful. In view of the above, we hold that the applicants have not been able to make out a case for quashing the viva-voce test. Prayer for quashing the same is accordingly held to be without any merit and is rejected.

6. In the result, therefore, we hold that the application is without any merit and the same is rejected but in the circumstances, without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

S. Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.9.99