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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 242 OF 1994
Cuttack this the 27th day of March, 2000

Jagadish Chandra Kirtania

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21/3/2000

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 242 OF 1994
Cuttack this the 27th day of March, 2000

CORAM:

THE HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
AND
THE HON'BLE MR. SOMNATHSOM, VICE-CHAIRMAN

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Sri Jagadish Chandra Kirtania
aged 51 years
S/o. Late Jogendranath Kirtania
At present residing at Jharsuguda Railway
Colony and working as Parcel Supervisor
South Eastern Railway, Jharsuguda
PO/PS/Dist: Jharsuguda

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Applicant

By the Advocates: M/s. M. Kanungo
S. Das
D. Pradhan
P. K. Rath
S. Satpathy

-Versus-

1. Union of India represented by
Senior Divisional Personnel Officer
South Eastern Railway,
Chakradharpur,
Division, POP/PS: Chakradharpur
Dist: Singhbhum (Bihar)

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Respondent

By the Advocates : Ms. S. L. Patnaik
Addl. Standing Counsel
(Railway)

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ORDERORAL

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 1^o of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to respondents to promote him to the post of Booking Supervisor/Parcel Supervisor and further to the next promotional post of Chief Parcel Supervisor/Chief Booking Supervisor in the scale of Rs.2000 - Rs.3200/-. He has also prayed for direction to the respondents to maintain proper roster for Scheduled Caste and Scheduled Tribe candidates in the matter of promotion and give him promotion in accordance with the said roster.

2. The case of the applicant is that he belongs to Scheduled Caste and was appointed as Commercial Clerk in the year 1963. In 1968 he appeared in a written test conducted by the railway authorities along with 26 other candidates for the post of Booking Supervisor/Parcel Supervisor out of which 17 candidates including him were called for viva voce test on 25.2.1988. The applicant has stated that one Shri D.K.Das who was not called for viva voce was shown favouritism and was given promotion to the post of Booking Supervisor/Parcel Supervisor and his case was ignored. He has further stated that out of the panel two persons, viz., S/Shri G.C.Ghosh and Mahadeva Mandala were under punishment and their increments were withheld. The applicant made representations, but without any result. It has been further stated by the applicant that proper roster for Scheduled Caste candidates was not maintained and that is how his chances of promotion were

ignored. He has also made further averment with regard to chance of future promotion and payment of dues. In the context of the above the applicant has come up in this application with the prayers referred to earlier.

2. Respondents in their counter have stated that the applicant was proceeded under D & A Rules on three occasions and was imposed penalties on 12.12.1968, 31.1.1975 and 21.4.1992. It is further stated by the respondent that out of 27 candidates called to the written test, 17 candidates including the applicant and Shri D.K.Das qualified in the written test. It is further stated that the applicant appeared in the written test so also Shri D.K.Das. They have specifically denied the averment made by the applicant that Shri D.K.Das was not even called to the interview. Secondly the respondents have denied that the averment of the applicant that because of imposition of punishment on S/Shri G.C.Ghosh and Mahadev Mondal, they should not have been promoted and the applicant should have been given promotion, it is the case of the respondents that selection was conducted for filling up of 9 vacancies comprising of six for unreserved posts and one for S.C. and two for S.T. Respondents have further stated that a panel was published only of five general candidates as against six vacancies because against one person Shri G.C.Ghosh, departmental proceedings were pending. As regards maintenance of roster of SC/ST respondents have pointed out that there was only one vacancy for S.C. against which one Shri T.N.Choudhury, who belongs to S.C. candidate and was much senior to the applicant was selected and placed in the panel. As regards Mahadev

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Mondal respondents have submitted that he belongs to Scheduled Caste, but he could not be placed in the panel because of his low seniority position. Respondents have specifically also denied the averment of the applicant that favouritism has been shown to Shri D.K.Das. On the above grounds the respondents have opposed the prayer of the applicant.

4. We have heard Shri M.Kanungo, learned counsel for the petitioner and Mr.Md.Arif, learned counsel on behalf of Ms.S.L.Patnaik, learned Addl.Standing Counsel for the respondents and also perused the records.

5. From the pleadings of the parties it is clear that the applicant took the written test and viva voce for the post of Booking Supervisor/Parcel Supervisor, but he was not selected as his name did not find place in the panel published by the department. He has challenged this on different grounds which have to be discussed below.

6. The first ground of challenge is that one Shri D.K.Das, who was not called for viva voce was selected and included in the panel. The respondents have specifically denied this averment and have stated that Shri Das was actually called to the interview. It has also to be noted that while the applicant, in the Original Application has made this averment, he has not arraigned Shri D.K.Das as respondent in this case. In view of this in the ~~face~~ of specific averment made by the respondents that Shri D.K.Das was called to the interview and in the absence of any documents produced by the applicant ~~that~~ showing that Shri Das was not called to the interview, version of the respondents has to be

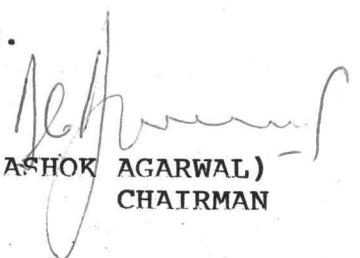
S. Das

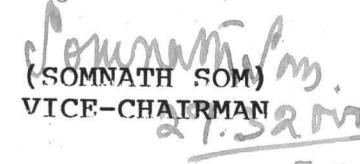
accepted. In view of this, contention of the learned counsel for the applicant in this respect is rejected. The second ground of challenge is that roster point for SC was not properly maintained. Respondents have pointed out that out of 9 vacancies, there was only one vacancy for SC candidate and the person selected and appointed against that vacancy was one I.N.Choudhury belonging to S.C. and who was also much senior to the applicant. This averment of the respondents not having been denied by the applicant through any rejoinder, this contention is held to be without any merit and the same is rejected. Moreover, we find no merit in his prayer that the applicant should have been included in the panel consequent upon the examination in which he participated. Law is well settled that the applicant after having taken in the examination cannot question the method of examination after having been declared unsuccessful. This has been laid down by the Hon'ble Apex Court in the case of **O.M.Pra~~k~~ash Sukla vs. Akhilesh Kr.**(1986 SC 1043) and this principle applies in full force to the facts of this case. Learned counsel for the petitioner has made certain averment with regard to payment of dues to him as per revised pay scale. Respondents have pointed out that arrears of pay and allowances due to the applicant in view of revised fixation of pay has been drawn for an amount of Rs.3307/- It is submitted by the learned counsel for the petitioner that this amount has not yet been paid and some more is due to him. There is no averment with regard to details/particulars of claim of the applicant. In view of this, this prayer of the

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applicant is disposed of with a direction to respondents that in case on the basis of fixation of pay any more amount is due to to the applicant strictly in accordance with rules, then the same should be calculated and paid to him within a period of 90(Ninety) days from the date of receipt of copy of this order.

The Original Application is disposed of in terms of observations and directions above. No costs.


(ASHOK AGARWAL)
CHAIRMAN


(SOMNATH SOM)
VICE-CHAIRMAN

B.K.SAHOO