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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 786 of 1994.
Cuttack, this the 2nd of August, 2000.

BIBEKANANDA SAMAL
& ANOTHER.

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APPLICANTS

UNION OF INDIA & ORS.

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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.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2/8/2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 786 of 1994.

Cuttack, this the 2nd day of August, 2000.

CORAM:

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

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1. Bibekananda Samal,
S/o. Narayan Samal,
Presently working as Ref.Mechanic
(SK), MES/2706071G. E. (I), R&D, Chandipur,
Dist:Balasore.
2. Surup Kumar Rout, S/o.Surendra Ku.Rout,
Presently working as Ref.Mechanic(SK),/
MES/270611, G. E. (I), R&D, Chandipur,
Dist:Balasore.

: Applicants.

By legal practitioner: M/s.D.Mohanta, H.M.Dhal, Advocates.

- Versus -

1. Chief Engineer (R&D), Picket,
Secunderabad (Andhra Pradesh)
2. Garrison Engineer(I), R&D,
Chandipur, Dist:Balasore.
3. Surendra Dakua, MES/270608, Ref.Mechanic (SK),
G. E. (I), R&D Chandipur, Dist:Balasore.
4. Dhirendra Prasad Nayak, MES/270610, Ref.Mechanic (SK),
G. E. (I), R&D, Chandipur, Dist:Balasore.
5. Saraj Kumar Baral, MES/270612, Ref.Mechanic (SK),
G. E. (I), R&D Chandipur, Dist:Balasore.
6. Debabrata Jena, MES/270613, Ref.Mechanic (SK),
G. E. (I), R&D Chandipur, District:Balasore.

: RESPONDENTS.

By legal practitioner: Mr.B.Dash, Additional Standing Counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, two applicants have prayed for quashing the result of the Trade Test published at Annexure-3 and to declare that the entire process of test of Practical paper has been illegal.

2. Departmental Respondents have filed counter opposing the prayers of the applicants.

3. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. The case of the two applicants is that they are working as Refrigerator Mechanic (in Skilled Category and were officiating in the post of Ref.Mechanic, High Skilled-II category. They were asked to sit for the Trade test for regular promotion to the post of Ref.Mechanic, High Skilled-II on 10th of October, 1993. Instruction relating to the Trade Test at Annexure-2, provides that 35% of the marks shall be on theory paper, 25% for viva-voce and 40% for practical test. Applicants alongwith others took the written examination and viva-voce. They have stated that while they are waiting for practical test, they were told that the practical tests have been held alongwith the viva-voce and results were published in which they were declared as failed whereas Private Respondents 3 to 6 alongwith some others were declared as passed. Their grievance is that the practical test was not held at all and it was required to be held in accordance with the Syllabus at Annexure-1 and in the context of the above facts, the applicants have come up in this Original Application with the prayers referred to above.

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4. Departmental Respondents have stated that the petition is not maintainable because the applicants have made only four of the successful candidates as parties whereas their prayer ~~is~~ for declaring the result as illegal, will affect all the 29 candidates. Basing on the Trade Test result published on 15.11.1993, DPC was held on 2.12.1993 and 13 persons including private Respondent No. 3 were promoted. They have stated that at the time of holding of the Trade Test, applicants were Ref. Mechanic in Skilled category and were not officiating as Ref. Mechanic, High Skilled-II. It is stated that Ref. Mechanics became eligible for promotion only after passing the Trade test but these two applicants failed to qualify in that test. With regard to holding of the Test, they have stated that the second paper was devived into two parts; one for viva-voce carrying 25 marks and the second for practical test carrying 40 marks. Depending upon the technical facilities available, the Board of Officers holding the examination, chose to conduct the viva-voce and practical test simultaneously. Accordingly, practical tests were conducted for all the candidates uniformly alongwith viva-voce test and there was no discrimination. They have stated that the practical test was done based on candidate's possession of overall combination/Dangries and required tools for his job. By observing the way the candidates identify/handle the tools and answer certain questions as per the syllabus given on the practical aspect of their trade, the examiners could easily assess the candidates' practical knowledge of his job and allot marks accordingly. It is submitted that it was neither essential nor specified in the syllabus that practical test should be conducted by asking all the candidates to operate all the

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equipments/machinery included in their syllabus. For want of technical facilities like Central A/c plants, Air conditioners and refrigerators, the Board of Officers might have opted to hold the practical test by asking questions.

Candidates were assessed separately for practical and marks were allotted separately. It is stated that the Board of Officers are autonomous in character and their decision can not be questioned by applicants before the Tribunal more so after the two applicants have appeared in the test and have failed. On the above grounds, the Departmental Respondents have opposed the prayers of applicants.

5. Private Respondents were issued with notice but they did not appear or file counter.

6. We have heard Mr. D. Mohanta, learned Counsel for the Applicants and Mr. B. Dash, learned Additional Standing Counsel (Central) appearing for the Departmental Respondents and have also perused the records.

7. Before considering the submissions made by learned Counsel for both sides, it is necessary to note that instruction at Annexure-1 provides that the minimum pass percentage for the candidates will be 50%. From the result sheet, which is at Annexure-P/2 of the counter of the Departmental Respondents, it appears that for the purpose of passing the examination, 50% marks have been taken in total for all the three parts of the examination, written, vivavoice and practical tests. It is clear from the fact that one candidate Sh. Debabrata Jena, Respondent No. 6, who has got 13 marks out of 35 in the written examn. and has thus, failed to secure 50% in the written has been declared pass on the basis of his overall marks of 53 out of 100 marks. As earlier noted, both the applicants have

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failed because of their inability to secure 50% marks out of 100 marks in total and in the trade test in which 40 marks were allotted to both of them, have got less than 20 marks which is 50% of the total marks in the Trade test.

Applicants' grievance is that the practical test was not held in accordance with the syllabus. Learned counsel for the applicants has addressed us at length on this point and drawn our attention to the syllabus for the test test which is at Annexure-1 and which has not been denied by the Departmental Respondents in their counter. In Annexure-1 the syllabus for the trade test has been mentioned. It is to be noted that this syllabus is not for the practical test alone, it is for the trade test as a whole which includes the viva-voce and written test. Therefore, it can not be urged as has been done by learned counsel for the applicants that candidates' expertised in carrying out all the works mentioned in the syllabus should have been examined in the practical test. This is also not practically possible; an example will make this clear.

Item No. 5 of the syllabus is dismantling and reassembling open type compressors. For examining the candidate's

expertised in the matter of dismantling and reassembling

open type compressors, it is not necessary nor it is

practicable to ask the candidate during ^{practical} ~~trade~~ test to dismantle and reassemble the compressors. This has to be

achieved by putting questions to them on the subject.

Similarly the next item is to carry out maintenance of the

central A/C plant. Respondents have mentioned that there

^{Central}

is no A/C Plant at Chandipur where the test was held and

in any case maintenance of a Central A/C plant can not be

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done in course of practical test for which hours must be limited. There are many other similar items and it is not necessary to give examples all these in support of our above conclusion. In view of this, it is clear that for the purpose of practical test it is not necessary that the candidates should be asked to function all and some of the functions which have been mentioned in the syllabus for Trade test. As the Board of Officers who are technical people and is an autonomous body has adopted a particular procedure for holding their practical test in the manner mentioned in the counter as noted by us earlier and as the applicants have been assessed alongwith others in the same manner, it can not be said that because none of the candidates were asked to perform the practical task mentioned in the syllabus, the trade test has become invalid. It is also to be noted that if the trade test is declared invalid as prayed for by the applicants, then a large number of persons who have passed in the trade test, would be adversely affected. Applicants have only made four of them as private Respondents in this O.A. and that is also a ground which goes against the applicant. Moreover, Law is well settled that a person after appearing at an examination and becoming unsuccessful is estopped from challenging the method of examination. This has been laid down by the Apex Court in several decisions and it is not necessary to repeat those decisions.

8. In view of the above, we hold that the applicants have not been able to make out a case for any of the reliefs prayed for in this Original Application. The Original Application, is therefore, dismissed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN