

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 154 OF 1995

Cuttack, this the 3rd day of October, 2000

B.V.R.Patnaik Applicant

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
(SOMNATH SOM)
VICE-CHAIRMAN
3.10.2000

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CORAM:

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

B.V.R.Patnaik,
Assistant Accounts Officer,
S.E.Railway, Khurda Road (Orissa)....Applicant

Advocate for applicant - Mr.P.V.Ramdas

Vrs.

Union of India represented by

1. General Manager,
South eastern Railway, Calcutta-43.
2. Principal F.A.& C.A.O.(O.ord.),
S.E.Railway, Calcutta-43.
3. Senior Divisional Accounts Officer, S.E.Railway, Khurda
Road..... Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.

In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner had originally prayed for a direction to the respondents for allowing him to continue to work as Assistant Accounts Officer, a post which he has been holding for the last twenty-two months. There was also a prayer for suspending the order of reversion of the applicant issued on 1.3.1995 at Annexure-A/4. Counter to the OA was filed by the respondents on 28.3.1995 with copy to the other side. Thereafter the applicant came up in Miscellaneous Application No.542/95 seeking amendment to the O.A. This amendment

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was allowed in order dated 17.8.1995. It is necessary to note that by this amendment substantial changes have been brought about in the prayer portion as also in the nature and character of the OA. But as the amendment has been allowed in the order dated 17.8.1995 it is not necessary to pursue this aspect further. In the Application as amended the petitioner has prayed for a direction to the respondents to conduct fresh written examination for 70% vacancies meant for seniority-cum-suitability for Group-B posts in the Accounts Department and holding the test strictly in accordance with the Railway Board's instruction dated 18.6.1987. The second prayer is for a further direction that in the fresh test marks should be given under all heads of evaluation and qualifying marks should be determined by taking the aggregate of marks given under all heads. The third prayer is to allow the applicant to continue as Assistant Accounts Officer, a post which he was holding for the last 22 months. The fourth prayer is for regularising the intervening period from 1.3.95 till he is taken back as Assistant Accounts Officer and for payment of differential salary.

2. The case of the applicant is that he is a substantive holder of the post of Senior Travelling Inspector of Accounts (Functional) in the scale of Rs.2000-3200/-. On the basis of written test and oral examination, a provisional panel of 21 staff was drawn up in 1990 for promotion to Group-B of the Accounts Department to the post of Assistant Accounts Officer. After the panel was exhausted the applicant and others were given promotion to the post of Assistant Accounts

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J. J. J.

Officer. The applicant's case is that even though he had passed the written and oral examinations in 1990, his promotion in 1993 was termed as ad hoc. Written examination was again conducted in May 1994 for regularising ad hoc promotions. In this examination in 1994 all the vacancies after 1990 and till 1994 were pulled together and candidates were called for examination together and thereby chances of seniors, according to the applicant, were jeopardised. It is further stated that this examination should have been conducted on the basis of the Railway Board's circular dated 18.6.1987 in terms of which the question papers should have been so designed as to test the practical knowledge of the candidates. But, according to the applicant, this question paper in 1994 examination was designed to test the theoretical knowledge. It is further submitted that according to the circular dated 18.6.1987 marks obtained under different heads like professional ability, written test, viva voce and record of service should all be considered and the aggregate marks have to be taken into account for declaring a person selected or otherwise. But the respondents only published the marks of written examination and declared the applicant unsuccessful in the written examination and he was not assessed for interview and other heads of assessments. This, according to the applicant, is not in accordance with the Railway Board's circular dated 18.6.1987. It is stated that during the time the applicant was working on ad hoc basis as Assistant Accounts Officer he was sent for training in the Staff Training College, Kharagpur and was awarded merit certificate. In view of the above submissions, the applicant has come up with the prayers referred to earlier.

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3. The respondents have filed a counter to the OA, as earlier noted. Subsequently they have filed an Additional Reply after the OA was substantially amended. The applicant has also filed a Rejoinder to the original counter and again another Rejoinder to the Additional Reply. The respondents in their two counters have stated that the applicant was originally appointed as a Clerk Grade II on 14.5.1959 and after successfully completing departmental examination he became T.I.A. and was thereafter promoted as Senior Travelling Inspector of Accounts in the scale of Rs.2000-3200/-. Further promotion was to Group-B of Railway Service. These Group-B posts are filled up by promotion on the basis of selection amongst eligible Group-C employees through a selection test. The quota for such employees is 70% (earlier 75%) and the balance 30% (earlier 25%) is filled up on the basis of Limited Departmental Competitive Examination. In 1990 in order to form a panel to fill up twenty-one vacancies in Group-B posts in the Accounts Cadre 63 willing candidates were called to appear at the examination. The applicant also took the examination, but he failed to qualify and in the panel which was published on 27.6.1991 his name was not there. Subsequently, in view of acute shortage of Accounts Officer some of the eligible staff who had not been empanelled were given ad hoc promotion to the post of Assistant Accounts Officer with the clear stipulation in their promotion order that their promotion is only till such time when the empanelled candidates become available. The respondents have denied the applicant's assertion that in 1990 examination he qualified but was not included in the panel because of

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his low seniority. It is further stated that in May 1994 another selection test was held to draw up a panel. According to the respondents, this test was held on the basis of the Railway Board's revised instruction dated 20.8.1991 which changed the marks allotted to different heads of evaluation. The respondents have stated that according to the circular dated 20.8.1991 which came into force with effect from 4.9.1991, for selection test there was only one written paper of 150 marks in which qualifying marks were 90. It was also laid down that only those candidates who qualified in the written examination would be called to the viva voce and their record of service would be evaluated. The respondents have stated that the examination in May 1994 was held strictly in accordance with the circular dated 20.8.1991 which had by that time come into force and the applicant failed to qualify in the written examination and that is why when the panel was drawn up his name was not there and accordingly he had to be reverted. The respondents have conceded that according to the circular dated 18.6.1987 written and viva voce marks had to be taken together. But they have pointed out that according to the circular dated 20.8.1991 candidates have to first qualify in the written examination and thereafter on the qualified candidates being called to the viva voce, their marks in viva voce and evaluation of record of service have to be taken together. The respondents' stand is that the 1994 examination has been held strictly in accordance with the circular dated 20.8.1991 and the applicant has failed to qualify in the written examination. On the above grounds, the respondents have opposed the prayers of the applicant.

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3. The applicant has filed a Rejoinder to the Additional Reply of the respondents in which he has taken the stand that the circular dated 20.8.1991 of the Railway Board does not specifically supersede the circular dated 18.6.1987 and therefore, the examination for the selection test should have been held in 1994 in accordance with the Railway Board's circular dated 18.6.1987 and according to this circular marks obtained in the written test and viva voce should have been taken together. He has also stated that action of the respondents to disqualify the applicant on the basis of his marks in the written test alone is illegal. On these amongst other grounds he has reiterated his prayers in the OA.

4. We have heard Shri P.V.Ramdas, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel appearing for the respondents, and have also perused the records. We have mentioned the averments of the applicant and the stand taken by the respondents in detail to bring out the point that the averments made in this case by both the sides and the prayers made by the applicant are identical to the pleadings and the prayers in OA No.170/95. We have in a separate order delivered today rejected OA No. 170/95 (S.M.Mohan Rao v. Union of India). As the averments made by the applicant in this case and the submissions made by the learned counsel for the petitioner who also appeared in OA No.170/95 are the same, it is not necessary to repeat the averments and submissions once again.

S.M.

5. For the reasons indicated in our order delivered today in OA No. 170/95 (S.M.Mohan Rao v. Union

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of India), we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Application is, therefore, held to be without any merit and is dismissed, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

3rd October, 2000/AN/PS