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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 172/95, 432/97 & 810/97  
Cuttack this the 23rd day of September, 1998

O.A. No. 172/95

Ajaya Kumar Nayak

Applicant(s)

-Versus-

Union of India & others

Respondent(s)

O.A. No. 432/97

Susanta Kumar Dinda

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

O.A. No. 810/97

Biswa Ranjan Sahoo

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 *No* Central Administrative Tribunal or not ?

*Somnath Som*  
(SOMNATH SOM)

VICE-CHAIRMAN

*23.9.98*

*23.9.98*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS.172/95, 4329/97 & 810/97  
Cuttack this the 23<sup>rd</sup> day of September, 1998

CORAM:

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

...

IN O.A.172/95

Shri Ajaya Kumar Nayak,  
Roll No.001187, S/o.Bimbadhar Nayak,  
aged about 30 years, at presnt  
working as TR.Chargeman-'B',  
permanent resident of Bank Colony Road,  
Rani Patna, P.O & District:Balasore  
at present at :FBWP/South Eastern Railway,  
Jharsuguda

... Applicant

By the Advocate:

M/s.B.N.Rath,  
J.N.Rath, S.K.Jethy &  
M.K.Panda

-VERSUS-

1. Union of India represented by the General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal
2. Railway Board, represented through its Chairman, New Delhi
3. Railway Recruitment Board represented through its Chairman, Orissa Forest Development Corporation Building, 2nd Floor, A-84, Kharavela Nagar Bhubaneswar-751001
4. South Eastern Railway represented through its Chief Personnel Manager(Admn) Garden Reach, Calcutta-43
5. Susant Kumar Dinda aged about 29 years S/o.Parsuram Dinda At/Po:Bhandaripolly, Via:Hatigarh Dist:Balasore-756033

...

Respondents

6. Rupendra Kishore Das, aged about 35years  
 S/o.Surendra Kishora Das, Nuasahi,  
 Nua-Bazar, Town/Dist:Cuttack

7. Dipak Ranjan Das aged about 24 years  
 S/o.Rama Ranjan Das, resident of C.R.R.I.,  
 Bidyadarpur, Nayabazar, Cuttack

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Intervenors

By the Advocates: Mr.L.Mohapatra  
 (For Res. 1 to 4)

M/s.P.Mohanty  
 G.S.Satpathy,  
 D.N.Mohapatra,  
 Smt.J.Mohanty  
 (Respondent No.5)

M/s.A.S.Naidu,  
 P.K.Mohapatra  
 D.N.Mohapatra &  
 R.K.Pattnaik

(Respondents 6 & 7)

O.A. NO.432/98

Susanta Kumar Dinda, aged about 31 years  
 S/o.Parsuram Dinda, At/Po:Bhandaripalli,  
 Via:Hatigarh, Dist:Balasore

...

Applicant

By the Advocates: M/s.Pradipta Mohanty  
 G.S.Satapathy,  
 D.N.Mohapatra,  
 Smt.J.Mohanty

-VERSUS-

1. Union of India represented by the General Manager, South Eastern Railway, GardenReach, Calcutta-43, West Bengal
2. Railway Board represented through its Chairman, New Delhi
3. Chief Personnel Officer(Admn)  
 S.E.Railway, GardenReach,  
 Calcutta-43, West Bengal
4. BiswaranjanSahu,  
 S/o.Bhagaban Chandra Sahu,  
 Charge Man-B, in the office of M.W.O.Cuttack  
 S.E.Railway, Cuttack
5. Ranani Kanta Guru,  
 S/o.ChirendranathGuru  
 working as Charge Man-B, Flash Butt  
 Welding Plant, S.E.Railway, Jharsuguda

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- 6. Umakanta Panigrahi,  
S/o.Sitaram Panigrahi  
working as Charge Man-B in the office of  
E.E.Flash Butt Welding Plant  
S.E.Railway, Jharsuguda
- 7. Ajaya Kumar Nayak  
S/o.Bimbadhar Nayak working as  
Charge Man-B in the Flash Butt Welding  
Plant, S.E.Railway, Jharsuguda

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Respondents

By the Advocates: Mr.Ashok Mohanty  
(For Res.1, 3 and 4)

Mr.L.Mohapatra  
(For Res. 2)

M/s.A.K.Mishra  
J.Sengupta  
B.B.Acharya  
D.K.Panda  
P.R.J.DASH  
C.Mohanty  
(For Res.4,5 and 6)

M/s.B.N.Rath  
J.N.Rath  
S.K.Jethy 7  
M.K.Panda  
(For Res. 7)

O.A. NO.810/97

- 1. Biswa Ranjan Sahoo  
28 years, S/o.BhagabanCh.Sahoo  
Balichhaksahi, Jatni, Puri  
at present serving as Chargeman 'B' in the  
office of the Dy. C.E.Workshop  
Sini, S.E.Rly., Singhbhumi
- 2. Rajanikant Guru 28 years  
S/o.D.K.Guru, Kujang, District:Jagatsinghpur  
at present Chargeman 'B' E.E.(FBWP)SE Rly.  
Jharsuguda
- 3. Umakanta Panigrahi  
27 years, S/o.Sitaram Panigrahi  
F/N 172, BasantiColony, Rourkela  
at resentChargeman 'B' in the  
Office of Dy.C.E.(Workshop)Sini Rly  
Singhbhumi

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Applicants

By the Advocates: M/s.A.K.Mishra  
J.Sengupta  
B.B.Acharya  
C.Mohanty  
D.K.Panda  
P.R.J.Dash  
G.Sinha

## -VERSUS-

1. Union of India through  
General Manager, S.E.Rly.,  
Garden Reach, Calcutta-43
2. Chief Personnel Officer  
O/O General Manager, SE Rly.  
Garden Reach, Calcutta-43
3. Railway Recruitment Board through  
its Chairman, O.F.D.C. Building  
2nd Floor, A-84, Kharabelnagar,  
Bhubaneswar

...

Respondents

4. Rupendra Kishore Das,  
Aged about 27 years  
Son of Sri Surendra Kishore Das,  
permanent resident of Nuasahi,  
P.O:Nayabazar, P.S.Chauliaganj  
Dist:Cuttack-4
5. Dipak Ranjan Dash  
aged about 26 years,  
Son of Sri Rama Ranjan Dash,  
at present residing at CRRI Campus  
At:Bidyadharpur, PO:Nayabazar,  
Dist:Cuttack-6

...

Intervenors

By the Advocates:

P.M/s. B.Pal  
P.C. P.C.Panda  
S.K.Ojha  
P.Das  
(For Res.1)

M/s. A.K.Mishra  
M/s.A.K.Mishra  
S.K.Ojha  
P.Das  
(Res.3)

M/s.A.S.Nidu  
P.K.Mohapatra  
D.Mohapatra  
(For Res.4 & 5)

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ORDER

MR.G.NARASIMHAM, MEMBER(J) These three applications relate to recruitment for the post Chargeman-B(Electrical) conducted by the Railway Recruitment Board, Bhubaneswar and are inter-connected. Though the cases have been heard separately, for the sake convenience they are being disposed of through this common order. Some of the documents filed in these applications though common ~~and~~ have been given different annexure numbers, ~~hence~~ <sup>not</sup> documents will be described in terms of annexures marking, but through their dates.

2. Facts which are not in dispute and relevant are as follows :

For recruitment of this post, ~~an~~ Employment Notice No.6/92 was issued. Written test and viva voce were also conducted. Candidates Susanta Kumar Dinda(Roll No.002224), who is Res.5 in O.A.172/95, Res.7 in O.A.810/97 and applicant in O.A.432/97 preferred Original Application 137/93 for ~~canceling~~ the list of successful candidates and to direct respondents-railway administration to select the candidates strictly according to merit, by alleging that the Railway Recruitment Board acted in a clandestine manner to satisfy some powerful and political personalities like the then Railway Minister Shri Kanhu Charan Lenka and some Members of Parliament in the matter of giving marks to the candidates ~~closed~~ to these persons in power. At the instance of this petitioner, ~~the~~ <sup>the</sup> Tribunal called for records of the examination as well as original tabulation form and perused answer books of Umakanta Panigrahi(Roll

No.001078), Biswa Ranjan Sahoo (Roll No.001235) and Rajanikanta Guru (Roll No.001567), who are applicants in O.A.810/97, besides the answer book of the petitioner, Susanta Kumar Dinda. In para-4 of the order the Tribunal observed that they came across many scorings and overwritings in the marks in the answer papers of the three applicants in O.A.810/97, to inflate their marks and in the case of the applicant Shri Susant Kumar Dinda, the original mark 24 has been re-written as 22 and in this way his total mark has been reduced to 117 from 119. Taking note of these manipulations, the Tribunal quashed the select list and also the entire selection recruitment process. At the same time the Tribunal made it clear that the candidates who appeared in the test and qualified for being interviewed even if they would become overaged when the 2nd fresh notification is issued, their applications on that score shall not be rejected.

Pursuant to this direction of the Tribunal a fresh recruitment notice No.2/95 dated 24.2.1995 was issued. On 13.3.1995 terminations orders of the appointments of six candidates appointed pursuant to the earlier recruitment(since quashed) were issued by the Chief Personnel Officer(Admn). At the same time in the very same order the Chief Personnel Officer(Admn), Garden Reach, Calcutta ordered them to continue in service purely on adhoc basis subject to the condition of their passing the written/viva voce and empanelment on their merit obtaining in the examination to be conducted by the Railway Recruitment Board, Bhubaneswar, afresh and

in case they would fail to qualify in the recruitment, their services would be terminated. These six candidates are the three applicants in O.A.810/97 (names already indicated above), Ajaya Kumar Naik (applicant in O.A.172/95) and two others.

On 23.3.1995, O.A.712/95 was filed by Ajaya Kumar Naik praying for quashing of order dated 13.3.1995 and issue of fresh advertisement dated 24.2.1995 so far as he is concerned on the ground that he being not a party in O.A.137/93, the order, passed therein is not binding on him and <sup>that</sup> there has been no allegation of malpractice as against him. This application was admitted on 27.3.1995. Operation of the order dated 13.3.1995 passed by the Chief Personnel Officer was stayed <sup>w</sup> against him. This order was subsequently vacated on 6.12.1996 on the prayer of intervenors Dipak Ranjan Das and Ruprendra Kishore Das and the railway administration was directed to publish the results of the recruitment conducted on 30.6.1995 pursuant to the 2nd advertisement dated 24.2.1995.

On 17.4.1995 Biswa Ranjan Sahoo, Rajanikat Guru and Umakanta Panigrahi (applicants in O.A.810/97) preferred Review Application No.7/95 against the order dated 10.11.1994 passed in O.A.137/93. In that Review Application they made a prayer through Misc. Application 399/95 for a direction that they shall not be required to appear in the recruitment afresh. In the main Review Application there was also a prayer that order dated 13.3.1995 of the Chief Personnel Officer be stayed <sup>w</sup> against them. On 7.6.1995 this Misc. Application was

disposed of with a direction that order dated 13.3.1995 of Chief Personnel Officer is stayed as against the applicants. Consequently they did not appear in the recruitment examination conducted afresh. On 20.3.1996 the Review Application was rejected. Then they filed S.L.P.(Civil) No.10250/96 before the Hon'ble Supreme Court which was dismissed through judgment dated 8.5.1996 (reported in AIR 1996 SC 2552).

On 26.12.1997 adhoc services given through order dated 13.3.1995 were terminated.

In the meanwhile on 28.7.1997, Shri Susant Kumar Dinda preferred O.A.432/97 to direct the railway-respondents to appoint him as Chargeman-B(Electrical) with retrospective effect from 13.3.1995 as in the case of the applicants in O.A.172/95 and O.A.810/97 on the ground that in the original recruitment his position was at Sl.No.6 and his representation dated 25.3.1996 sent by Regd.Post remained unanswered.

On 29.12.1997, Biswa Ranjan Sahoo, Rajanikant Guru, Umakanta Panigrahi, who preferred SLP before the Apex Court filed O.A.810/97 praying to quash the termination order dated 26.12.1997 mainly on the ground of want of notice under Article 311 of the Constitution.

3. The main stand of the departmental respondents in all these cases is that they had implemented orders of the Tribunal.

Facts being not in dispute, we may as well deal each case on merit one after the other.

O.A.No.172/95

1. As earlier stated the applicant Ajaya Kumar Naik was a successful candidate in the previous recruitment and was appointed as Chargeman-B(Electrical), He was not a party in O.A.137/93. Hence His contentions, that the order passed in O.A.137/93 is not binding on him as the same was passed without any notice to him to have his say in the matter, though he was a necessary party. Consequently he also prayed quashing of order dated 13.3.1995 of Chief Personnel Officer terminating his appointment pursuant to the order dated 10.11.1995 passed in O.A.137/93. We do not see any merit in these reliefs prayed by the applicant. This Tribunal in order dated 10.11.1994 quashed the entire selection process after coming to a finding that there was large scale manipulations and interpolations in the answer papers. In fact the very same contention was advanced before the Hon'ble Supreme Court by the applicants in O.A.810/97 and the same was turned down through the following observation:

"A perusal thereof would indicate the enormity of mal-practices in the selection process. The question, therefore, is : whether the principle of natural justice is required to be followed by issuing notice to the selected persons and hearing them ? It is true, as contended by Mr.Santosh Hegde, learned senior counsel appearing for the petitioners, that in the case of selection of an individual his selection is not found correct in accordance with law, necessarily, a notice is required to be issued and opportunity be given. In a case like mass mal-practice as noted by the Tribunal, as extracted hereinbefore, the question emerges: whether the notice was required to be issued to the persons affected and whether they needed to be heard ? Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and

and given selection and appointment. The procedure adopted are in flagrant breach of rules offending Articles 14 and 16 of the Constitution."

In view of aforesaid finding and observation of Hon'ble Supreme Court this contention advanced by the learned counsel for the applicant needs no further examination. We do not see any merit in this application.

O.A.432/97

5. The applicant's main grievance is that though his position in the recruitment test was at Sl. No.6 and though there was observation of the Tribunal in order dated 10.11.1994 that his total number of marks were reduced through manipulation which <sup>in turn</sup> would have put him in Sl.No.3 position, but for the manipulation and though applicants in O.A.810/97 and O.A.172/93 and two others were given appointment on adhoc basis by order dated 13.3.1995, he was not given any such appointment and as such wanted a direction to railway-respondents to appoint him so with retrospective effect. At this stage we cannot but observe that the Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta circumvented the order of this Tribunal by issuing adhoc appointments to the candidates selected and whose appointment orders were quashed by this Tribunal. It is true by way of implementing the order of the Tribunal he had first passed orders of termination of these appointments; yet in the same order, he allowed them to continue in those posts by giving adhoc appointments. This Tribunal in its order clearly observed that answer papers of Biswa Ranjan Sahoo, Rajanikant Guru and Umakanta Panigrahi were

subsequently manipulated to inflate their marks. Thus the Chief Personnel Officer was quite aware of this picture; yet by way of technical implementation of the order of the Tribunal, he allowed the applicants and other three to continue on adhoc basis giving them fresh appointments. The answer papers were examined by the Tribunal because of the categorical averment of the applicant that some of these candidates claimed that they would get appointment because of their nearness to the then Railway Minister Shri K.C.Lenka and certain Members of Parliament. Hence we cannot but entertain a strong suspicion that the Chief Personnel Officer either due to political pressure or to please the then Railway Minister passed this order of fresh appointments to these six persons indirectly, <sup>by</sup> completely disregarding the findings and direction of the Tribunal. We hope the Chairman, Railway Board will take notice of this conduct of the then Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta and if necessary of other railway officials responsible for issuing of this order and take appropriate action in the matter. In view of this, we would direct the Registry to send a copy of this order to the Chairman, Railway Board.

We reiterate that the order dated 13.3.1995 of the Chief Personnel Officer giving adhoc appointments is contrary to the directions issued by this Tribunal in order dated 10.11.1994. Hence such an order cannot be a cause of action for the applicant Shri Santosh Kumar Dinda to claim his adhoc appointment. More-over, we

cannot assume that simply because his total mark has been reduced by 2 marks his position came to Sl.No.6 from Sl.No.3 in the absence of any other material. More-over services of these adhoc appointees have ~~been~~ been terminated. Thus there is no merit in this application.

O.A.810/97

6. The cause of action for this application is termination order dated ~~22~~<sup>23</sup>.12.1997 of the adhoc appointments passed in order dated 13.3.1995. The applicants pray for quashing of this termination order dated 22.12.1997 on the ground that as per natural justice they were entitled to notice for show cause before issuing of such temination order and that they having not appeared in the fresh recruitment test in view of the stay order passed in R.A.7/95(M.A.399/95), they are entitled to continue. On 29.12.1997, when this application was filed, this Tribunal, after hearing the submissions of the applicants that this termination order dated 22.12.1997 had not as yet been served on them, as they were on leave, directed the respondents-railways not to serve this order on them till 15.1.1998. Thereafter after hearing both sides in the matter of interim relief, by an elaborate order dated 23.1.1998, the prayer for interim relief for their continuance and stay operation of the termination order have been disallowed.

We have already discussed the background of the order dated 13.3.1995 issued by the Chief Personnel Officer. This order being in conflict with the order dated 10.11.1994 passed by this Tribunal in O.A.137/93.

we cannot therefore, pass any order allowing that order to continue further.

Submissions of the applicants as to entitlement of notice before issue of termination order dated 22.12.1997 cannot be accepted, because, order dated 13.3.1995 relating to their adhoc appointments in substance makes it clear that their engagement on adhoc basis will come to an end on fresh empanelment in the recruitment process initiated afresh pursuant to the direction of the Tribunal in O.A.137/93. Moreover, their appointments through order dated 13.3.1995 was an appointment simplicitor and no discriminatory treatment has been meted out to these three applicants out of the six persons appointed through that order dated 13.3.1995 by passing this termination order dated 22.12.1997. In view of the principle enunciated by Hon'ble Apex Court in Hukum Chand vs. Chandigarh Administration reported in 1996(1) SCC(L&S) 49, the termination of such appointment without notice is not violative of Article 311 of the Constitution.

It is true that order dated 13.3.1995 does mention that the applicants and the three others are allowed to continue in service purely on adhoc basis subject to the condition of their passing the written/viva voce test and empanelment on their merit obtaining in the examination to be conducted by the Railway Recruitment Board, Bhubaneswar afresh and if they fail to qualify/empanelment in the fresh selection, their services would be terminated. It is also true that they

3)

did not appear in the recruitment conducted afresh. Their contention is that they could not appear in this recruitment test because in R.A.7/95(M.A.399/95) this Tribunal by order dated 7.6.1995 stayed the operation of order dated 13.3.1995 so far as these three applicants are concerned. In other words, their contention is that by virtue of this stay order the termination order dated 13.3.1995 passed by the Chief Personnel Officer came to be stayed and consequently they were deemed to be continuing in the appointment pursuant to the earlier recruitment. Since order dated 13.3.1995 clearly mentions that their adhoc services would be terminated if they fail to qualify in the fresh recruitment test to be conducted by participating therein and since they had no scope to participate in the recruitment to be conducted in June, 1995 in view of the stay order dated 7.6.1995 in R.A.7/95, their adhoc services cannot be terminated. We do not see any force in this ~~application~~. Before praying for stay in R.A.7/95 the applicants were well aware of the conditions mentioned in order dated 13.3.1995. Yet they had taken a chance in staying operation of the order dated 13.3.1995 which includes the termination of their appointments. In other words stay was granted at their instance and not at the instance of railway administration. Even otherwise ~~through~~ the stay order ~~did not~~ ~~nothing~~ prevented the applicants from appearing in the fresh recruitment test; if necessary with intimation to the Tribunal in R.A.7/95. Thus the applicants cannot make the railway administration responsible and they must thank themselves in this connection.

In the result we do not see any merit in this application too.

7. In view of our discussions above, we dismiss these three applications, but without any order as to costs.

*Somnath Som*  
(SOMNATH SOM)

VICE-CHAIRMAN

23.9.98

23.9.98  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)

B.K.SAHOO, C.M.