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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.536 OF 1995
Cuttack this the 1st day of August/02

Gopinath Naidu

...

Applicant (s)

-VERSUS-

Union of India & Others

...

Respondent (s)

(FOR INSTRUCTIONS)

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

1. *Canorayan Mohanty*
01/08/2002
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Sanku Kumar Hajra
(S.K. HAJRA)
MEMBER (ADMINISTRATIVE)

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 536 OF 1995
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CORAM:

THE HON'BLE MR. S.K. HAJRA, MEMBER (ADMINISTRATIVE)
AND
THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

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Gopinath Naidu, Son of Lachhamaya Naidu, aged about 30 years, at present working as Token Porter, South Eastern Railway, Cuttack

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By the Advocates

Applicant
M/s. A.K. Rath
P. Mohapatra
R.K. Patnaik

-VERSUS-

1. Union of India represented through Secretary to Government, Railway Department, Ministry of Railways, Railway Bhawan, New Delhi
2. South Eastern Railway represented through its General Manager, Garden Reach, Calcutta-700 043
3. Divisional Manager (Personal) South Eastern Railway, Khurda Road, Khurdha
4. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, At/PO-Khurdha, Dist-Khurdha

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By the Advocates

Respondents
M/s. B. Pal
O.N. Ghosh

O R D E R (ORAL)

MR. MR. S.K. HAJRA, MEMBER (ADMINISTRATIVE) : The applicant, who was initially appointed as Khalasi in the scale of Rs. 750-940/- (RPS) in Signal & Telecom Department of S.E. Railway, Khurda Road, was transferred to Operating Department at his own request. He joined there as Token Porter accepting the bottom seniority on 4.1.1994. The applicant filed this original application with prayer to quash the provisional panel for promotion to the post of Switchman, prepared by the Selection Committee

Sum

vide Annexure-4 dated 9.8.1995. The applicant also sought direction to respondents to add his name to the panel. Shri P.K.Mohapatra, the learned counsel for the applicant argued as follows :

"The Respondents-Department by notification dated 10.1.1995 called for the willingness of the staff for promotion to the post of Switchman in the scale of Rs.1200-2040/- (RPS) (Annexure-1). As per this notification at Annexure-A/1, 50% of vacancies would be filled in from the LM 'P'/C.Man/TPM for promotion and 50% by written and viva voce amongst Group 'C' and 'D' staff. The applicant qualified both in the written and viva voce amongst Group C and D staff and was eligible for inclusion of his name in the panel for appointment to the post of Switchman. To his dismay, his name ~~did~~ not figure in the panel, although eight posts were reserved for Scheduled Castes, ^{to which the applicant belongs}. The applicant having cleared the requisite tests should have been promoted along with seven members of the Scheduled castes, who were promoted by virtue of Annexure-1."

2. The learned senior counsel for the Respondents, on the other hand, advanced the following contentions.

"The applicant was initially appointed as Khalasi. He was transferred from Signal & Telecom Department, Khurda Road to Operating Department, Cuttack, where he joined as Token Porter on 4.1.1994. As per Annexure-A/1, 50% of the posts of Switchman were to be filled in by written and viva voce test, amongst Group C and D staff, who had rendered five years of regular service in the Operating Department and acquired Matriculation qualification as on 1.1.1995. The applicant having just completed one year's of service in the Operating Department was not eligible for promotion to the post of Switchman. As per Annexure - A/1, he was asked

to appear at the written and viva voce test by mistake, which was subsequently detected and since the applicant had not rendered five years of regular service in the Operating Department as on 1.1.1995, he was not eligible for being empanelled for promotion to the post of Switchman.

3. Heard Shri P.K.Mohapatra, the learned counsel for the applicant and Shri B.Pal, learned senior-counsel for the Respondents-Department and perused the records.

It is clear from Annexure-R/1 dated 16.1.1986 that as 50% of vacancies could not be filled up by (i) above, will be filled in by a written examination and viva voce from amongst Group C and D staff of Operating Department with minimum 5 years regular service and with matriculation qualification. Admittedly the applicant did not have five years of regular service in the Operating Department, as on 1.1.1995 (having joined the Operating Department as Token Porter on 4.1.1994). He served in the Signal and Telecom Department for four years, which, as per the notification at Annexure-A/1 was not to be included in the period of service making the applicant eligible for promotion to the post of Switchman. Since the respondents-Department detected the applicant not having held a minimum period of five years of regular service in the Operating Department, they did not empanel the applicant for promotion to the post of Switchman and in this context, their action cannot be termed as mala fide, detrimental and/or whimsical in any way to the prejudice of the applicant. The mere fact that the applicant was allowed to appear at

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the written and viva voce test for promotion to the post of Switchman, cannot prevent the Respondents-Department from rectifying a glaring error which had occurred earlier.

In the light of the facts stated above, we see no reason for quashing the selection panel at Annexure-4 and giving relief to the applicant. However, if the applicant, meanwhile, has become eligible for promotion to the post of Switchman as more than six years have passed from the date of filing of the application, the Respondents-Department will consider his case for promotion in accordance with law.

As a result, O.A. is dismissed without costs.

M.R. Mohanty
(M.R. MOHANTY) 01/08/2002
MEMBER (JUDICIAL)

S.K. Hajra
(S.K. HAJRA)
MEMBER (ADMINISTRATIVE)

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