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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 791 OF 1995
Cuttack, this the 29th day of October, 1999

Shri Bhramarbar Padhi and anotherApplicants

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 Soni
SOMNATH SONI
VICE-CHAIRMAN
29-10-99

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Cuttack, this the 29th day of October, 1999

CORAM:

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

.....

1. Shri Bhramarbar Padhi, Station Master, Kapilas Road, S.E.Railway, Khurda.
2. Shri Trilochan Nayak, Station Master, Manjuri Road, S.E.Railway, Khurda Applicants

Advocates for applicants - M/s B.S.Tripathy
K.P.Mishra
M.R.Kar.

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1. Union of India, Ministry of Railways, represented through its Chairman, Railway Board, New Delhi.
2. Chief Personnel Officer, South Eastern Railway, 11, Garden Reach Road, Calcutta-43.
3. Chief Operations Manager, South Eastern Railway, 11, Garden Reach Road, Calcutta-43.
4. General Manager, South Eastern Railway, 11, Garden Reach Road, Calcutta-43..... Respondents

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the two petitioners have prayed for quashing the memo dated 25.9.1995 at Annexure-5. The second prayer is for a direction to respondent nos. 2 to 4 to modify the panel published in September 1993 for filling up of Group-B posts through Limited Departmental Competitive Examination (LDCE) on the basis of vacancies of two years (anticipated) plus 30% of the panel in terms of the mandatory prescription for LDCE.

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2. The two petitioners are working as Station Masters, Kapilas Road and Manjuri Road Railway Stations and are in the scale of Rs.1400-2600/- on regular basis. They have put in more than five years of service in the aforesaid grade. The applicants have stated that for filling up Group-B posts, normally known as Class-II posts in the Railways, 70% of vacancies are filled up by promotion from different streams like Traffic Transportation Department, Commerce Department, Civil Engineering Department, Mechanical Engineering (Power) Department, etc. Such promotion is done through Departmental Promotion Committee (DPC). The balance 30% of the Group-B posts are filled up through LDCE. Earlier the quota for LDCE was 25%. The applicants have quoted the relevant provisions of the Railway Establishment Manual regarding holding of LDCE in complete detail in their petition. These provisions quoted by the applicants show the percentage of posts to be filled up through LDCE as 25% which was the position earlier before this quota was increased to 30%. It is stated by the applicants that the panel drawn up after LDCE shall remain valid for a period of two years from the date of approval by the General Manager. They have further stated that the assessment of vacancies falling under the 30% quota is to be made on the vacancies already existing plus vacancies which are anticipated within a period of two years plus 30% of the panel less the vacancies which would be filled up by officers who return from deputation/long leave. The applicants have stated that the instructions provide for holding one examination for filling up of the LDCE quota and there is no provision for holding a supplementary examination. The grievances

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of the applicants are that these provisions for filling up of 30% LDCE quota of vacancies in Group-B posts were not strictly followed by the respondents. A written examination was held on 10.8.1992 for filling up 75% quota of vacancies in Group-B posts. Similarly, a notice was published for selection against the balance 25% quota of vacancies through LDCE and applications were invited from all eligible staff who have completed five years of regular service in the grade the minimum of which is Rs.1400-2600/-. The vacancy position was indicated as 5, all unreserved and the last date of receipt of applications was 18.9.1992. The applicants have stated that to the best of their knowledge the vacancy position indicated in the notice dated 17.8.1992 was only existing vacancy. The anticipated vacany which would arise for a period of two years from 2.11.1993 was not taken into consideration. In addition, 30% of panel to be added was also not taken into consideration. However, for filling up of the above vacancies written examination was held on 24/25.4.1993. Fourteen candidates including the applicants qualified in the written test. Accordingly, all the 14 including the applicants were directed to appear at the viva voce test which was held on 28.10.1993. The applicant had done extremely well in the viva voce test. Finally, a provisional panel of 5 staff was published on 2.11.1993. In the said panel dated 2.11.1993 it was indicated that the names were arranged according to merit position. In this panel the names of the applicants were not there. The applicants have stated that they have reliably

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learnt that their position in the merit list was within serial nos. 1 to 5. But names were arranged in the panel in order of seniority though deliberately it was mentioned in the panel dated 2.11.1993 that the names have been arranged in order of merit. The applicants have further stated that the five persons in the panel were immediately appointed to Group-B posts and the panel was exhausted at once proving that the anticipated vacancies for the next two years plus 30% of the cadre have not been added to the total number published in the panel. The applicants state that had the panel been published strictly according to the number of vacancies correctly worked out, then more persons could have been included in the panel and they would have waited for two years to be appointed against anticipated vacancies when such vacancies arise, but this was not done. The applicants have further stated that a notification was issued on 24.3.1994 for a fresh examination for filling up of 8 posts and this proves that the panel published on 2.11.1993 did not take into account these eight vacancies. The applicants have further stated that the respondents have issued notice on 24.3.1994 for formation of a panel for filling up Group-B posts against 30 % vacancies through LDCE. In response to this advertisement the applicants again applied and they were selected in the written test. Along with them 26 other candidates were directed to appear at the viva voce test to be held on 7.9.1994. Finally in order dated 25.9.1995 (Annexure-5) a panel of eight names was published in which names of the applicants were not included. In the context of the above facts, the applicants have come up with the prayers referred to

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earlier.

3. Respondents in their counter have submitted that although there is no provision to hold supplementary selection for the posts to be filled up through LDCE, but with due approval of the Railway Board supplementary examination can be held due to special circumstances. The respondents have stated that selection procedure to fill up the vacancies in Group-B posts against 25% quota through LDCE for the year 1992-93 was correctly followed as per rules. The total vacancies for the post of ADM/SS in Group-B against 75% and 25% quota for two years from 1.3.1992 to 28.2.1994 were assessed and these came to 16 and 5 respectively taking into account the existing vacancies and anticipated vacancies. The respondents have stated that the increased percentage of vacancies falling in LDCE quota which was raised from 25% to 30% was not followed for the year 1992-93 in accordance with the Railway Board's letter dated 3.11.1992 (Annexure-R/1) which provided that the revised percentage would take effect from the date of issue of that letter. The selection process in this case had been initiated before issuance of this instruction dated 3.11.1992 when the applications were invited in letter dated 17.8.1992 (Annexure-1 of the O.A.). In view of this, the question of enhancing the percentage from 25% to 30% does not arise. The respondents have stated that the panel of five persons drawn up in letter dated 2.11.1993 (Annexure-3) was prepared on the basis of total marks secured by candidates in written examination, viva voce

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and record of service. In the panel the names were arranged in order of merit of the selected candidates. The applicants could not be empanelled because of their low merit position as compared to candidates who got empanelled though the applicants had qualified both in written examination and viva voce together with record of service. The respondents have stated that besides the applicants there were a number of other candidates who had also got qualifying marks in the selection but could not be empanelled due to low merit position. The panel dated 2.11.1993 was exhausted when the last man Shri T.Hussain assumed charge of a Group-B post on 1.12.1993. As such after exhausting of both the panels under 75% and 25% quota fresh selection for the years 1994-95 was initiated and as per Railway Board's letter dated 3.11.1992 (Annexure-R/1) the revised percentage of vacancies for seniority-cum-merit quota and LDCE quota were taken as 70% and 30%. While calculating the vacancies, the existing and anticipated vacancies as per rules from 1.1.1994 to 31.12.1995 were worked out and these came to 20 and 8 respectively. Against the quota of 8 vacancies to be filled up through LDCE, the applicants again appeared but failed to qualify in the examination. In view of this, the respondents have stated that the application is without any merit and the same should be rejected.

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4. We have heard Shri B.S.Tripathy, the learned counsel for the petitioners and Shri Ashok Mohanty, the learned panel counsel for the respondents and have also perused the records. The learned counsel for the respondents has filed certain circulars and documents. The learned counsel for the petitioners has

also submitted the relevant rules regarding LDCE. These have also been taken note of.

5. The first point for consideration is whether the quota of vacancies to be filled up through LDCE, for which notice was issued on 17.8.1992 vide Annexure-1, should have been taken as 25% or 30%. From this notice itself it appears that on 16.7.1992 against the seniority-cum-merit quota a written examination was held for filling up of 75% of vacancies. Accordingly, the balance 25% vacancies in Group-B posts were decided to be filled up through LDCE. The respondents have pointed out that the Railway Board in their letter dated 3.11.1992 (Annexure-R/1) have clearly mentioned that the revised percentage of 70% and 30% instead of earlier percentage of 75% and 25% will take effect from the date of issue of this letter dated 3.11.1992. It was also clarified that wherever the selection/ LDCE has been initiated or is in the process of being finalised on the basis of earlier instructions, this should not be disturbed. In this case, the notice was issued on 17.8.1992 prior to issue of this letter of the Railway Board, inviting applications for filling up of vacancies against LDCE quota and therefore LDCE quota has been correctly maintained as 25% and not 30%. Moreover, as has been already noted, the selection on seniority-cum-merit quota for that period has been taken to be 75%. In view of this, we hold that the contention of the applicants that LDCE quota should have been taken as 30% is without any merit and is rejected.

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6. The second contention of the learned counsel for the petitioners is that even taking the LDCE

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quota as 25%, the vacancies have not been correctly assessed. The applicants have stated that their understanding was that only the existing vacancies and not the anticipated vacancies have been taken into consideration while fixing the LDCE quota vacancies to be 5. Secondly, it is stated that the very fact that the panel which was published on 2.11.1993 indicating five names got exhausted immediately by giving appointment on promotion of these five selected persons to the higher posts shows that only the existing vacancies have been taken into account and not the anticipated vacancies. It is further submitted by the applicants that 30% of the total strength of the cadre minus the persons who are likely to come back has not been taken while calculating the vacancies. It is stated that had the vacancies been correctly calculated, the number of vacancies falling in LDCE quota would have been larger and so would have been the panel which is at Annexure-3. We have considered this sumission carefully. The respondents in their counter have stated that the vacancies falling both under 75% quota and 25% quota were assessed for the period from 1.3.1992 to 28.2.1994. While doing this the existing and anticipated vacancies upto 28.2.1994 was taken into consideration for both the groups and accordingly the vacancies falling under each group were assessed as 16 and 5 respectively. Taking the 75% quota of vacancies to be 16, naturally the 25% quota for LDCE vacancies would come to 5 and there is nothing wrong with this. Moreover, the very fact that the panel was published on 2.11.1993 and got exhausted immediately by promotion of the empanelled candidates to Group-B

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posts does not necessarily prove that the anticipated vacancies were not taken into consideration. The respondents have admitted that the panel was published on 2.11.1993 and got exhausted on 1.12.1993 when the last man in the panel one T.Hussain assumed charge of the higher promotional post. Since the anticipated vacancies for the entire period from 1.3.1992 to 28.2.1994 had to be taken into account and according to the respondents had been taken into account, some of the anticipated vacancies could have arisen even before the panel was brought out on 2.11.1993. Therefore, the exhaustion of the panel within a month of publication by 1.12.1994 does not prove that anticipated vacancies were not taken into consideration. Moreover, the applicants have not given any details how or if any anticipated vacancy was actually left out. The respondents, on the other hand, have enclosed the xerox copy of their office notes in which the vacancies were worked out and from this it appears that anticipated vacancies were duly taken note of. Details of these would be referred to while discussing the next point. In view of the above, it is held that the contention of the applicants that the anticipated vacancies were not taken into consideration is without any merit and is rejected.

7. The next point raised by the learned counsel for the petitioners is that while assessing the vacancies, besides the existing and anticipated vacancies, 30% of the cadre should be added. But this was not done. Reference on this point has been made to Railway Board's letter No.E(GP)87/2/72 dated 11.1.1988. The subject of this communication of the Board is "Selection for promotion from Group-C to Group-B".

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In paragraph 3(ii) of this letter it has been mentioned that the vacancies for two years should be assessed properly with the aid of all known factors and possible anticipations. To the vacancies so assessed, an addition of 30% (thirty percent) of the cadre of both Group-B and Junior Scale posts including Construction Reserve should be made. It has been indicated in this letter that this addition of 30% is in modification of the existing instruction for providing the addition at 20%. From this it is clear that while assessing the vacancies, 30% has to be added to the existing and anticipated vacancies in the manner indicated above. The applicants' case is that this has not been done and thereby the vacancies falling in LDCE quota have been artificially made less reducing their chances of promotion. The first point to be noted in this connection is that this addition of 30% is required to be made for computation of vacancies both for seniority-cum-merit quota and LDCE quota. The circular dated 11.1.1988, referred to above, makes this absolutely clear. After the calculation of the vacancies in Group-B posts to be worked out in the above fashion, the break-up of vacancies would be at the rate of 75%: 25% for the relevant years. In the instant case, the vacancies for the period from 1.3.1992 to 28.2.1994 under both the groups have been taken as 16 and 5 respectively and this bears out the ratio of 75% and 25%. It is therefore not possible for the applicants to argue that the quota of vacancies meant for LDCE has been wrongly reduced. Moreover, as noted earlier, the learned counsel for the respondents has filed the xerox copy of the office notes regarding assessment of

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vacancies. From this we find that in a note dated 24.2.1992 anticipated vacancies for 1992 and 1993 and 1994 till 28.2.1994 due to retirement have been worked out in senior scale and Class-II by the names of different persons who were going to retire on different dates during this period. These anticipated vacancies came to 17. It has further been worked out that the total cadre in Class II is 53. The anticipated vacancies are 17 and 30% of the cadre of 53 works out to 16 and thus the total of these two comes to 33. As against this number of 33, it has been noted that six persons are still available from the previous panel and there are six probationers likely to be absorbed in regular posts. Deducting these 12 out of 33, the total vacancies have been worked out as 21 out of which 16 have gone to 75% seniority-cum-merit quota and 5 to 25% LDCE quota. From ^{while} this, it is clear that calculating the vacancies, the ^{^ JDM} 30% of the cadre has been taken into consideration and this contention is also therefore held to be without any merit.

8. It has been lastly urged by the applicants that in the examination out of which the panel dated 2.11.1993 at Annexure-3 was published both the applicants came within the first five in the merit list, but the panel was published arranging the names on the basis of seniority. This contention is absolutely without any merit because in annexure-3 itself it is clearly mentioned that in the panel the five names have been arranged in order of merit. The respondents have

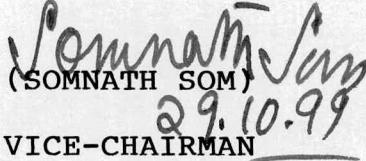
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also mentioned in their counter that names empanelled have been arranged in order of merit and even though the applicants got the qualified marks, they could not be empanelled because of their low merit position. The respondents have also stated that besides the applicants there were a number of other persons who also qualified but could not be included in the panel because of their low merit position. In view of this, we hold that the applicants have failed to prove that meritwise they were within the first five in this examination. This contention is also held to be without any merit and is rejected.

9. In the result, therefore, we hold that the Application is without any merit and the same is rejected but without any order as to costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
29.10.99
VICE-CHAIRMAN

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