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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 83 OF 1995
Cuttack this the 20th day of November/2000

Ch.V.Rangaram & Others ... Applicant(s)

versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Y*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *N*

Somnath S. Som
(SOMNATH S. SOM)
VICE-CHAIRMAN
20/11/2000

20.11.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 83 OF 1995
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CORAM:

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

....

1. Ch.C.Rangaram aged about 45 years,
S/o. Late C.B.N. Sharma, working as
Head Clerk in South Eastern Railway,
Khurda Road Division, Dist - Khurda
2. S. Basu
3. B.Chinna Babu
4. P.C. Patnaik
5. V.Narayana Rao
6. Smt. N.Kanagam
7. B.Dongaiah
8. Fakir Khan
9. G.B.Paikray
10. K.Gopalaswamy
11. N.C.Patsani
12. Smt.Parul Ghosh
13. U.K.Mohanty
14. Miss. Nirupama Mohapatra
15. R.C.Padhi
16. Smt.M.Mohanty

Sl.No. 2 to 16 are working as Head Clerk under
Respondent No.3, South Eastern Railway, Khurda
Road Division, Dist - Khurda

... Applicants

By the Advocates

Mr. S.C.Samantray

-VERSUS-

1. Union of India represented through the
General Manager, South Eastern Railway,
Garden Reach, Calcutta-700043
2. Divisional Railway Manager, South Eastern
Railway, Khurda Road, Dist - Khurda
3. Sr.Divisional Personel Officer, South Eastern
Railway, Khurda Road, Dist - Khurda

... Respondents

By the Advocates

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

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O R D E R

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MR.G.NARASIMHAM, MEMBER (JUDICIAL) : 16 applicants serving as Head Clerks in Khurda Road Division of South Eastern Railway, filed this Original Application praying to quash Annexures-A/2 and A/4 dated 11.11.1994 and 2.2.1995 respectively, forming a panel for the written test and selecting suitable candidates from amongst the candidates appearing for viva voce test in the examination conducted for promotion to the post of Office Superintendent Gr.II and to direct the Respondents to take the examination following the rules and provisions. Head Clerk is the feeder cadre for promotion to the post of Office Superintendent Gr.II.

2. The case of the applicants is that in the Gradation List of Head Clerks published on 1.11.1994 (Annexure-A/1) their positions are at the top. On 11.11.1994 vide Annexure-A/2, Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road (Res.3) issued a panel of 51 names to appear in the written test to be held on 27.11.1994 to form a panel of 17 candidates for the post of Office Superintendent Gr.II. Out of these 17 posts, one was reserved for Scheduled Caste and one for Scheduled Tribe and the rest 15 were unreserved posts. Applicants 1 to 5, though included in the panel were aggrieved that some persons who have not rendered a minimum period of three years of service as Head Clerk have been included in the panel and accordingly represented to Respondent No.3. This apart out of the 17 vacancies, six were of the year 1993 and these six posts should have been filled up in the said Financial Year and should not have been carried forward or clubbed with the vacancies of another year. Had there been a separate examination for these six vacancies of the year 1993, 18 senior persons would have been subjected

to the test and not 51, who are most juniors to the applicants and under such circumstance applicants would have had a fair chance for promotion. Since out 17 posts, 15 were unreserved, 45 persons in the unreserved category should have been included in the panel. But the said panel consisted of 44 unreserved candidates only. All these illegalities, according to applicants, were brought to the notice of Respondent No.3 in their representation under Annexure-A/3. Since there was no response from the Respondent No.3, applicants were compelled to appear in the written test on 17.11.1994. On 2.2.1995, Respondent No.3 declared the result of the written test wherein 16 candidates were qualified to be called for the viva voce test and the 16 candidates in the panel are juniors to the applicants (Annexure A/4). Though for viva voce test not only the marks in the written test, even the seniority marks had to be assessed, the same has not been done, but only the candidates securing 60% marks in the written test had been called. Another irregularity pointed out by the applicant is that when the panel of 51 names was published, it was announced that no supplementary test would be held. Yet a supplementary written test had been held on 30.12.1994 and four persons, who did not appear in the written test on 27.11.1994 appeared in that written test and were ultimately called for the viva voce test. Pointing out these irregularities, applicants filed this Original Application with the prayers mentioned above.

3. The Department in their counter take the stand that there is no rule/provision that only Head Clerks having a minimum period of three years of service would be eligible to be included in the panel for taking the examination for promotion to the

post of Office Superintendent Gr.II. On the basis of marks obtained by the candidates in the written test and considering notional seniority marks 16 candidates, whose names find place in Annexure-A/4 were selected for the viva voce test. It was also made clear that candidates who are eligible to appear in the viva voce test on the basis of notional seniority mark or relaxed standards, which was only for SC/ST candidates cannot be empanelled if they would fail to secure the qualifying marks in the aggregate, i.e. 60% for unreserved candidates and 50% for reserved candidates excluding seniority marks. In fact this panel was challenged by applicant No.9 and others of the Original Application in their appeal dated 6.2.1995 and while it was still under active consideration by the Railway authorities, this Original Application had been filed without exhausting the alternative remedy available to the applicants. Hence, according to the Department, this Original Application being premature is not maintainable. Candidate at Sl. No.1 under Annexure-A/2, though a Scheduled Caste became eligible as per his general seniority and as such, he was treated as unreserved candidate in terms of Establishment Serial No.108/93. Thus 45 unreserved candidates were called for 15 posts justifying the ratio 1 : 3. It is true that under Annexure-2 it was clearly mentioned that no supplementary written test under any circumstances would be held. It was so mentioned with a view to avoid any wilful and intentional absentisim. This does not mean it would cover genuine case of absence beyond the control of candidates. It is only in case of candidates' ^{whose} absence was beyond their control supplementary test was held.

4. No rejoinder has been filed by the applicants.

5. On 8.2.1995, the Original Application was admitted and an ad interim direction was given not to hold the viva voce test. Thereafter on 19.1.1996, this order was modified to the extent that though the viva voce test could be conducted and a list of successful candidates drawn up, but the same should not be published with the leave of the Bench. On 22.9.1997 Respondents were permitted to publish the result of the viva voce test and give appointments accordingly with a condition that such appointments should be subject to result of this Application.

6. During the pendency of the Original Application Respondents preferred Misc. Application No. 816/99 with a prayer to dispose of the Original Application on the ground that the applicants 1 to 3, 5 to 11 and 14 have since been promoted to the cadre of Office Superintendent Gr.II vide Memos dated 22.6.1998 and 10.7.1998 in a subsequent test held for 16 more vacancies notified on 18.12.1997. Two of the applicants could not be included in the zone of consideration in view of their retirement on superannuation in the meanwhile. On behalf of the applicants two Misc. Application viz. M.A.Nos. 581/2000 and 582/2000 were filed. M.A. 582/2000 was filed for amending the Original Application and M.A. 581/2000 was filed for issuing direction to Respondents to produce certain records. All these Misc. Applications were heard along with Original Application. By order dated 30.8.2000 Misc. Application 582/2000 seeking amendment was disposed of as infructuous.

7. We have heard Shri S.C.Samantray, the learned counsel for the applicants and Shri B.Pal, the learned senior counsel appearing for the Respondents (Department). Also perused the

records.

7. The main grievance of the applicants are as follows:

- i) A separate examination should have been conducted for the vacancies arising for the Financial Year 1993;
- ii) Some candidates who had not completed three years of service as Head Clerk should not have been included in the panel for the examination
- iii) Supplementary written test should not have been conducted.
- iv) Unreserved vacancies being 45 in number, 45 unreserved candidates instead of 44 should have been included in the panel.
- v) In case seniority marks had not been given to the applicants, ~~they~~ they would have been called to appear at the viva voce test but only the candidates securing 60% marks in the written test had been called.

8. The stand of the Department is that vacancies are not filled up with reference to a Financial Year. In fact an earlier panel for promotion to the cadre of Office Superintendent Gr.II fully exhausted on 19.4.1994. Thereafter, a fresh assessment of vacancies was made on 25.4.1994. It was then decided to form a panel of 17 staff consisting of 15 unreserved and 1 SC and 1 ST. These averments in the counter have not been refuted by the applicants through any rejoinder. So the first grievance of the applicants will not stand.

9. On behalf of the applicants no rule/provision was cited in support of their stand that only Head Clerks having three years of service experience in that grade would be eligible to sit in the examination for promotion to the post of Office Superintendent Gr.II. On the other hand Rule-215 of Indian Railway Establishment Manual, relating to promotion of Group C Staff to a Selection Post is clear that staff in the immediate Lower Grade with a minimum of two years of service in that Grade will only be eligible for promotion and this condition of

two years of service should stand fulfilled at the time of actual promotion and not necessarily at the stage of consideration. Hence inclusion of Head Clerks having less than three years of service in that Grade in the panel was in no way illegal or irregular.

11. The averment in the counter that supplementary test was conducted in respect of those candidates in the panel of 51 who could not attend the first written test for reasons beyond their control had not been refuted by the applicants through any rejoinder. In fact there is provision under the Indian Railway Establishment Manual for conducting the supplementary selection/suitability test and as per those guidelines, nor more than one supplementary selection normally should be held to cater to the needs of absentees due to sickness, non-intimation/late intimation of dates etc. The explanation given in the counter that intimation in the panel under Annexure-A/3 that no supplementary test would be held was only to put a stop to tendency of the candidates in not appearing the test for some reason or the other and certainly not for those candidates who would not be able to attend for reasons not beyond their control. Hence on the ground of supplementary test this examination cannot be declared as bad in law.

12. Annexure-A/2 consists of names of 51 candidates of which 45 belong to unreserved category. The contention of the applicants is that in view of the ratio 1 : 3, there being 15 vacancies for unreserved category, 45 Head Clerks should have been included in the panel instead of 44. In the counter the Department clarified that Shri R.C.Behera under Sl. No.1 in the panel though belongs to Scheduled Caste was in fact selected

as an unreserved candidate in view of his efficiency and as such there is no irregularity in inclusion of his name in this panel. This specific averment in the counter has also not been denied. We, therefore, do not see any reason to treat this panel under Annexure-A/2 if not illegal, at least irregular.

1> As to the averment of the applicants that in their cases seniority marks have not been assessed before finalizing the panel under Annexure-A/4 for viva voce test, Misc. Application 581/2000 has been filed by them for issue of direction to the Department for production of mark sheets indicating marks awarded in the written test. In Para-3 of the counter the Department took a positive stand that on the basis of marks obtained by the candidates in the written test and considering notional seniority marks, 16 candidates under Annexure-A/4 were advised to be in readiness for viva voce test. In other words the case of the Department is that even in respect of the applicants notional seniority marks were taken into account before finalizing the panel of candidates suitable for viva voce test under Annexure-A/4. The procedure for awarding notional seniority marks is covered under Establishment Serial No. 248/84 dated 19.12.1984, i.e. Annexure-A/5. A careful perusal of this Annexure along with the illustration mentioned at the bottom of that Annexure will make it clear that only in respect of candidates who had not secured 60% of marks in the written test, this notional seniority marks were to be added. If inspite of adding to this notional seniority marks in case of candidates securing less than 60% of marks in the written test ~~on the whole~~ they would not be able to secure 60% of marks on the whole, they would not be eligible to be called for the

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viva voce test. Though Para-4(f) of the Original Application relevant in this regard is based on the information gathered by the applicants from the reliable source, there is no averment whatsoever either in that para or anywhere else that from what source the applicants could come to know that they secured nearing 60% marks in the written test, so that addition of notional seniority marks would have brought them on the whole 60% marks in order to be eligible to be called for the viva voce test. We are aware that under Annexure-R/3 dated 6.2.1995 which also finds mention in M.A.581/2000, the Office of the Divisional Railway Manager, (Personnel), S.E.Railway, Khurda intimated to D.R.M. (P), S.B.P. and others that S.M.Hossain HC(UR) at Sl.No.5 under Annexure-A/4 had been called for the viva voce test basing on the marks for seniority awarded on notional basis and his empanelment was subject to his securing 60% marks in professional ability and 60% in aggregate, and further that three other candidates belonging to Scheduled Caste and Scheduled Tribe, i.e. at Sl.Nos. 2, 3 and 13, respectively have been called for the viva voce test basing on marks on relaxed standard and their empanelment is subject to their securing 50% marks and professional ability and 50% in aggregate. It is also true that this S.M.Hossain, as per Gradation List under Annexure-A/1 is junior to applicant Nos. 2, 3, 4, 5, 6, 7 and 8. In this Gradation List consisting of 54 names, name of Mr.Hossain finds place at Sl. No.13. This would not necessarily imply that notional seniority marks were not added in respect of the applicants, specifically, applicant Nos. 1, 2, 3, 14, 5, 6, 7 and 8 in order to secure 60% marks. On the other hand in Para-4(d) of the O.A. it has been

averred that out of these seven senior applicants only applicant Nos. 5 and 7 had done very well in the written test hoping to come out successful. We are, therefore, not inclined to accept the contentions advanced on behalf of the applicant in this regard and we also see no justification to call for the marks sheets as prayed in this Misc. Application.

Even assuming there is some irregularity in assessing the notional seniority marks in case of the applicants in the absence of the candidates selected in the test under Annexure-A/4 as respondents in this Original Application, this Annexure-A/4 cannot be quashed without hearing their version since their interests are likely to be affected in case of ultimate quashing of Annexure-A/4.

10. Thus the main grievance of the applicants as discussed above has no leg to stand. On this ground alone the prayers in this Application can be disallowed.

11. This apart the Original Application as such, as indicated above, is not maintainable inasmuch as those persons who would be affected in case of quashing of Annexure-A/4 have not been impleaded as Respondents (Vide State of Bihar vs. Indranand Mishra reported in AIR 2000 SC 2306). The main prayer of the applicants is for quashing Annexure-A/4, which is a list containing the names of the candidates, who were called to appear for the viva voce test. If this list is ultimately quashed then the rights that have accrued to them to appear in the viva voce test would be lost for ever. Thus, they are necessary parties. Viewed from this angle, this O.A. is not maintainable.

12. In the result, we do not see any merit in this O.A. which is accordingly dismissed, but no order as to costs.

Somnath Sahoo
SOMNATH SAHOO
VICE-CHAIRMAN

20-11-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)