

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTA CK.

ORIGINAL APPLICATION NO. 283 OF 1996  
cuttack, this the 24<sup>th</sup> day of April, 2003.

C. Rammurthy.

....

Applicant.

Vis.

Union of India & Ors.

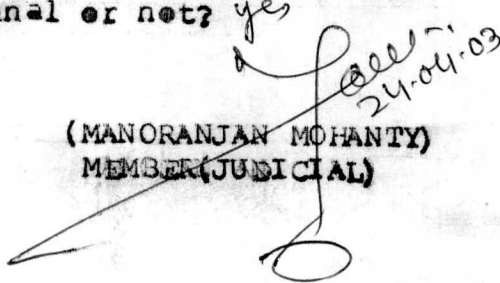
....

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? *yes*

  
(B.N. SOM)  
VICE-CHAIRMAN

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

9  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 283 OF 1996  
Cuttack, this the 24<sup>th</sup> day of April, 2003

CORAM:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN  
A N D  
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL).

....

C. Rammurthy, aged about 58 years,  
S/o. Late C. Sreenivas Murthy, retired  
as a Sr. Engineer from South Eastern  
Railway, Calcutta, residing at 1, Goffur  
Colony, Rourkela.

Applicant.

By legal practitioner: M/s. B. S. H. Rao, A. Kanungo,  
M. K. Biswal, D. P. Dhalsamant,  
Advocates.

; Versus;

1. Union of India, represented through General Manager,  
South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Personnel Officer, South Eastern Railway,  
Garden Reach, Calcutta-43.
3. Railway Board represented through its Secretary,  
Railw Bhawan, New Delhi.

.... Respondents.

By legal practitioner: Mr. Ashok Mohanty,  
Sr. Counsel for Railways.

-----  
O R D E R

MR. MAN CRANJAN MOHANTY, MEMBER (JUDICIAL) :-

Applicant, claiming for inclusion of his name in the panel of A. E. N. of the year 1975, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985. He has also prayed for quashing the order (of rejection of his prayer for inclusion of his name in the panel of 1975) made under Annexure-A/9 dated 10.04.1995.

2. The case of the Applicant is that he joined the Service on 05.11.1959 as an Assistant Permanent way Inspector (Gr. 'C' Technical post) in the Civil Engineering Department of the Railways. With march of time, the Applicant was promoted to the post of permanent way Inspector, Chief Permanent way

76

10  
Inspector, Assistant Engineer and, lastly superannuated (from the post of Senior Engineer) w.e.f. 31.07.1995. He claims that though ; as per the Rules (issued on 31.07.1973, in exercise of powers conferred by the provisions to Article 309 of the Constitution of India) known as Indian Railways Department of Civil Engineer, Assistant Engineer (Class-II) Recruitment (Amendment) Rules, 1973, he ought to have been empanelled for the year 1975, against the vacancies of 25% quota meant for Limited Departmental Competitive Examination (in short 'LDCE') and that, he has, wrongly been shown in the panel of 1979. It has been urged that even though he had submitted several representations for inclusion his name in the panel of 1975 the same was rejected under Annexure-A/9 dated 10.04.1995. Hence this Original Application.

3. Respondents in their counter have elaborately explained the reasons of finalisation of the panel of AEN belatedly; and that it would suffice to clinch the issue in quoting the averments made in paragraph 10 (page-3) of the counter and paragraph 11 (page-6) of the counter which runs thus

\*10.      xxx                      xxx                      xxx                      xxx.

The applicant's allegation regarding filling up of 9 vacancies against 25% through Limited Departmental Competitive Examination, it is submitted that the panel of AEN was published on 15.3.1977 and the scheme namely LDCE of AEN through 25% was introduced w.e.f. 3-6-1977. As such, filling of 9 vacancies against 25% through LDCE for the year 1977 does not arise since the LDCE scheme was not in existence at that time.

11. With reference to the averments made in paragraph 4.10 of the application, it is submitted that the last selection of AEN (Gr. 'B') through 75% was held in the year 1979. Thereafter no selection/LDCE could be held due to pending court cases in the Hon'ble High Court/Cal which has since been decided on 19.6.1990. Thereafter, a

fresh combined selection and LDCE had been held in the year 1991-92 assessing the year-wise vacancies from 1979 to 1990 as per rules. Since the Applicant qualified in the selection held during 1991-92 by obtaining outstanding grade he was fitted against 75% vacancies for the year 1982. Subsequently, the applicant was fitted against the year 1979 having qualified to the LDCE vide this Rly's letter dated 08.05.1992 (Annexure-A-6) to the application.\*

It has further been averred in paragraph 13 of the counter as follows:-

\*13. With reference to the statements made in paragraph 4.13 to 4.15 of the application it is submitted that in sequence to the selection of 1979, the vacancies for 1979 against 25% through LDCE has been calculated for 2 years from 3.6. 1977 (i.e. the date of introduction of LDCE). The Applicant has rightly been fitted against the year of 1979 vide this Rly's letter dated 8.5. 1992 having been qualified in the LDCE. The Applicant's claim for inclusion of his name in the 1975 panel does not arise since there was no scheme of LDCE during the material time. As such, his claim for empanelment to AEN and consequential benefits from the year 1975 does not arise, which was communicated to him in response to his representation vide this Rly's letter dt. 10.4.1995 (Annexure-A-9 to the application)\*.

4. We have heard learned counsel for the Applicant and Mr. Ashok Mohanty, Learned Senior Counsel for the Respondents Railways and perused the records.

5. The moot question for consideration in this Original Application is as to whether the LDCE was in existence in the wing of the Railways; where the Applicant was working and, if it is so, what relief the Applicant is entitled to. For the sake of clarity and to clinch the issue, the relevant portion of the amended rules under Annexure-A/10 dated 31.7.1973 is quoted herein below:-

\*2. Amendment of the Schedule: in the Schedule to the Indian Railways Department of Civil Engineering, Assistant engineers (Class-II), Recruitment Rules, 1965, under columns 10 and 11 for the existing entries, the following entries shall be substituted, namely:-

- (1) (a) 75% of vacancies shall be filled by promotion through selection (which will include viva-voce test and also ordinarily a written test) of permanent class-III staff of the Civil Engineering Department.

XXX

XXX

XXX

XXX.

NOTE : Where it is considered by the Government that the above categories would not constitute an adequate field of choice, permanent staff who have rendered a minimum of three years non-fortuitous service in the grade Rs. 250-380 (AB), after reaching the stage of Rs. 335/- may also be made eligible.

(b) 25% of the vacancies shall be filled through a limited departmental competitive examination open to all permanent Class-III staff in the technical categories in the grade of Assistant Inspectors or chargemen or equivalent grade (Rs. 205-280/-) and above of the Civil Engineering Department who have put in at least 5 years service in the grade\*.


6. But the Government of India, Ministry of Railways issued circular under Annexure-R/1 dated 3.6.1977 wherein it has been stated as under:-

\*2. This question has been, once again, reviewed by the Ministry of Railways and on further consideration of various aspects of the matter, it has now been decided that the scheme of holding the Limited Departmental Competitive Examination to fill up 25% of the vacancies for which panel is required to be framed at any one time in class-II may be introduced in the following Department:-

1. Civil Engineering Department;  
2. Mechanical Engineer and Transportation (power) Department;  
3. Electrical Engineering Department;  
4. Signal and Telecommunication Department;  
5. Traffic Transportation and Commercial Deptt.\*
- 76

7. In view of Annexure-R/1 dated 03.06.1977, the Department/Respondents have rightly considered the case of the Applicant for empanelment in the AEN for the vacancies of the year 1979 under LDCE quota. The most important fact to reckon is that one can aspire to derive benefit of a scheme only after it is introduced in reality. In the instant case, the LDCE Scheme came into effect only from 03.06.1977. Hence, there could be no question of giving anyone benefit of the scheme before that date. That apart, it is also not clear from the record that either the Applicant or any of the aggrieved parties have ever challenged before any Court of law; when specifically notice was issued for holding the examination under LDCE quota during 1975/1977. Having kept quite at that relevant time, when the actual cause of action arose, the Applicant is now estopped under law from challenging the action of the Department long after in the year 1996 in the present Original Application; which would, in a way, tantamount of unsettling a settled thing.

8. We would also like to state here that mere existence of grievance is not enough to approach the Court of law at any point of time. Applicant has also not placed on record, any material to show that the Applicant had agitated the same in the year 1975/1977 for preparing the panel of 1975 nor he has given any reasonable explanation for not approaching the Court/Tribunal within any reasonable time.



9. In the above view of the matter, we find no merit in this Original Application; which is accordingly dismissed by leaving the parties to bear their own costs.

  
(B.N. SOM)  
VICE-CHAIRMAN

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)