

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 59 OF 1996.
Cuttack, this the 13th day of September, 2000.

BAIDYANATH PRADHAN & ORS.

....

APPLICANTS.

- VERSUS -

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? No.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Parvathivam
(SAMNATH S.M.)
VICE-CHAIRMAN
13.9.2000

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 59 OF 1996.

Cuttack, this the 13th day of Sept., 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

1. Baidyanath Pradhan, Aged about 40 years, Son of late Meghanath Pradhan, At Diesel Colony, Boudamunda, Po: Boudamunda, Dist: Sundargarh.
2. Shri P.N. Rao, Aged about 35 years, Son of Late S.N. Murty, Sector C Market, At/Po: Boudamunda, Dist. Sundergarh.
3. Shri N.C. Pradhan, Aged about 35 years, Son of Babrughan Pradhan, At Diesel Colony, At/Po: Boudamunda, Dist: Sundergarh.
4. Shri A.K. Chakrabarty, Aged about 36 years, S/o D. Chakrabarty, Sector A quarter No. 118, At/Po: Boudamunda, Dist. Sundergarh.
5. Shri M. Raju, Aged about 35 years, Son of Late M. Prakash Rao, Sector E Quarter, No. 110, At/Po: Boudamunda, Dist. Sundergarh. ... APPLICANTS.

By legal practitioner: M/s. D.S. Mishra, S. Behera, Advocates.

- V E R S U S -

1. Union of India represented through the Secretary, Railway Board, Railway Bhawan, New Delhi.
2. General Manager, South Eastern Railway Garden Reach, Calcutta-43, West Bengal.
3. Divisional Railway Manager, South Eastern Rly., Chakradharpur Division, At/Po: Chakradharpur, Dist. Singhbhum, Bihar.
4. Senior Divisional Personnel Officer, SE Rly., Chakradharpur Division, At/Po: Chakradharpur, Dist: Singhbhum, Bihar.
5. Senior Divisional Mechanical Engineer (Diesel), S. E. Railway, Chakradharpur Division, At/Po: Boudamunda, District: Sundergarh. ... RESPONDENTS.

By legal practitioner: M/s. R.C. Rath, P.K. Rath, Additional Standing Counsel (Railways).

....

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application, the five applicants have prayed for a direction to the Respondents to fillup the posts of Asst.Diesel Driver through the select list already prepared by a certain date. By way of interim relief, it has been prayed that the posts should not be filled up with any person other than those mentioned in the select list. By order dated 27.11.1996, the prayer for interim relief was disposed of with a direction to the Respondents that posts of five Asst.Diesel Driver should be kept vacant till disposal of the original Application. It is submitted by learned Additional Standing Counsel that accordingly five posts of Asst.Diesel Driver have been kept vacant till today.

2. Applicants' case is that they were initially appointed as Gr.'D'. It is not necessary to mention the nature of appointment and further promotion of all the five applicants. It is only noted that the applicant No.1 was initially appointed as Gr.D Shed Khalasi in Steem Loco shed on 12.5.1979 at Bandamunda and was made permanent on 2.8.1982. Thereafter, he was transferred to Diesel Loco shed and was promoted to the post of Khalasi Helper on 1.5.1986. He was thereafter promoted to the post of Diesel cleaner Helper of Khalasi. Applicant No.2 was also initially appointed as Khalasi in Steem Loco shed and ultimately absorbed as Diesel shed Khalasi in Diesel shed and later on promoted to Diesel cleaner-cum-Khalasi. Other three applicants were also initially appointed in Steem Loco shed as Shed Khalasies in Gr.D and were ultimately come to Diesel Loco shed as Diesel Cleaner and similar other posts. Their grievance is that in 1992, Sr.Divisional Personnel officer, Res.No.4, called for option from Diesel shed employees, Bandamunda to fillup the post of Diesel Asst.Driver and the applicants gave

102
3:

their option for being considered for the above posts, on 5.11.1993, Res. No. 4 directed the applicants to be present at an interview on 8.11.1993. Applicants have stated that they were successful in the interview and were asked to face the medical test. They also appeared and passed the medical test. But no promotion order was issued to them. On 25.4.1994, applicants including other employees filed a petition before the Respondent No. 4 for getting absorbed in the post of Asst. Diesel Driver but till now no steps have been taken. They have stated that they have cleared the trade test as also the medical test but Respondents are mala fide trying to appoint some other employees in the post for which they have been duly selected. In the context of the above facts, they have come up in this original Application with the prayers referred to earlier.

3. Respondents in their counter have stated that initially a proposal was taken up for absorbing Diesel cleaners/Diesel Khalasies of Diesel Shed, Bandamunda and a list of such 54 employees have been drawn up for screening in terms of the instructions issued by the Chief Personnel Officer on 17.7.1992. It was decided to conduct the screening on 8.11.1993 but the screening was not conducted and it was postponed. 23 optees were sent for medical examination and out of them 22 cleared the medical test. Respondents have stated that in order to avoid delay even before their selection the optees were sent for medical test but thereafter the recognised unions objected for filling up of such posts by the optees. The Chief Mechanical Engineer, Garden Reach also directed that the proposal should be dropped and thereafter on getting the inspection note of Chief Mechanical Engineer, the proposal was dropped. Respondents have stated that actually no selection has taken place and the applicants have not been selected in any screening and on the above grounds, the Respondents have

opposed the prayers of the applicants.

4. At our instance, learned Additional Standing appearing for the Respondents had filed a copy of the Recruitment Rule for Diesel Assistant. It is submitted by learned Addl. Standing Counsel that Diesel Asst. and Asst. Diesel Driver is the same post. The method of Recruitment has been issued in circular dated 3.11.87 and has been printed at page 15 of the Indian Railway Establishment Manual Vol. I, 1989 revised edition Chapter I Section B. According to the Recruitment Rules, vacancies in the post of Diesel Asst. are to be filled up 50% by lateral induction from among first Fireman who are atleast 8th class pass and are below 45 years of age; in case of shortfall of such persons, promotion by usual selection procedure from among the second Fireman who are atleast 8th class pass and are below 45 years of age. The balance 50% of the vacancies are to be filled up by lateral induction of matriculate first Firemen with minimum three years of continuous service and in case of shortfall by promotion of matriculate second Firemen through Departmental examination.

5. Law is well settled that the posts can be filled up only in terms of Recruitment Rules. Recruitment Rules provide that the posts of Diesel Asst. Driver should be filled up by lateral induction of first firemen and promotion through usual selection procedure from among the second firemen and therefore, the applicants who are neither the first firemen nor second firemen can not get appointment to the posts of Diesel Asst. Driver in terms of the Recruitment rules. It is also submitted by the Respondents that no selection test was held and merely option was called for from the applicants who opted for the higher post but merely by giving other options, they have not acquired a right to get selected to the posts. In support of the

14
 above contention, reliance has been placed on the decision of the Hon'ble Supreme Court in STATE OF BIHAR VRS. KAUSALA KISHORE SINGH - reported in AIR 1997 SC 2643. It is not necessary to refer to the facts of this case. It is only necessary to note that in para-5 of the judgment, Their Lordships of the Hon'ble Supreme Court have held that asking for option from candidates is only a discretionary matter and the Govt. is not bound to select the candidates on the basis thereof. The applicants have merely opted for the post. No selection has been made. Merely because of giving option and clearance of medical test they can not claim that they should be given appointment. Prayer of applicants is to work out the select list but actually there is no select list. In view of this, we hold that the original Application is without any merit and the same is rejected. No costs.

(G. NARASIMHAM)
 MEMBER (JUDICIAL)

S. N. S.
 SOMNATH SHARMA
 VICE-CHAIRMAN

KNM/CM.