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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 774 OF 1996
Cuttack this the 25th day of January, 2000

Amulya Kumar Nayak & Others

Applicants

-Versus-

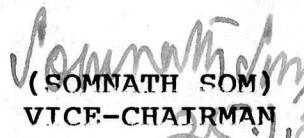
Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to 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 SOM)
Vice-Chairman
25.1.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.774 OF 1996

Cuttack this the 25th day of January, 2000

CORAM:

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

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1. Amulya Kumar Nayak, aged about 30 years, Son of Duryodhan Nayak, of Village: Bainchua, PO: Bainchua, Via: Kotsahi, Dist: Cuttack
2. Sahadeb Mohanty, aged about 28 years, Son of Kangali Charan Mohanty, of Village: Poparda, PO: Unchapada, Via: Tangi, Dist: Cuttack
3. Ashok Kumar Jena, aged about 30 years, S/o. Hemalata Jena, of Village/PO: Bainchua, Dist: Cuttack
4. Kanduri Charan Lenka, aged about 35 years, Son of Chandramani Lenka, of Village: Poparda, PO: Uchhapada, Via: Kotsahi, Dist: Cuttack
5. Manoj Kumar Mohanty, aged about 31 years, Son of Gokulananda Mohanty, At/Po/ Bairi, PS: Badachana, Dist: Jajpur

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Applicants

By the Advocates : M/s. Pradeep Mohapatra
Bebaranjan Ray

-Versus-

1. Union of India represented through the Secretary to Government of India, in Railway Department, Ministry of Railways, Rail Bhawan, New Delhi
2. South Eastern Railway represented through the General Manager, Garden Reach, Calcutta-70043
3. Divisional Railway Manager, Khurda Road, At/Po/PS/Munsif/Dist: Khurda

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Respondents

By the Advocates : Mr. Ashok Mohanty
Standing Counsel
(Railways)

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, five applicants have prayed for direction to the respondents to appoint them as well as all other persons, who had appeared in the recruitment test held in the year 1991-92 in consonance with the notice dated 13.8.1990 at Annexure-1 in Group D category within a date to be fixed by the Tribunal.

2. The facts of this case falling within a short compass can be briefly stated. The case of the applicants is that Divisional Railway Manager, S.E.Railway, Khurda Road in his notice dated 13.8.1990 at Annexure-1 invited applications from the children of the railway employees who had retired on superannuation or voluntarily after 1.1.1987 or will be retiring from service by 31.12.1993 for enrolment of fresh faces as substitutes for utilisation against day to day casual works. Certain conditions were laid down in that notification amongst which one of the conditions ^{is} ~~to~~ the effect is that only one application will be entertained from one family. But it is not necessary for the present purpose to go into these conditions. The applicants' case is that in response to the notification about 18, 000 applications were received at Khurda Road within the stipulated date. After preliminary scrutiny of the applications, the authorities were pleased to issue call letters to all the applicants intimating them of the date(s) of interview. In accordance with the date(s) specified in the call letters, recruitment tests were conducted on different dates in 1991 and 1992. All the applicants had appeared at the recruitment tests which were held in the year 1991.

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and January, 1992 and according to applicants they did fairly well in the tests. Applicants' grievance is that the result of that test has not been published even after passage of several years, that is why they have come up in this petition with the prayers referred to earlier.

3. Respondents in their show cause(as submitted by the learned senior counsel for the respondents to be treated as counter) have opposed the prayer of the applicants. They have stated that for engagement of 500 fresh faces as substitutes in Group D categories for Mechanical and Traffic Department, notice dated 13.8.1990 was issued. In response to this about 3, 000 applications were received and a scrutiny was conducted in 1991-92. Respondents have stated that they have no knowledge about the averment made in the application that similar notices have been issued by the other Divisions. Respondents have stated that certain complaints were received against the tests by the Vigilance Department and all the documents were seized by them and because of this further action could not be taken with regard to publication of the result of the test. Respondents have further stated that there has been no illegality committed in not publishing the result of the test, because the result could not be finalised due to vigilance enquiry. On these grounds respondents have opposed the prayer of the applicants.

4. We have heard Shri D.Ray, learned counsel for the applicants and Shri Ashok Mohanty, learned Sr.counsel appearing for the respondents and also perused the records.

5. It has been submitted by Shri Ray that copy of show cause has not been served on him. We find from the record

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that show cause was filed on 3rd November, 1998.

Thereafter the matter came up on 14.12.1999 when none from the side of the applicants appeared and the matter was posted to 13.1.2000. On 13.1.2000 Shri D.Ray, learned counsel for the applicants was heard for some time and it was directed that the matter should be placed before the Division Bench. On this occasion learned counsel for the petitioner did not mention that copy of show cause had not been served on him. In view of this at the time of hearing he cannot take the plea that copy of show cause has not been served on him. It is submitted by the learned senior counsel that show cause has been received by the other learned counsel and he has shown us the endorsement in token of having received copy of show cause. It is submitted by the learned counsel for the petitioners that show cause must have been served on some other counsel who is not appearing in this case and therefore, such service cannot be taken into account. In any case, on 14.12.1999 when the matter was fixed, learned counsel for the petitioners was not present. Had he been present on 14.12.1999 then he could have asked for copy of show cause. On 13.1.2000 also, when he was present and heard for sometime, he did not raise this question and therefore, to-day as an after-thought when the prayer for further adjournment was refused, this plea cannot be allowed to stand.

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After hearing the learned counsel for both sides, we find that in this case notice at Annexure-1 of the Original Application was in fact issued by the Divisional Railway Manager. It is not necessary for us to determine case in this how far issuance of such notice is legal. Notice

itself indicates that employment procedure was taken in hand for filling up of 500 fresh faces to be engaged as substitutes in the Mechanical and Traffic Department by keeping such selection confined to employees of retired and/or retiring railway servants within the dates mentioned earlier. Railway authorities have kept out of consideration fresh candidates or arbitrarily mentioned that only wards of retired and/or retiring railway employees have to apply and appear at the selection test. Therefore, the prayer of the applicants in this case for direction to respondents to appoint them as also to all other persons, who had appeared in the written tests held in the year 1991-92 in consonance with the notice dated 13.8.1990 at Annexure-1 is wholly misconceived. The applicants themselves have stated that 18, 000 candidates had applied though the figure, according to respondents is 3000. As against this total number of vacancies were 500. Therefore, prayer of the applicants to appoint them as also all others who had applied is wholly misconceived and the same is held to be without any merit and is rejected. The other prayer with which the applicants are concerned is for direction to respondents to appoint them in pursuance of notification at Annexure.1. As the result of the test has not been published, it cannot be said how the applicants have fared in the tests. Therefore, the averments that they have fared well in the test cannot be relied on and the Tribunal cannot go by that. In view of this the prayer which can be dealt is only by directing the respondents that in case the vigilance enquiry in the process of selection has been completed in the meantime, the respondents should act in pursuance of the report of

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the vigilance. In case it is not completed even after passage of about 10 years, Res.2 should take steps to complete the enquiry as soon as possible and we make it clear that in case anything adverse is found in the vigilance enquiry with regard to selection process, then the respondents will be at liberty to take further action as per law with regard to selection test. We note that in this case show cause has been filed in 1998 and the learned counsel for the respondents has no instruction with regard to further development in the matter. In view of this it is directed that the above direction of ours is subject to the condition that the above directions would be given effect to in case matter about the selection has not been disposed of already by the departmental authorities.

We have taken note of the decision in O.A.511/94 of this Tribunal cited by the learned counsel for the applicants.

With the above observation and direction the Original Application is disposed of, but no order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
25.1.2010