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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION NO. 778 of 1996

CUTTACK THIS THE 4th DAY OF JULY, 2001

G.K. Singh and others Applicants

- Versus -

Union of India and 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)

(SUMNATH SOM
VICE-CHAIRMAN)
A. 7.8.001

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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 778 OF 1996

CUTTACK THIS THE 4TH DAY OF JULY, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

THE HON'BLE SHRI G. NARASIMHAM, MEMBER (J)

.....

1. Goutam Kumar Singh,
Aged about 23 years, S/o- M.P. Singh.
2. Lakhikanta Ray, aged 28 years, S/o- Late C.D. Ray.
3. P. Venkatraman, aged 28 years, S/o-P. Suryanarayana.
4. Ashri Viswanathan, Aged 26 years, S/o- A.N. Rao,
5. M.V. Brasad Rao, aged 26 years, S/o- M. Jagannath Rao
6. Madan Nayak, aged 21 years, S/o Kishore Nayak
7. K.L. Narayana, aged 26 years, S/o- Simmayya.
8. S. Mukherjee, aged about 24 years, S/o A.T. Mukherjee.
9. Layani Sagar Tanty, aged about 39 years, S/o Kaldarou.
10. Samud Anthony, aged about 31 years, S/o Manual
11. Biplab Kumar Paul, aged about 24 years, S/o- N.C. Paul.
12. Goutam Paul, aged about 33 years, S/o- Gourang Paul.
13. Bonamu Venkata Ramana Dora, aged 26 years, S/o- B. Balaramudu.
14. Koppusethi Prasad Rao, aged 24 years, S/o K. Rama Rao,
15. Amulya Gope, aged about 33 years, S/o- M.S. Gope.
16. Rabindra Kumar Thakur, aged 24 years, S/o-Laxman Thakur.
17. K. Vijaya Babu, aged about 27 years, S/o- K.N. Rao.
18. G. Venkata Rao, aged about 24 years, S/o- G. Suri.
19. Mespal Guria, aged about 22 years, S/o Rasion Guria.
20. Gangadhar Khandayat, aged about 20 years, S/o-Banduram Khandyat
21. Robert Charke, aged about 25 years, S/o-A. Charke.
22. Pradeep Kumar, aged about 26 years, S/o- H.J. Pasi.

- 23. Raghab Machoua, aged about 29 years, S/o- S. Machoua
- 24. C.H. T. Swamy, aged about 26 years, S/o Ch. Rangayya.
- 25. Sanjaya Kumar Tripathy, aged 24 years, S/o- S.C. Tripathy
- 26. Keshab Kumar Dey, aged 21 years, S/o-Mahanlal Dey.
- 27. Subhas Yadav, aged about 20 years, S/o- Baban
- 28. Jai Prakash Singh, aged about 29 years, S/o-Late R.N. Singh.
- 29. L. Venkateswar Rao, aged 29 years, S/o-L.T. Rao.
- 30. L. Muglayan, aged about 30 years, S/o- Abdul Hamid.

..... Applicants.

By the Advocates

M/s. B.S. Tripathy
M.K. Rath
R.K. Singh

- VERSUS -

- 1. Union of India represented through its General Manager, S.E. Railway, Garden Reach, Calcutta-43 (West Bengal)
- 2. Divisional Railway Manager (Engg.) S.E. Railway, Chakradharpur, West Bengal.
- 3. Divisional Railway Manager (P) S.E. Railway, Chakradharpur, West Bengal.
- 4. A.E.N., S.E. Railway, Bondonunda, Rourkela, Dist. Sundergarh.

..... Respondents

By the Advocates

Mr. Ashok Mohanty.

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN: In this Original Application, thirty applicants have prayed for setting aside the Select List dated.

1.10.1996 (Annexure-3) and for a declaration that applicants are deemed to have been selected. Respondents have filed counter opposing the prayer of the applicants no.11, 16, 20 and 23 have filed rejoinder. Applicants have approached the Tribunal on being unsuccessful in selection for appointment as casual labourer for monsoon period under Assistant Engineer, South Eastern Railway, Bondonunda. Before proceeding further it has to be noted that respondents in their counter have stated that out of 30 applicants in this O.A. 15 i.e. applicants no.4, 7, 8, 9, 10, 13, 15, 17, 19, 21, 22, 26, 27, 28 and 30 did not even apply for the post nor did they take part in the selection. This averment has not been denied by the applicants in their rejoinder. In view of this the Original Application is dismissed at the outset in respect of these 15 applicants.

2. For the purpose of considering the petition it is not necessary to go into too many facts of this case. Some of the admitted facts can be stated first. Sanction of engagement of 646 casual labourers was received from Head Quarters from the monsoon period of 1996 for Chakradharpur Division in letter dated. 16.5.1996. For Bondonunda area the original break up was for 130 casual labourers. But the sanction was subsequently reduced to 115. It was decided to select the candidates from open market and those who would qualify in the physical test would be called for viva-voce test. Physical test ^{consisted} _{considered} ^{S.Jom.}

of covering a distance of 100 meters in 30 seconds carrying a 50kg cement bag or B.G.CST-9 sleeper plate. In response to the employment notice 2887 applications were received and all the candidates were advised through a notification regarding holding of physical test which was conducted by a committee headed by Inspector of Works, Jharsuguda between 25.6.96 and 27.6.96. Respondents have stated that 1064 candidates were found successful in the physical test. The viva-voce was conducted by a Selection Board of A.P.O.(I) Chakradharpur and A.E.N.(Settlement) Chakradharpur. It has been submitted by the Respondents that out of the remaining fifteen applicants 10 candidates i.e. applicants no.1,6,11,16,18,20,23,24,25 & 29 had passed the physical test and qualified for viva-voce test. The applicants no.2,3,5,12 and 14 did not qualify in the physical test and these 5 applicants were not therefore called to viva-voce test. Applicants in their petition have not averred that these 5 applicants who did not qualify in the physical test were failed in the physical test for any extraneous reason. In view of this, these 5 applicants who participated in the physical test but were not successful cannot have any legitimate grievance and the Original Application is rejected so far these 5 applicants are concerned.

S.Jam. 3. The petitioners have challenged the selection process on various grounds which are discussed below.

4. They have stated that eight persons whose names appear against serial nos.6, 7, 29, 53, 55, 79, 108 and 111 in the select list at Annexure 3 did not appear at the physical test but they were

included in the final pannel. Respondents have enclosed along with their counter the records of the Race Committee signed by both the persons conducting the Physical Test and the names of the persons who had cleared the physical test along with signatures of the concerned persons are there in this record. From this we find that out of the 8 persons as above seven have actually come out successfully in the physical test. The name of Sl.No.111 Lukman Ansari does not appear in Annexure 'B' series. In view of this, Respondents are directed to check up if the person against Sl.No.111 in the select list whose name appear to be Lukman Ansari, S/o. Md.Kurban had actually appeared and qualified in the physical test. This direction is being issued because we are not sure if all the papers of the Race Committee have been filled at Annexure 'B'.

5. The second ground taken by applicants is that the persons mentioned against Sl.No.55 and 79 of the select list are brothers being son of one Shri Anadi Sharma but in the select list Sl. No.55 is known as unreserved category and Sl.No.79 has been shown as OBC. It is stated that these two persons have been included in the Select list through collusion. We have already noted from the records of the Race Committee that these two persons against Sl.No.55 and 79 did qualify in physical test. Respondents have stated in reply that both these persons declared their case as OBC but candidate at serial 55 did not attach any caste certificate with the application. He also failed to produce a caste certificate at the time of viva-voce test. Therefore, he was treated as unreserved category. Candidate against Sl.No.

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79 gave a caste certificate showing that he is O.B.C. and therefore he was shown as O.B.C. We find this explanation reasonable and it cannot therefore be said that there was in illegality in including these two persons in the select list and showing their castes differently.

6. The third ground taken is that candidates against Sl. No. 8, 34, 44, 48, 58, 92, 109 and 114 of the Select List did not qualify in the physical test but their names were included in the Select List. We have verified the records of the Race Committee and we find that the name of these 8 persons are amongst the persons who have qualified in the physical test. This contention is therefore held to be without any merit.

7. The next point is that seven persons against Sl. No. 1, 2, 17, 31, 51, 56 and 57 of the Select List are Schedule Tribes but they were shown as Unreserved Category candidates. Respondents have pointed out that this is in accordance with the circular of the Railway Board dated 8.3.89 at Annexure 'C'. We have considered the rival submissions carefully. The general principle is also that if a reserved category candidate is selected by his own merit and not against reserved quota then he has to be shown against a general vacancy. Therefore no illegality is involved in this.

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8. In view of the above all the grounds urged by the applicants for quashing the selection are held to be without any merit as discussed above and are rejected. Respondents have pointed out that 10 applicants had passed physical test and appeared at the viva-voce test but they were not selected

because of their performance in viva-voce test. From the pleadings it appears that in the viva-voce test marks were awarded on literacy, knowledge of local terrain and area of work, aptitude and related skills, previous track experience and work experience. As a committee of two Officials have held the viva-voce test merely on the statement of these applicants, that viva-voce test was not conducted properly, it is not possible to hold that those ten applicants who have cleared the physical test have been disqualified in the viva-voce test illegally. This contention is also therefore held to be without any merit.

9. In view of our above discussion we hold that the application is without any merit and the same is rejected.
No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
4/7/2011