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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.891 OF 1996
Cuttack, this the 29th day of October, 1998


Pradip Kumar Mohapatra Applicant


Vrs.

The Director General, All India Radio
and another 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)


(SOMNATH SOM)
VICE-CHAIRMAN 29.10.98

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CORAM:

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

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Pradip Kumar Mohapatra,
son of Prafulla Chandra Mohapatra, aged about 37 years
At-Station Road, Dhenkanal,
Dist-Dhenkanal, Pin- 759 013 Applicant

By the Advocates - M/s Dr.M.R.Panda
D.K.Pani
Mrs.M.K.Das &M.K.Nayak

Vrs.

1. The Director General ,
All India Radio, New Delhi.
2. Station Director,
All India Radio, Sambalpur (Orissa)....Respondents

By the Advocates - M/s U.B.Mohapatra,
A.C.G.S.C.?
S.K.Purohit
P.K.Sahoo
K.M.H.Niamati
P.Mohapatra

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

Sd/m.

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to consider the case of the applicant for the post of Music Composer (Grade IV) in All India Radio, Sambalpur. By way of interim relief, it was prayed that respondents should be directed not to publish the result of selection and appoint any person ignoring the case of the applicant. On the date of admission of this petition on 17.12.1996 it was ordered that till

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2.1.1997 result should not be published without leave of the Court. But this order was not extended beyond 2.1.1997.

2. The petitioner's case is that he was engaged as a casual and approved Artist of All India Radio, Cuttack and Doordarshan, Bhubaneswar, at different spells of time. The petitioner has passed Sangeet Bisarad in Vocal from Akhil Bharatiya Gandharv Mahavidyalaya Mandal, Bombay in 1993 and stood first in the said subject. He had also participated in a number of programmes under All India Radio, Television and by private bodies. He was also given assignment in a Tele Film which was highly appreciated. The applicant is a talented Musician and Composer, and has composed songs which have been awarded by All India Radio in the year 1992. It is further submitted that the authorities of All India Radio approved him after due audition on 13.8.1992 for Music Comporsorship, Grade II. He has also participated in several music programmes in All India Radio. Station Director, All India Radio, Sambalpur, invited applications through an advertisement dated 1.4.1992 for the post of Music Composer (Grade-IV). Copy of this advertisement is at Annexure-3. The petitioner submitted his application for the post and was called to attend the interview on 25.7.1996. According to the applicant, his performance before the Board was highly appreciated and he was given to understand that he has stood first in the interview and will be selected for the post. The applicant's case is that out of sixteen candidates who were called to the interview, he stood first and he was expecting an appointment order. He came to know that the authorities are going to discard his candidature and select a person who belongs to Sambalpur notwithstanding the applicant's result in the interview and

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his eligibility criteria. According to the petitioner, in the advertisement there was no indication that a local candidate would be given preference and therefore, he apprehends that he is going to be unjustly discriminated against. In view of this, he has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have submitted that the case of the applicant was considered by the respondents, along with others. He appeared at the interview and has been placed in the second position. Appointment order has been issued to the person who has secured first position in the selection. The successful candidate was informed of his selection only after the result was approved by Director-General of All India Radio. According to the respondents, the applicant knew that he has not secured the first position, but has made a wrong averment before the Tribunal. The respondents have stated that selection has been made fairly by the experts nominated by Director General of All India Radio and no preference has been shown to the selected candidate on the ground of his being a man of Sambalpur. On the above grounds, the respondents have opposed the prayer of the petitioner.

4. The selected candidate is one Bijaya Kumar Behera and ^{he} filed an intervention petition which was considered and allowed in order dated 4.9.1998. It was submitted by the learned counsel for the intervenor that he did not wish to file any counter.

5. We have heard Dr.M.R.Panda, the learned counsel for the petitioner, Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the departmental respondents, and Shri S.K.Purohit, the learned lawyer appearing for the intervenor, and have also perused the records. The learned counsel for the petitioner and the learned lawyer for the intervenor have also filed written submissions which have been taken note of.

6. It has been submitted by Dr.M.R.Panda, the learned counsel for the petitioner that in the advertisement at Annexure-3, under General Instructions it has been mentioned that while calling candidates for interview preference will be given to candidates having higher qualification and greater experience. It is stated that the petitioner has higher qualification, but this has not been taken note of. The second point urged is that in the process of selection eligible candidates have not been considered and this has vitiated the selection. Thirdly, it has been urged that the Selection Committee held the practical test on two days, i.e., on 25.7.1996 and 26.7.1996, but the marks were given to the candidates only on 26.7.1996. This, according to the learned counsel for the petitioner, shows that even though practical test was conducted for some candidates including the applicant on 25.7.1996, the marks have been given on the next day and in the process , the applicant has not been suitably assessed. The above contentions of the learned counsel for the petitioner are discussed below.

7. In the advertisement it has been mentioned that preference will be given to candidates having higher qualification. The learned counsel for the petitioner has urged that from the assessment records filed by the respondents it is clear that the selection has been made on the basis of marks in practical test and interview, and no credit has been given to the higher qualification of the applicant. From the averments in the O.A. and the written note filed by the learned counsel for the intervenor, we find that both the petitioner and the intervenor have passed Visharad in Vocal from Akhil Bharatiya Gandharv Mahavidyalaya, Bombay. The intervenor has also passed Sangeet Pravakar from Prayag Sangeet Samiti, Allahabad. Both

of them have composed light music programmes, have been Vocal Artists in All India Radio and have received different Awards. In view of this, prima facie it does not appear that the petitioner has higher qualification. Moreover, this is a matter to be taken note of by the Selection Committee and it is not possible for the Tribunal to enter into a specialised field like Music to take a view on this aspect. The second aspect of the matter is that question of preference would come only if two persons are adjudged equal. In the instant case, on the basis of practical test and interview, the intervenor has been assigned higher marks and he has been placed in the higher position. In that situation, question of giving any special preference to the petitioner does not arise, and this contention of the learned counsel for the applicant is accordingly rejected.

8. The learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in the case of Miss Shainda Hasan v. State of Uttar Pradesh and others, AIR 1990 SC 1381. The point decided there was that a Selection Committee cannot relax qualification of experience in favour of the selected candidate in the absence of any statutory rule or any indication in the advertisement conferring such power on the appointing authority. In this case, it has not been made out that any qualification was relaxed in favour of the selected candidate, the intervenor and therefore, this decision has no application to the facts and circumstances of this case.

9. The second contention of the learned counsel for the petitioner is also without any merit. It has been urged that in the process of selection eligible candidates have not been considered. The applicant is an eligible candidate and his case has been duly considered. We have already dealt with the submissions regarding giving

preference to the applicant. The Selection Committee has assigned second position to the applicant and first position to the intervenor. From this, it is clear that the petitioner's case has been considered by the Selection Committee and the departmental authorities. The prayer in the O.A. is only for a direction to the departmental authorities to consider the candidature of the petitioner and this has already been done.

10. The third point urged is that different candidates were called for practical test on two days, i.e., on 25th and 26th July 1996. It has been submitted by the learned counsel for the petitioner that the post being that of a Music Composer and the candidates being all Vocalists, the Selection Committee would have heard their performance and should have assigned them marks on the very same day. It is difficult to witness the performance of a candidate in Vocal Music on a particular and assign mark to him on the next day. On this ground, the learned counsel for the petitioner has assailed the assessment of the Selection Committee. We must note at this stage that the Tribunal cannot sit on judgment on the assessment made by the Selection Committee. We find that the Selection Committee had three outside assessors which included the eminent Musicians Shri Raghunath Panigrahi and also Shri Santanu Mohapatra, names which do not require any introduction in the field of Music in Orissa. The respondents have filed Annexures R/9 and R/10 showing the marks given by the Selection Committee to the two sets of candidates who were called for practical test and interview on 25th and 26th July, 1996. From this, it cannot be held that assessment of the candidates who were called for practical test on 25th

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July 1996 was made on the next day, i.e., 26th July 1996. The assessment sheets have been signed for both the dates on 26th July 1996. From this, it cannot be held that assessment of the candidates who were called for practical test on 25th was made on the next day, i.e., 26th July 1996. The assessment sheets which have been fair-copied and drawn up have been signed on the same day for both sets of candidates. But this does not firstly prove that the candidates who appeared before the Selection Committee on 25th July 1996 were not assigned marks on the same day. Secondly, this also does not prove that the Selection Committee has assessed the candidates called on 25th July 1996 which included the applicant incorrectly.

11. In consideration of all the above, we hold that the applicant has not been able to make out a case for assailing the selection. In any case, his prayer in the O.A. is only for consideration of his case which has already been done. We, therefore, find no merit in the petition and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN
29.10.98