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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 931 of 1996
Cuttack, this the 11th day of March, 2003

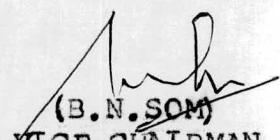
Phillip Kumar Samal & another. Applicants.

- Versus -

Union of India & Others. 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


(B.N. SOM)
VICE-CHAIRMAN


11/03/03
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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CUTTACK BENCH: CUTTACK.

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C O R A M:

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

...

1. Dillip Kumar Samal, Aged about 27 years,
S/o Dayanidhi Samal, Vill. Narayanpur,
PO: Angulai, Dist. Kendrapara.
2. Magendra Kumar Samal, S/o Sachidananda Samal,
At/PO: Barada, Via: Balichandrapur, Dist. Cuttack.

.... Applicants.

By legal practitioner: M/s. S. K. Purohit, P. K. Sahoo,
P. Mohapatra, K. N. A. Niamati,
S. H. Ali Rizwar, Advocates.

: VTS. :

1. Union of India represented by the General Manager,
South Eastern Railways, Garden Reach, Calcutta-43.
2. Chief workshop Manager, Carriage Repair workshop,
South Eastern Railways, Mancheswar, Bhubaneswar.

.... Respondents.

By legal practitioner: Mr. Ashok Mohanty,
Senior Counsel.

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O R D E R
(ORAL)

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL) :-

The two Applicants namely D.K. Samal and M.K. Samal,
(being trained apprentices of the year 1993) had appeared
the examination conducted by the Railways for Gr.D post.
They were found unsuitable in the written test conducted
by the Railways. When the panel of successful candidates

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(to be appointed in the post, in question) was published under Annexure-4 on 09.11.1996, they approached this Tribunal in the present Original Application under sec. 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- *(a) to direct the Respondents to recruit the Applicants on priority basis on the presently available and future vacancies in accordance with the guidelines prescribed by the Honourable Supreme Court and the Act;
- (b) to quash the present select list Annexure-4*.

2. In support of the challenge, the Applicants have made several bald allegations without any concrete evidences.

3. However, the Respondents have filed their counter justifying their action in the matter of conducting the examination for filling up of the post of Gr.D, pursuant to Annexure-3 dated 14.5.1996. It has been stated by the Respondents, in their counter, that it is the only statutory obligation on their part to provide training and not to absorb the trained apprentices. In the notice it was categorically and specifically stated that the administration is not under any obligation to provide jobs to the trainee in any category and that, trainees (like the Applicants) were, however, given stipend and, after completion of the training, they were discharged. It has been specifically averred in the counter that no specific instances have

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been furnished by the Applicants with regard to the involvement by the relations in the examination, that no persons ineligible were ever noticed to appear the said examination ; and, that during the examination sufficient precautionary measure were adopted by the Respondents to conduct the said examination in a free and fair manner. It has also been disclosed in the counter that on receipt of allegations, the matter was enquired into administratively and having found no truth , no heed was paid to such unfounded allegations made by the unsuccessful candidates/their guardians. It has also been submitted by the Respondents that before joining the apprentice training in the year 1990, a triparty contract was made by the employer, Regional Director of Apprentice Training(Calcutta) and the trainees concerned(under Annexure-D) and, as per the term of the said contract (and the office order under Annexures-E and F) after completion of the training, the trainees will be terminated automatically as per rules. In this view of the matter, the Respondents have prayed for dismissal of this original Application.

4. None appears for the Applicant on repeated call. However, since it is a year old matter of the year 1996, where pleadings have been completed long ago, with the aid and assistance of Shri Ashok Mohanty, Learned Sr. Counsel for the Respondents/Railways, we have perused the records. We have also heard him at length.

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5. Law is well settled in a plethora of judicial pronouncement of the Apex Court (as well as of various Courts/Tribunals in the country) that before passing any order affecting any person, he/she should be given adequate opportunity to have his/her say in the matter. Even though, in this Original Application, the Applicants have prayed for quashing of the Selection list (under Annexure-4 dated 09.11.1996) drawn by the Railway administration,; they have not been made as Opposite Parties/Respondents in this Original Application. As such, this Original Application suffers from non-joinder of necessary parties and, as such, needs no interference by this Tribunal.

6. Further more, it is to be noted here that law is well settled that a person having appeared in an examination and failed, is estopped to challenge the validity/legality of the examination/manner of conducting the examination etc. As such, here in this instant case, the Applicants having appeared the said examination and having failed in the said examination are estopped to challenge the same on the ground that the said examination being not done in accordance with rules etc. Further, burden of proof lies on the persons who allege anything against any person. Applicants having miserably failed to substantiate any of the allegations , levelled in this Original Application, interference of this Tribunal, at this stage is totally uncalled for.

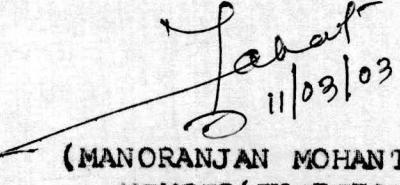
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7. In the above said premises, this Original Application is dismissed; by leaving the parties to bear their own costs.


(B.N. SOM)
VICE-CHAIRMAN


11/03/03
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL)