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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 195 OF 1998
Cuttack, this the 16th day of August, 1999

Susanta Mishra

.....

Applicant

Vrs.

Union of India and 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.*

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
10.8.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 195 OF 1998
Cuttack, this the 16th day of August, 1999

CORAM:

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

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1. Susanta Mishra, aged about 34 years, son of late Bhabani Charan Mishra, now working as Junior Engineer, Gr.I (Con.) in the office of Senior Project Manager, Doubling-II, S.E.Railway, Chandrasekharpur, Bhubaneswar, permanent resident of Plot No.1087, Jayadurga Nagar, Bomikhali, P.O-Bhubaneswar-751 006, District-Khurda (Orissa).
2. Chandeswar Prasad Singh, aged about 28 years, son of B.P.Singh, Vill/PO-Mayhauli, Dist.Vaishali, Bihar-844 123, now working as J.E/2/Works (Con) in the office of Senior Project Manager/DI/S.E.Railway, Chandrasekharpur, Bhubaneswar, at present residing in qr. No. Con/A/I Unit-I, Railway Colony, Bhubaneswar, P.O-Bhubaneswar G.P.O, District-Khurda (Orissa)

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Applicants

Advocates for applicant - M/s P.K.Jena
N.Panda

Vrs.

1. Union of India represented through its Chief personnel Officer, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
2. Chief Engineer, South Eastern Railways, Garden Reach, Calcutta-43, West Bengal.

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Respondents
Advocate for respondents - Mr.D.N.Misra
Standing Counsel

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioners have prayed for a declaration that the cut-off date 1.1.1997 as

fixed by the respondents in Annexure-3 is illegal. They have also prayed for a declaration that they are eligible to appear at the Limited Departmental Competitive Examination (LDCE) for selection against 30% quota of Assistant Engineers, Group-B, scheduled to be held on 26.4.1997. By way of interim relief, it was claimed that the respondents should be directed to permit the applicants to appear at the written examination on 26.4.1998 during the pendency of the O.A.

2. On the date of admission on 16.4.1998 the prayer for interim relief was disposed of with a direction to the respondents that these two applicants should be allowed to appear at the examination held on 26.4.1998 but their results should not be declared without leave of the Court. It was also made clear that direction to the respondents to allow the applicants to appear at the examination is without prejudice to the claims of the respective parties with regard to the points raised in the O.A.

3. The case of the applicants is that they were initially appointed as Apprentice Inspector Grade III and joined the post on 6.1.1992 and 9.1.1992. On 3.11.1997 Chief Personnel Officer (respondent no.1) circulated a notice (Annexure-1) in which applications were invited from willing staff to participate in the LDCE for selection against 30% vacancies in the cadre of Assistant Engineers, Group-B of Civil Engineering Department. In the notice the eligibility criterion was stipulated as follows:

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"All staff of Civil Engineering Department who have completed 5 years regular service (non-fortuitous) as on 1.1.97 in the grade the minimum of which is Rs.1400-2300/- or in higher Grade "C" will be eligible."

The notice dated 3.11.1997 is at Annexure-3. The applicants had already completed more than five years of service on the date of advertisement and were in the scale of Rs.1400-2300/-, but they had fallen short of five days and eight days respectively from the cut-off date 1.1.1997 fixed by the respondents in their advertisement. As all their batch mates were eligible to appear at the LDCE and the cut-off date was arbitrarily fixed retrospectively to the inconvenience of the applicants, they filed representations dated 21.11.1997 and 26.11.1997 to respondent no.1. These representations were duly forwarded by the Chief Project Manager. Later on in order dated 12.3.1998, at Annexure-6 the programme for holding the written examination along with a list of eligible candidates was circulated. The applicants' names were not included in the list. The applicants have stated that four other persons Ramesh Chandra, B.Anand Rao, V.Kishore Kumar and K.Niranjan, who did not fulfil the eligibility criterion of five years ^{of} non-~~fortuitous~~ service were ^{^ Wm} included in this list and called to the written examination. The applicants have further stated that even though the notice inviting applications was issued on 3.11.1997 the cut-off date was fixed eleven months earlier with effect from 1.1.1997. In the past such a long gap has never been given. They have stated that the fixation of the cut-off date as 1.1.1997 is arbitrary and capricious and that is how they have come up in this petition with the prayers referred to earlier.

4. The respondents in their counter have stated that in sequence to selection of Assistant Engineers against 70% vacancies, a circular dated 3.11.1997 was issued inviting applications from eligible candidates against 30% vacancies for making a panel of forty candidates. The eligibility criterion was five years of

regular (non-fortuitous) service as on 1.1.1997 in the is Rs.1400/- in the scale of grade minimum of which is Rs.1400-2300/- or in higher Group-C grade. The respondents have stated that the date of eligibility fixed for 30% quota to be filled through LDCE is the same as the date fixed for selection against 70% quota as per Railway Board's letter dated 18.6.1985 at Annexure-R/1. As such the cut-off date for both the selections against 70% quota and 30% quota was fixed as 1.1.1997 and the vacancies for the two groups were assessed for two years taking the vacancy position from 1.1.1997 to 31.12.1998. As the applicants were short of five years of non-fortuitous service as on 1.1.1997 they were not eligible to appear in this examination even though their names were forwarded by the Chief Project Manager. As per interim order of the Tribunal the two applicants were allowed to take the written examination but their results have not been published. The respondents have further stated that in the list of candidates declared eligible to appear in the examination, which was circulated at Annexure-6, it has been clearly mentioned that the candidature of the persons in the list has been accepted provisionally and if any candidate is subsequently found ineligible his name will be deleted. The respondents have stated that a part panel against 30% quota has already been published and this has been enclosed at Annexure-R/2 and none of the four candidates mentioned by the applicants who according to the applicants were wrongly called has found place in the panel. On the above grounds, the respondents have opposed the prayer of the applicant.

J. N. Jom.

5. We have heard Shri P.K.Jena, the learned counsel for the petitioners and Shri D.N.Mishra, the learned Standing Counsel for the respondents and have perused the records. The learned counsel for the petitioners has relied on the condition of eligibility the

gist of which has been printed at page 144 of **Nirmalendu Bhushan Bhattacharjee's Gude to Railwaymen on Establishment Rules and Labour Laws, 1993 Edition.** It has been submitted by the learned counsel for the petitioner that the eligibility condition as mentioned in this Book does not indicate any cut-off date. Secondly, it is submitted that even granting for argument's sake that the Railways can fix a cut-off date, such a date should be fixed in a reasonable fashion and cannot be arbitrarily fixed. Thirdly, it is submitted that never in the past there has been a gap of eleven months from the cut-off date and the date of issuing of the notice calling for applications for sitting at the examination. In support of this, the learned counsel for the petitioners has filed a notice for the examination against 30% quota of vacancies which has been issued on 4.6.1999 and in this the cut-off date has been given as 1.4.1999. We have considered the submissions of the learned counsel for the petitioners carefully.

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6. As the eligibility criterion lays down five years regular (non-fortuitous) service in a certain pay scale as mentioned above, it is clear that a cut-off date has to be fixed with reference to which the five years regular service has to be determined. In this case the cut-off date has been fixed on 1.1.1997. There is no doubt a gap of eleven months from the cut-off date and the date of issuing of the notice dated 3.11.1997. But this is due to the fact that the cut-off date for the 70% quota had been fixed at 1.1.1997. According to the Railway Board's circular dated 18.6.1985, paragraph 2 (iii), the date of eligibility to be fixed for LDCE should be the same as the one fixed for the selection against 75% of the vacancies. Earlier the break-up of the quota was 75% by selection and 25% by LDCE. Later the ratio has been changed to 70% and

30%. In view of this, it is clear that the respondents have fixed the cut-off date as 1.1.1997 because for the 70% quota that was the cut-off date fixed and under orders of the Railway Board the same cut-off date has to be fixed for both the groups. We therefore find nothing illegal in this. No doubt the applicants have missed that examination because they fell short of the required five years regular (non-fortuitous) service only by a few days, having joined on 6.1.1992 and 9.1.1992. But that cannot be helped. Whatever may be the cut-off date there will be some candidates who will fall short of the required minimum period of service by that cut-off date by few days or weeks. No grievance can therefore be made of that. It, however, remains to be said that if the gap between the cut-off date and the date of the notice inviting applications is too long, more number of persons in the meantime are likely to have completed the required minimum period of service by the date of advertisement and therefore, it is desirable to keep the gap between the two dates as short as possible.

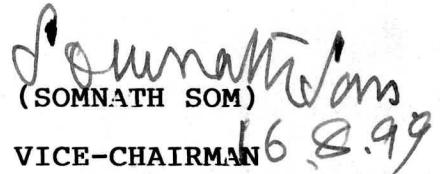
7. As regards the claim of the applicants that four other persons who were similarly placed as the applicants have been called to the examination, the respondents have pointed out that they have been admitted to the examination provisionally and if they are found ineligible, then they will not be selected. In any case in the final list of selected candidates which is at Annexure-R/2, none of these four candidates has found place. Therefore, the applicants have not been prejudiced in any way by the alleged incorrect action of the respondents in calling the four persons to the written examination.

J. J. Joshi

8. In consideration of all the above, we hold that the applicants have not been able to make out a case for the relief claimed by them. The Original Application is held to be without any merit and is rejected. The respondents are directed not to publish the result of the two applicants in the examination at which they have appeared by virtue of the interim order of the Tribunal. No costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
16.8.99
VICE-CHAIRMAN

AN/PS