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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 196 OF 1998
Cuttack this the 27th day of Oct. /2000

Paramananda Gupta

...

Applicant(s)

-versus-

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Ne*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NI*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.10.2000

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)
27.10.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.196 OF 1998
Cuttack this the 27th day of October/2000

CORAM:

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

...

Paramananda Gupta aged about 40 years
S/o. Late Akshaibar Prasad Gupta,
At - Jalkal Road, PO/Dist - Deobaria(U.P.)
AT present working as Senior Section Engineer
(P.Way), Baranga Railway Station
At/PO - Baranga, Dist - Khurda

...

Applicant

By the Advocates

Mr.S.C.Samantray

-VERSUS-

1. Union of India represented by its
General Manager, South Eastern Railway,
Calcutta, Garden Reach, Calcutta
2. Divisional Railway Manager, Khurda
S.E.Railway, Khurda Road, At/PO/Dist:Khurda
3. Senior Divisional Engineer(Co-ordination)
Khurda S.E.Railway, Khurda Road,
At/PO/Dist - Khurda
4. Senior Divisional Personal Officer,
Khurda, S.E.Railway, Khurda Road,
At/PO/Dist - Khurda
5. P.K.Ghose, Section Engineer Permanent
Way Inspector in-charge of Baranga Unit,
now at/PO : Baitarani Road, Dist-Jajpur

...

Respondents

By the Advocates

Ms. C.Kasturi

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : Applicant, Paramananda
Gupta, P.W.I. Gr.II under S.E.Railway had appeared in the
Departmental selection test for promotion to the post of P.W.I.
Grade-I (now called Section Engineer) conducted during August,
1997 and February, 1998 in respect of the vacancies of the year
1997 along with Respondent No.5, P.K. Ghosh. Both of them
qualified themselves in the written test and by order dated
3.2.1998 under Annexure-8 they along with three others were

called to appear at the viva voce test on 9.2.1998. On the basis of written test and viva voce test, S/Shri S.K. Ghosh, Pradip Kumar and P.K. Ghosh (Respondent No.5) were finally empanelled for promotion. The applicant's name does not find place in this panel. Subsequently by order dated 19.3.1998 under Annexure-9/1 these three candidates have been given posting orders on the promotional posts. In this Original Application the applicant prays for quashing Annexure-9 and 9/1 so far as they relate to Respondent No.5 and also for issue of direction to the Departmental Respondents to consider the case of the applicant for promotion to the post of Section Engineer, i.e. P.W.I. Gr.I.

2. The case of the applicant is that in the year 1990, he was promoted to the cadre of P.W.I. Gr.II. He holds a Diploma in Civil Engineering. He was transferred to Barang on 11.4.1995 against the vacancies of Chief Permanent Way Inspector, i.e., Senior Section Engineer. In the departmental selection test conducted in the year 1994 and 1996 for considering promotion to P.W.I. Gr.I he having been called participated in those tests. As he was not selected he made several representations under Annexure-6 series whereupon out of grudge he was transferred and posted at Khurda Road, which transfer order has been challenged before this Tribunal in Original Application No.750/97. Only on the direction of this Tribunal in this O.A., his result in regard to viva voce test in December/96 was communicated to him. Again for the vacancies of the year 1997, he was called to appear in the departmental selection test. As he came out successful in the written test he was called to appear in the viva voce test under Annexure-8 and in that notice his name

was at Sl. No.3. However, in the final list of empanelment Respondent No.5, who is junior to him found place and the case of the applicant was fully ignored. In fact his performance in the viva voce was very good and his service record is without any blemish and is supported by many certificates of appreciation under Annexure-1 series. Hence this Application.

3. Respondent No.5 had neither entered appearance nor filed any counter.

The Departmental Respondents in their counter take the stand that his posting at Barang against the vacancy of Chief P.W.I. was in his capacity as P.W.I Gr.II and his salary was being charged against that post. This does not mean that he had shouldered the higher responsibility. In fact in someother P.W.I. Units also P.W.I. Gr.II are working in charges of Chief P.W.I., keeping in view the safety and efficiency aspect of track maintainence. He was not transferred to Khurda Road out of grudge, but was transferred in response to his representation dated 30.8.1997 under Annexure-R/3. In order to fill up six un reserved vacancies available in the year 1997, the applicant along with others were called to appear in the written test on 9.8.1997 and on the basis of performance in the written test five of them including applicant and Respondent No.5 were called to the viva voce test under Annexure-8. Due to poor performance in the viva voce test the applicant could not secure the required minimum qualifying marks and as such he could not be empanelled. Respondent No.5, on the other hand had secured the qualifying marks and was accordingly empanelled. In the viva voce test in terms of Rule 219 of the Indian Railway Establishment Manual, an unreserved candidate must have to secure 60% marks in professional ability and 60% marks in aggregate to be placed

in the panel. The applicant neither secured 60% marks in the professional ability nor 60% in aggregate. He had secured 29.85 marks out of 50 marks in professional ability and 53.85 out of 100 marks in aggregate. There was no malafide in the test as alleged by the applicant. On these grounds the departmental respondents pray for dismissal of this Original Application.

4. The applicant in the rejoinder more or less reiterated the averments as made in the Original Application.

5. By order dated 17.4.1998, this Tribunal directed the departmental respondents that in case of out of three vacant posts of Section Engineer (P.W.I.) there is one or more posts belonging to general category, then the departmental respondents should fill up the last general category post only with the leave of this Tribunal.

6. Heard the learned counsel on record. Also perused the records.

The main point for determination is whether the applicant was unjustly disqualified in the viva voce test. The contention of the applicant is that as he was not selected he made a series of representations to the Department in connection with his non selection in the earlier selection test whereupon the Department bore grudge against him and unjustly transferred him to Khurda Road and he challenged this transfer in Original Application No.750/97. On this account the Department became still more vindictive and deliberately disqualified him in the viva voce test. We do not see any force in this line of reasonings, because had the Department been motivated, they would have had ample scope to eliminate the applicant in the written test itself. On the other hand

even in the selection of the year 1996 and in this selection the applicant was declared successful by the Department in the written test. There is no material at all available in the record to consider the prayer of the applicant to quash the selection and promotion of Respondent No.5.

7. In the result, we do not see any merit in this Application which is accordingly dismissed, but without any order as to costs.

The interim order dated 17.4.1998 stands vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
27.10.2000

L. Narasimham 27.10.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//