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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION Nos.555/98 & 107/99
Cuttack this the 8th day of November/02

IN O.A. No.555/98

Haribandhu Swain & Others ... **Applicants**

-VERSUS-

Union of India & Others ... **Respondents**

IN O.A. No.107/99

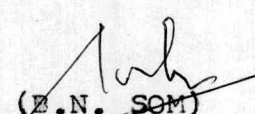
Pratap Kumar Bharimal & Another ... **Applicants**


-VERSUS-

Union of India & Others ... **Respondents**

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the No.
Central Administrative Tribunal or not ?


(E.N. SOM)
VICE-CHAIRMAN


(A.S. KHAN)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.555/98 & 107/99
Cuttack this the 8th day of Nov./02

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR. A.S. KHAN, MEMBER(JUDICIAL)

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IN O.A. No.55/98

1. Haribandhu Swain, aged about 24 years, S/o. Late Nilakantha Swain, At-Rengal, PO-Godiput Matiapada, Dist-Puri
2. Niranjan Behera, aged about 29 years, S/o.Loknath Behera, At-Barpada, PO-Godiput Matiapada, Dist-Puri
3. Manoj Kumar Badajena, aged about 24 years, S/o.Bidyadhar Badajena, At/PO-Kantia, Dist-Khurda
4. Ramakanta Mangaraj, aged about 24 years, S/o. Bimbadhar Mangaraj, At/PO-Sanpada, Dist-Khurda
5. Rabindra Kumar Bharimal, aged about 30 years, S/o. Jayakrushna Bharimal, At-Mahura, PO-Retanga, Dist-Khurda
6. Sarata Chandra Maharana, aged about 25 years, S/o. Krushna Chandra Maharana, At-Govindpur, PO-Janla Dist-Khurda

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Applicants

By the Advocates

Mr..Biswajit Mohanty-I

-VERSUS-

1. Union of India represented through General Manager, South Eastern Railways, Garden Reach, Calcutta, West Bengal
2. Chief Personel Officer, South Eastern Railways, Garden Reach, Calcutta, West Bengal
3. Divisional Railway Manager (P), Khurda Road, South Eastern Railway/East Coast Railways, Jatni, Dist-Khurda

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Respondents

By the Advocates

Mr.P.K.Mishra,
Addl.Standing Counsel
(Railways)

Jb

IN O.A. NO.107/99

1. Pratap Kumar Bharimal, aged about 33 years,
S/o. Jaykrushna Bharimal, At-Mahura, PO-Retanga,
Dist-Khurda
2. Durgamadhah Baliarsingh, aged about 25 years,
S/o. Sarangadhar Baliarsingh, At-Khudpur, PO-Bhimpur
Dist-Khurda

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Applicants

By the Advocates

M/s.B.Mohanty
S.Patra

-VERSUS-

1. Union of India represented through General Manager
South Eastern Railways, Garden Reach, Calcutta,
West Bengal
2. Chief Personel Officer, South Eastern Railways,
Garden Reach, Calcutta, West Bengal

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Respondents

By the Advocates

Mr.B.K. Bal,
Addl.Standing Counsel
(Railways)

O R D E R

MR. A.S. KHAN, MEMBER(J) : As the issues involved in the above Original Applications are the same, a common order is passed in these two matters.

2. The applicants in the above Original Applications seek directions to the Respondents to engage the applicants as Casual Labourers.

3. The case of the applicants in the above Original Applications is that in pursuance to the Notification dated 28.5.1996, the Respondents invited applications for engagement of 907 casual labourers on daily rated basis in the Engineering Department of South Eastern Railways, that the applicants applied for the same and the applicants were empanelled as casual labourers, that in the year 1996, the Respondents engaged 451 empanelled candidates, that in the

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year 1998 the Respondents engaged another 115 empanelled candidates and sometime later 100 other empanelled candidates were also engaged by the Respondents, that the remaining 197 persons in the approved panel in which the applicants were included, have not been engaged so far, that third Respondent by order dated 20.10.1997 had informed second Respondent that there was shortage of man-power for track maintenance ^{and} that the empanelled candidates should be given enagement for track maintainence, that the Respondents have not engaged the applicants inspite of shortage of manpower, that the representation dated 15.9.1998 by the applicants have not been considered by the Respondents, that failure of the Respondents to engage the applicants is arbitrary, discriminatory and illegal. Under the circumstances, the applicants in the above Original Applications have prayed for relief stated above.

4. The Respondents in their reply have contended that it is true that applications were invited for engagement of 907 casual labourers on daily rated basis by Notification dated 28.5.1996, but it was categorically mentioned in the Notification that the earlier retrenched casual labourers should be given preference when compared to the outsiders, that the number of posts were reduced from 907 to 812 by order dated 21.6.1996, that 611 candidates were selected and the list was published on 10.10.1996, that only 451 candidates joined duty on or before 31.10.1996, that the C.P.O. by his letter dated 31.10.1996, directed that no fresh casual labourers should be engaged until further orders, that the names of the applicants did not find place

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in the panel consisting of 611 candidates, that the applicants have no right to be engaged as casual labourers and that the action of the Respondents cannot be considered to be arbitrary or discriminatory or illegal. Under these circumstances, the Respondents pray for dismissal of the above Original Applications.

5. Heard the learned counsel for the Applicants and the Respondents in both the Original Applications one after the other and considered all the pleadings and records of the case.



6. The short point for our consideration in these cases is whether the applicants are entitled for appointment as Casual labourers. It is not indispute that the Respondents invited applications for 907 posts by the Notification dated 28-05-1996. However, by order dated 21-06-1996, the number of posts were reduced from 907 to 812. It is also not disputed, that the Applicants's names were not found in the list of 611 candidates empanelled on 10-10-1996. However, the learned Counsel for the Applicants vehemently contended that they were selected subsequently ~~but~~ they were not engaged by the Respondents even though there was shortage of manpower. Under these circumstances, the learned Counsel for the Applicants submitted that the Respondents have committed discrimination in engaging persons in the first list and by not engaging persons in the second list. Admittedly, the Applicants's names

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are not found in the list of 611 candidates. The Respondents deny that the Applicants were subsequently empanelled. The Applicants have not established that they had been empanelled at all. Even assuming that the Applicants were empanelled subsequently, the Applicants have not brought to our notice that anybody from the alleged ^{second} list has been engaged by the Respondents. Hence the contention of the Applicants that there is discrimination cannot be accepted. The decisions cited by the Counsel for the Applicants in this regard are not applicable to the facts and circumstances of these cases. Moreover, the selection for any post does not give right to appointment. It is within the discretion of the government to appoint the persons selected. The candidates cannot force the Govt. to appoint them. It is settled law that the courts and Tribunals cannot direct the Govt. to make appointment. In this connection, we may refer to a decision of the Hon'ble Supreme Court reported in AIR 1998 SC 375.

The relevant portion of the said decision is as follows:

"Merely because there were some vacant posts of Copy Holders and the director of the press had recommended to the Govt. to fillup those posts it was not open to the Tribunal to direct the government to fillup those posts even though it had good reasons not to do so. It should have been appreciated by the Tribunal that mere empanelment or inclusion of one's name in the selection list does not give him a right to be appointed. So also if the Govt. decides not to make further appointments for a valid reason, it cannot be said that it has acted arbitrarily by not appointing those whose

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names are included in the Selection list. whether to fillup a postor not is a policy decision and unless it is shown to be arbitrary it is not open to the Tribunal to interfere with such decision of the Govt. and direct it to make further appointments*.

The same view had been taken by the Hon'ble Apex court in the following decisions also:-

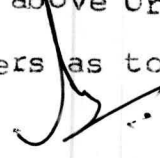
1. AIR 1994 SC 736 - STATE OF BIHAR AND OTHERS VRS. SECRETARIAT ASSISTANT SUCCESSFUL EXAMINEES UNION 1986 AND OTHERS.
2. AIR 1984 SC 1850- JATINDER KUMAR AND OTHERS VRS. STATE OF PUNJAB AND OTHERS.



7. In view of the above categorical pronouncement of the Hon'ble Supreme Court, we are of the view that we cannot interfere and direct the Respondents in the matter of filling up of the vacancies even if there are some vacancies. Hence there are no merits in the above Original Applications.

8. In the result, therefore, the above Original Applications are dismissed with no orders as to costs.


(B.N. SOM)
VICE-CHAIRMAN


(A.S. KHAN)
MEMBER (JUDICIAL)

KNM/CM.