

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS. 595 & 596/1998
Cuttack this the 27th day of March/2001

IN O.A.595/98

Tuffan Ghadei ... Applicant
-VERSUS-
Union of India & Others ... Respondents

IN O.A.596/98

Nalla Eswar Raju ... Applicant
-VERSUS-
Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? ✓
2. Whether it be circulated to all the Benches of the N^o - Central Administrative Tribunal or not ?

S. N. S. S.
SOMNATH SOMAN
VICE-CHAIRMAN
27.3.2001

27.3.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.595 & 596/1998
Cuttack this the 27th day of March/2001

CORAM:

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

IN O.A.595/98

Mr.Tuffan Ghadei, Near Dak Bunglow,
At: Bachharapatna, PO:Jatni-752050,
DT: Khurda - Orissa

...

Applicant

M/s.Dr.V.Prithivi Raj
S.V.R. Murthy
S.K.Nayak, Sreeram
Jena

By the Advocates

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. The Divisional Railway Manager (P), South Eastern Railway, Khurda Road

...

Respondents

Mr.Ashok Mohanty

By the Advocates

IN O.A.596/98

Mr.Nalla Eswar Raju, Imam Bada Lane,
At: Raja Bazar, PO/PS: Jatni,
Dist - Khurda-752050

...

Applicants

M/s.Dr.V.Prithivraj
S.R.R.Murthy,
S.K.Nayak
Sreeram Jena

By the Advocates

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-700043
2. The Divisional Railway Manager (P), South Eastern Railway, Khurda Road

By the Advocates

...

Mr.Ashok Mohanty

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Respondents in these two Original Applications containing identical reliefs being the same, the applications, though heard separately, are being disposed of through this common order.

2. Tuffan Ghadei and Nulla Eswar Raju in Original Application Nos.595 and 596 of 1998 respectively are applicants in response to Employment Notice dated 1.5.1997 (Annexure-3) for filling up of 109 posts for Scheduled Castes and 88 for Scheduled Tribe in Group D category in S.E.Railway, Khurda Road Division. These two applicants are among about 8000 candidates applying for the posts in question in response to Employment Notice, in order to fill up the backlog quota for Scheduled Caste and Scheduled Tribe. The applicants appeared at the test. However, the respondents, without publishing the results, cancelled the entire selection process under Annexure-1 dated 22.7.1998. Thereafter Respondent No.2, through notice dated 25.9.1998 (Annexure-2) intimated that selection afresh would be made in response to Employment Notice under Annexure-1 and the eligible candidates who were called in terms of that notification would only be called again and in this selection candidates would undergo physical test first and after qualifying in the physical test, they would have to appear in the written examination and the candidates qualifying in the written test would be eligible for the interview.

In these two application for quashing the cancellation order under Annexure-1 and for quashing the notice under Annexure-2 for fresh selection the grievance of the applicants is that as per the departmental circular under Annexure-4, respondents have violated their own guidelines by imposing new conditions for selection afresh.

2. In the counters and additional counters (identical in both the cases) the stand of the Department is that in response to notification 6430 S.C. candidates and 2640 S.T.

12

candidates were called for aptitude and viva voce test. The aptitude test was conducted by the Members of the Committee, of which 2/3 were non official members. The test was conducted from 10.7.1997 to 27.1.1998 on different dates. The Members were also different on each date. As per the departmental instructions the Committee Members were to submit the proceedings of each day, i.e. performance sheets, in a sealed cover after completion of the viva voce test. But when these performance sheets were compiled to scrutinise and publish the result, a large number of irregularities were noticed. In Chief Personnel Officer's letter dated 24.3.1998 (Annexure-R/3), Board's letter dated 19.7.1996 was clarified. This Board's letter lays down that non official Members will be only associating with the interview. Their marks on physical test should not be given any cognizance. In the individual marks in the viva voce test given by the non official Members only the original marks are to be taken into consideration. Over-writing/corrections/alterations should be ignored unless signed by the Members concerned. In the present case marks have been awarded by the non official Members in respect of physical test also. Some of the proceedings received through envelopes were not sealed although contain the signatures of the Members. For the S.T. candidates all the performance sheets were on a single sheet, which should have been individual performance sheet. On two occasions, the sheets were signed only by two railway officers. On another occasion only one of the non-official Members had associated. On two occasions for viva voce test, three non official Members only associated. Specifically on 25.8.1997, in regard

to aptitude and viva voce test conducted for S.T. candidates no non-official Member was present. Similar irregularities are also found in respect of S.C. candidates. All these irregularities were intimated to the Chief Personnel Officer, Khurda Road, in letter dated 30.4.1998 (Annexure-R/1), who in view of these irregularities, in letter dated 16.7.1998 under Annexure-R/2, directed cancellation of the selection and ordered for fresh notification.

3. No rejoinder has been filed by the applicants.

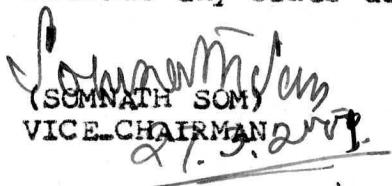
4. We have heard Dr.V.Prithivraj, the learned counsel for the applicants and Shri Ashok Mohanty, the learned senior counsel for the Respondents in both the cases. Also perused the records. The irregularities committed in the matter of conducting the tests, as pointed out in the counters have not been refuted through any rejoinder. It means, there is no dispute with regard to occurrences of these irregularities, which undoubtedly go the root of efficiency and impartiality in conducting the test. In other words, if such irregularities are allowed to ^h retain, the entire process of selection will stand vitiated.

5. It is not a case where after the selection and appointment cancellation was ordered. Even after selection cancellation can be ordered, if the selection was ^{un}judicious (Vide AIR 1993 SC 796) in the case of Union Territory of Chandigarh vs. Dilbagh Singh) Even in that decision it was further held that a candidate selected for appointment to a civil post did not acquire indivisible right to be appointed. He can be aggrieved by his non appointment only the administration

14

does so either arbitrarily or for non bonafide reason. In A.K.Sharma vs. Union of India reported in 1999 SCC (L&S) 535, it was held that mistake committed by the Government in the recruitment cannot confer any right on employee and there is no estoppel against the statute.

For the reasons discussed above, we do not see any infirmity in the decision of the Department in cancelling the selection made in response to Employment Notice dated 22.7.1998 under Annexure-1. In the result, both the Original Applications, being without any merit, are dismissed, but without any order as to costs.


 (SOMNATH SOM)
 VICE-CHAIRMAN
 27.3.2001

27.3.2001
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

B.K.SAHOO//