

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 608 OF 1998
Cuttack, this the 2nd day of February, 2001

Kishore Kumar Mishra and others ... Applicants

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 .

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
2.2.2001

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CORAM:

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

.....

1. Kishore Kumar Mishra, aged about 40 years, Station Master, Barpali (S.E.Railway), P.O-Barpali, District-Bargarh.
2. Sri Jaya Chandra Mishra, aged 39 years, son of Bhagabat Mishra, Station Master, S.E.Railway, Bolangir.
3. Sri Sudarsan Nayak, aged 44 years, son of Banewar Nayak, Station Master, S.E.Railway, Muniguda, P.O-Muniguda, District-Rayagada.
4. Sri Dushasan Jali, aged 43 years, son of Hatakeswar Jali, Station Master, S.E.Railway, Khariar Road, P.O-Khariar Road, Dist.Nuapara

....Applicants

Advocates for applicants- M/s Ashok Mishra
H.P.Rath
S.C.Rath

Vrs.

1. Union of India, represented by the Secretary, Railway Board, Rail Bhavan, New Delhi-Pin-110 001.
2. General Manager, S.E.Railway, Garden Reach, Calcutta-43.
3. Divisional Railway Manager, S.E.Railway, Sambalpur, P.O-Modipara, District-Sambalpur.
4. Divisional Personnel Officer, S.E.Railway, Sambalpur, P.O-Modipara, District-Sambalpur

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Respondents

Advocates for respondents-M/s D.N.Misra
S.K.Panda

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application, the four petitioners have prayed for quashing the promotion order at Annexure-3 and for a direction to the respondents to promote the applicants along with the incumbents in Annexure-3 to the

post of Deputy Station Superintendent from the date those incumbents had been promoted. Their second prayer is for a direction to the respondents to follow uniform policy of promotion for all either through modified selection procedure or follow the same selection procedure for all. They have also asked for consequential financial and service benefits. By way of interim relief, stay of further promotion was asked for. By way of interim relief, it was directed that promotion in pursuance of Annexure-3 shall be subject to the result of this O.A.

2. The applicants' case is that they joined as Assistant Station Master after having been recruited through Railway Service Commission and were promoted to the rank of Station Master in due course in 1984, 1985 and 1988. According to the respondents, they were actually promoted in 1985, 1987 and 1989. Any way nothing turns on this difference in their years of promotion to the rank of Station Master. The applicants' further case is that for filling up of 26 posts of Deputy Station Superintendent, which are non-selection posts, 26 persons including these four applicants were called for a suitability test on 12.7.1997. When the candidates appeared for the test they were informed that a written test would be conducted though no prior information was given to them about holding of written test. The candidates including the applicants objected to holding of written test as in all other Divisions of S.E. Railway, the suitability test is done through viva voce as the promotional posts being non-selection posts are to be filled up on the basis of seniority subject to elimination of unfit. The Divisional

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Personnel Officer, however, explained to them that written test is a formality. It was also explained that as no Junior Administrative Grade officer was available in the Operating Department, the written test was being held instead of viva voce. The candidates including the four applicants appeared at the written test the result of which was published in the letter dated 18.12.1997 after more than four months even though the select list was required to be published within fortyfive days. In the select list at Annexure-2 names of 25 persons were mentioned and in the top it was stated that this is a provisional part panel approved by the competent authority. Against the names of the individual candidates, however, it was mentioned if they have passed or failed. All the four applicants were shown to have failed in the examination. It has been stated in Note 2 of Annexure-2 that out of 26 candidates who took the examination, the result of one candidate was not published as major penalty proceeding was pending against him. Those who were shown to have passed were promoted in order dated 27.1.1998 (Annexure-3) leaving the eight who had failed. The applicants have challenged this panel on the ground that initially very few had passed but some were given grace marks and were declared as passed. The applicants have furtherstated that subsequently in two orders at Annexures 4 and 5 both issued on 28.5.1997, some persons were promoted to the post of Deputy Station Superintendent even though they had not taken the test. It was further stated that three candidates N.C.Bain, L.Sandil and R.C.Bhavasagar were given promotion on the basis of modified procedure, i.e., through only verification of service records. They have further stated that one S.K.Hambir was also promoted even though he was not subjected to suitability test in pursuance

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of Annexure-1. They have stated that vacancies in the promotional posts have arisen because of restructuring of cadre and these should have been filled up on the basis of seniority. It is further stated that Sambalpur Division has been formed taking staff from Chakradharpur Division and Waltair Division, and the staff brought from other Divisions came on transfer retaining their lien in the parent Divisions. It is also mentioned that some staff who came from Nagpur Division appeared at the viva voce test and all such staff were declared suitable for promotion. The applicants have stated that the respondents have declared such transferred staff from other divisions suitable only with a view to retain them in the Sambalpur Division. It is further stated that in the written test no question was put on "passenger amenities". The questions were not objective type at least upto 50% of the total marks. The seniority position was also ignored while drawing up the panel. The applicants have stated that the recognised trade Union took up the matter with the respondents but without any result. On the above grounds, the applicants have come up with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicants. They have made averments in respect of each of the points raised by the applicants in their O.A. It is not necessary to record these averments at this stage as these will be referred to at the time of considering the prayers of the applicants.

4. The matter was taken up for hearing on 17.1.2001 when the learned lawyers had stayed away from court work for more than a month and going by the law as

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laid down by the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, 2000 AIRSCW 4093, it was not possible to adjourn the matter. We have, therefore, perused the record and closed the case. Under the above circumstances, we did not have the benefit of hearing Shri Ashok Mishra, the learned counsel for the petitioners and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents.

5. With regard to the averment of the applicant that holding of written test was not legal, the respondents have pointed out and this has not been denied by the applicants by filing a rejoinder, that Paragraph 319 of Indian Railways Establishment Manual, Vol.I, provides the method of promotion to non-selection post. This has to be done on the basis of seniority-cum-suitability and the said suitability test is to be decided by the competent authority by way of oral, or written test, or by scrutiny of record of service as considered necessary. As in the instant case the competent authority has decided on holding a written test, no illegality *per se* is involved in this.

6. As regards the contention of the applicants that they had taken the written test on wrong assurance given by the Divisional Personnel Officer that nobody would be detained on the basis of the result of the written test, we are unable to accept this contention. Had it been so, then this fact would have certainly been mentioned by the Union in their representation. But this aspect has not been averred by the Union in their representations at Annexures 7 and 8. We, therefore, hold that this contention is without any merit.

7. The applicants have stated that in the written test questions were not put on "passenger amenities" and questions bearing at least 50% of total marks were not objective type. The applicants having taken the examination cannot be allowed to challenge the method of holding the examination. On the basis of well settled position of law, this contention is also rejected.

8. The applicants have challenged the result of the examination on the ground that instead of 45 days the result was published after passage of more than four months. The time table laid down for publication of the result of the examination has not been enclosed by the applicants. But in several other cases, this time table has been produced. We have held in several other cases that the time table set is merely directory and not mandatory. By not following the time table in the matter of declaration of result, the result itself does not get vitiated as because of delay itself the candidates are not prejudiced. This contention of the applicants is also rejected.

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9. Thus the position is that the applicants had appeared at the written examination but failed to come out successful. Their contention that as their names find place in the panel, they should have been taken to have qualified is without any merit because out of 26 persons who took the examination, names of 25 persons were in the list at Annexure-2. But against the names of the applicants and five others it has been clearly written that they have failed in the examination. Therefore, just because their names have been put in Annexure-2, it cannot be held that they have cleared the examination. In view of the above, we find no reason to accept the first prayer of the applicants

to quash the promotion order at Annexure-3 moreso when the applicants have not made the persons promoted thereunder parties to the OA.

10. The second ground of attack of the applicants is that certain other persons were promoted without taking the suitability test. They have mentioned the three names referred to by us earlier and that of one S.K.Hambir. As the applicants have failed to clear the suitability test, they cannot get promoted to the posts to which these four persons were promoted. The respondents have pointed out that in the promotion order dated 22.1.1998 at Annexure-3 B.S.Satpathy, J.Samal and M.M.Dehi were promoted even though they had not taken the suitability test in which the applicants appeared. It has been stated that they had earlier taken the suitability test and were found suitable for promotion to the rank of Deputy Station Superintendent in Nagpur Division prior to formation of separate cadre for Sambalpur Division. It is further stated that as per Indian Railways Establishment Manual, Vol.I, Paragraph 214(c)(iv), an employee who has passed a suitability test once need not be called for the test again and should be eligible for promotion as and when vacancies arise. Accordingly, these persons have been promoted. It is also stated that the three persons whose names have been noted by us earlier were promoted with effect from 1.3.1993 against the shortfall quota of vacancies in SC category on restructuring of the cadre. Similarly, S.K.Hambir was given promotion after he gave his option to get finally absorbed in Sambalpur Division. Conversely, one S.Bhima Rao, whose name appears as a passed and qualified candidate in the panel at Annexure-2 was asked to give his option to get finally

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absorbed in Sambalpur Division. But he opted to go back to his parent Division of Waltair and hence no promotion was given to S.Bhima Rao even though he was found suitable. Therefore, on this aspect of the challenge of the applicants, it is seen that some of those who have been promoted even though their names do not appear in the panel at Annexure-2 had earlier cleared the test in other Divisions and on their opting to get absorbed in Sambalpur Division, they were given promotion. Some others were promoted with effect from 1.3.1993 against SC shortfall vacancies presumably on the basis of modified procedure applicable for the purpose of filling up of the restructured posts with effect from 1.3.1993. It is also to be noted that none of the above persons whose promotion to the post of Deputy Station Superintendent has been objected to by the applicants, has been made party and therefore, on this ground also this prayer fails.

11. In the result, therefore, we hold that the Application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
28.2.2001
VICE-CHAIRMAN

February

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