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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 259 OF 1999

Cuttack, this the 7th day of February, 2001

Ratan Kumar Sinha

....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*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.2.2001

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CORAM:

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

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Ratan Kumar Sinha, aged about 43 years, son of Sudhir Kumar Sinha, presently working as Sr.Section Engineer (Works), office of the Dy.Chief Engineer (D-1), S.E.Railway, Bhubaneswar

Applicant
.....
Advocates for applicant - M/s A.Kanungo
B.S.H.Rao
S.R.Mishra
B.Ray
M.K.Biswal

Vrs.

1. Union of India, represented through its General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta.
3. Chief Engineer, S.E.Railway, Garden Reach, Calcutta

..... Respondents
Advocates for respondents-M/s S.Roy
A.A.Khan

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

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The prayer of the applicant in this petition is for a direction to the respondents to promote him to the category of AEN, Group-B with consequential benefits. The respondents have filed counter opposing the prayer of the applicant.

2. The admitted position is that for filling up 93 posts of AEN, Group-B against 70% quota of vacancies, a selection test was undertaken. The applicant appeared in the written test, qualified in the same as it appears from Annexure-2, and was called for the viva voce. In the final

panel published at Annexure-3 his name was not there. Being aggrieved with that, he filed representations but without any result. The applicant has stated that he has excellent record of service and he did very well in the viva voce test. He has challenged his non-selection on various grounds which will be discussed below.

3. We have heard Shri S.R. Mishra, the learned counsel for the petitioner and Shri S. Roy, the learned Additional Standing Counsel for the respondents. After hearing was over, we had directed the learned Additional Standing Counsel to produce the marks obtained by 39 candidates including the applicant in the written test, viva voce and record of service. Thereafter during the long absence of the learned counsels from court work, Shri Nanihal Singh, Assistant Personnel Officer, S.F. Railway, Garden Reach, Calcutta, had appeared on 19.1.2001 and had produced the records and we have perused the same. For the purpose of considering this application, it is not necessary to record all the averments made by the parties in their pleadings. We have already noted the admitted position.

4. The first point made by the applicant is that vacancies were 93, and 39 persons who had qualified in the written test, were called to viva voce, but only a part panel of 32 names was published. There is no provision in the rules to publish a part panel. The respondents have pointed out and rightly to our mind, that later on the same panel containing 32 names was made final and final panel was published on 5.2.1999 at Annexure-R/1. In the part panel it was mentioned that the provisional panel is subject to the outcome of OA No. 726 of 1997 pending before Cuttack Bench and OA No. 1362 of 1997 pending before Calcutta Bench.

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After complying with the order of Cuttack Bench of the Tribunal in OA No. 726 of 1997 the same panel has been finalised and published. There has not been any change in the panel and we find no illegality in this because the provisional character of the panel was obviously due to pendency of litigations before different Benches of the Tribunal. This contention is, therefore, rejected.

5. The second contention of the petitioner is that eligibility for the post of AEN, Group-B is three years non-fortuitous service in Group-C in the pay scale starting with Rs.1400-2600/- and in higher scales. The applicant's case is that ^{where} the rule itself provides for three years of minimum service, [^] ^{where} CRs for five years should not have been evaluated for awarding marks for record of service. We find this contention absolutely without any merit. The service required for eligibility is quite a different matter from assessing the work of the officer on the basis of CRs. In most cases of promotion including promotion to All India Services, CRs for five years are evaluated and there is no illegality in this.

6. The next submission of the petitioner is with regard to the marks received by him in record of service and viva voce. The admitted position is that for this examination, marks for professional paper are 150, for record of service 25, and for viva voce 25. Rules also provide that in order to qualify in the written test, a candidate must get 60% of marks, i.e., 90 in the written test. The applicant has admittedly qualified in the written test. So far as record of service and viva voce are concerned, the rules provide that for empanelment in the

panel, a candidate must get 60% of marks in viva voce and record of service together with at least 60% of marks in the record of service. In other words, out of 50 marks for record of service and viva voce together, a candidate must get 30 marks out of which in record of service he must get at least 60%, i.e., 15 out of 25 marks. The applicant has stated that he had excellent record of service as is seen from the certificates enclosed by him at Annexure-1 series. It is also stated that he has done very well in the viva voce and therefore, he should not have been left out of the panel. We have gone through the marks obtained by all the candidates including the candidates who like the petitioner had been called to the viva voce but were not selected. We find that the petitioner has got just 60% of marks in the written test and had qualified in the written test. But he has got less than 60% of marks in record of service and overall has failed to get 30 out of 50 marks meant for record of service and viva voce. Moreover, taking the written test, record of service and viva voce together, the applicant has not secured 60% of marks. We find that there are candidates who have got much higher marks than the applicant in the written test and as against the overall total marks of 200 but have not been put in the panel because they have not got 60% of marks in record of service even though they have got more than 60% of marks in the written test, and taking viva voce and record of service they have got 60% of marks. There are candidates whose total total marks out of 200 are 74% and who have got 60% marks in written test and viva voce but have not been selected because they have failed to secure 60% of marks in record of service. This assessment has been done and panel drawn up by

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very high officials comprising of Chief Personnel Officer, Chief Engineer and C.E.S.E. We find no reason to hold that these officials have deliberately given less marks to the applicant in order to disqualify him.

7. The applicant has also taken the stand that as there was a written test, professional ability should not have been judged during viva voce. He has relied on Rule 204.6 of Indian Railways Establishment Manual enclosed at Annexure-7 which provides that where written test is not held, questions should be asked during viva voce to adjudge professional ability. This Rule does not preclude adjudging professional ability in course of viva voce. This contention is, therefore, held to be without any merit and is rejected.

8. In consideration of all the above, we hold that the applicant is not entitled to the relief claimed by him. The Original Application is held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Somani
(SOMNATH SOMANI)

7.2.2001
VICE-CHAIRMAN

February 7, 2001/AN/PS