

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


ORIGINAL APPLICATION NO. 308 OF 1999
Cuttack, this the 12th day of February, 2004

MANOJ KUMAR KOSLA & ORS. APPLICANTS.
:VERSUS:
UNION OF INDIA & OTHERS. RESPONDENTS.

FOR INSTRUCTIONS

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


(B. N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.308 OF 1999
Cuttack, this the 12th day of February, 2004.

C O R A M:-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

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1. MANOJ KUMAR KOSLA,
Aged about 32 years,
Son of Prafulla Kumar Kosla,
Old Koraput, Town and Dist. Koraput.
2. SANJIB KUMAR MOHANTY,
Aged about 25 years,
S/o. Rama Chandra Mohanty,
At/Po: Dumuriput, Dist. Koraput.
3. SURAJAKUMAR HIAL,
Aged about 22 years,
S/o. Damsil Hial,
Mission Compound, Town & Dist: Koraput.
4. SISIR KUMAR RATHI NAIK,
Aged about 25 years,
S/o. Keepa Rathi Naik,
At: Puraja Saku, Po: Podagada,
Via: Laxmipur, Dist. Koraput. APPLICANTS.

By legal practitioner: M/s. H. M. Dhal, P. K. Patnaik, L. Pani,
Advocates.

:Versus:

1. Union of India,
represented through its General Manager,
South Eastern Railway, Garden Reach,
Calcutta-43 (W.B.)
2. Divisional Railway Manager (P),
South Eastern Railway, Waltier,
At/Po: Visakhapatnam (A.P.)
3. Assistant Engineer, South Eastern Railway,
Koraput, At/Po: Koraput, District-Koraput.

.... RESPONDENTS.

By legal practitioner: M/s. D. N. Mishra, S. K. Panda,
Railway Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Being aggrieved by their non-selection for the post of Gangman (in Waltiar Division of South Easter Railways), the 4 (four) Applicants have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, with the following prayers:-

- "i) The selection list published on 08.06.1999 by the Respondents for the post of Gangman be quashed;
- ii) the respondents be permanently restrained for making any appointments from out of the merit list dated 08.06.1999;
- iii) non-selection of the applicants be quashed and the respondents be directed to accord appointment to the applicants in the post of gangman".

2. It is the case of the Applicants that since they are having better educational qualifications (for the post of Gangman) they should have been selected and that instead of selecting and appointing them in the post in question; the Respondents, (by adopting a self contained procedure, in the matter of selection) eliminated the Applicants. They have alleged certain irregularities; to which the Respondents have pointed out, in their counter that there were no irregularity or illegality in the matter of selection and appointment to the post of Gangmen. They have pointed out in their

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counter that a Notification was issued on 09.05.1998 for recruitment of Gangman(inviting applications from eligible candidates for 382 posts)for four Sub-Divisions of Waltair Division;which was later on modified enhancing the vacancies and that accordingly,on receipt of applications, candidates were subjected to physical test that was taken on 16.4.1999 and 17.4.1999 and such of the candidates who qualified in the physical test,were subjected to written test that was taken on 17.4.1999 and that there were no regional consideration for the selection.As per the merit list,persons were called to appear in the Viva-voce test that was undertaken on 4.6.1999 to 6-6-1999 and,according to the marks secured by individual candidates,a merit list was prepared.While denying the assertions of the Applicants that out of 60 candidates, 45 candidates were from A.P. and their names were not sponsored by the Employment Exchange or that they are not the wards of Railway employees,it has been submitted that as the Applicants could not secure merit position in the panel they could not find place in the final panel published on 8.6.1999 and that though the selection was conducted for 480 gangmen posts,only 426 posts of Gangmen were to be recruited immediately, and hence,a panel for 426 candidates was published in order of merit.They have stated that the competent authority has the right to enhance the ^{number of} post and there was nothing wrong on such enhancement.It has been ^{the number of} stated that the enhancement of ~~posts~~ are, rather


beneficial to the Applicants. They have stated that the allegation of the Applicants (that 446 candidates, who appeared for physical test were not the wards of Railway employees) is baseless. In this connection, it has been submitted by the Respondents that the Applicants have misconstrued the provisions; because, as per the Para-179 IREM, the Applications (from the wards of the Railway employees) were available to be received directly, and if required the names of those wards are to be registered with the employment exchange by deputing Welfare Inspector and hence, the contention of the Applicants that in-eligible candidates were participated in the process of selection is far from truth. It has been strongly denied by the Respondents of the allegation of the Applicants that they were not selected because of regional consideration. The Applicants could not be selected, because of their lower ranking in the merit list; which was also displayed in the notice Board. They have stated that since, there was no infirmity in the matter of selection, this Tribunal may not interfere with the same.

3. Heard learned counsel for both sides and perused the materials placed on record. During the course of hearing it was not canvassed by the learned Counsel for the Applicants as to how they have been prejudiced by virtue of allowing more candidates or by virtue of allowing persons without sponsoring of their names from Employment Exchange. Law is well settled that wider the zone of consideration/more in number in the

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process of selection, best candidate can be selected. Law is also well settled that having appeared in the examination/process of selection and failed, candidates have no right to question the legality/validity of the process of selection. Another important feature of the matter is that the Applicants have filed this Original Application seeking to quash the select list of 8.6.1999, without annexing the same or without making the selected candidates as parties to this Original Application. It is a clear case of nonjoinder of necessary party. The further prayer of the Applicants that nonselection of the Applicants be quashed seems to be ^amiscellaneous prayer made by them. In this view of the matter, this Original Application is dismissed. No costs.


(B. N. SOM)
VICE-CHAIRMAN


12/02/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)