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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 34 OF 1999.

Cuttack, this the 22nd day of May, 2000.

SK. FAKIR.

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APPLICANT.

VRS.

UNION OF INDIA AND ORS.

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RESPONDENT.

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*

*J. S. Dhaliwal*  
(J. S. DHALIWAL)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 34 OF 1999.  
Cuttack, this the 22nd day of May, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HONOURABLE MR. J. S. DHALIWAL, MEMBER (JUDL.).

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SK. FAKIR,  
Aged about 45 years,  
S/o. Sk. Gafur,  
Village-Sana Routpara,  
PO:Kusumi, PS: Tangi  
Dist:Khurda.

: Applicant.

By legal practitioner: M/s. D. R. Patnaik,  
M. K. Khuntia,  
D. N. Patnaik,  
Advocate.

- VERSUS -

1. Union of India represented by its  
Chief General Manager,  
Garden Reach, Calcutta.
2. Divisional Railway Manager,  
S. E. Railway, Khurda Road,  
At/Po: Jatni, Dist: Khurda.
3. Senior Divisional Personnel Officer,  
S. E. Railway, Khurda Road,  
At/Po: Jatni, Dist: Khurda.

: RESPONDENTS.

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

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the Respondents to insert his name in the select list at Annexure-3 from the category of Cabinman/Cabinmaster and to direct the Respondents to promote him to the post of Switchman.

2. Respondents have filed counter opposing the prayer of the applicant.

3. We have heard Mr. D.N. Patnaik, learned counsel for the Applicant and Mr. D.N. Mishra, learned Standing counsel appearing for the Respondents and have also perused the records.

4. The admitted position between the parties is that applications were invited for filling up of the 61 posts of Switchman. The breakup of the post was ; unreserved-33, SC-22 and ST-6. 50% of the vacancies in the rank of Switchman are to be filled up from Lineman(A)/TPM 'A'/Cabinman and the balance 50% are to be filled up by matriculates from amongst the Gr.C&D staff and below of operating Department. For the first category, the minimum period of service is 2 years and the second category, the minimum period of service is 5 years. In response to the notice, applicant alongwith several others appeared at a written test in which he was successful, as the list of the persons who have come out successful in the written test, at Annexure-2, indicates. Accordingly, applicant alongwith other candidates successful in the written test were called to the viva-voce but in the final panel which came out, applicant's name was not there. That is why, he has come up in this original Application with the prayers referred to earlier.

*S. J. Som*

5. It is submitted by Mr. D.N. Patnaik, learned counsel for the applicant that in the list of candidates, who have come out successful in the written test, his name appears at Sl. No. 5 and therefore, it must be taken that amongst those who have cleared the written test, his position is No. 5 according to the merit list. Respondents, in their counter, have stated that Annexure-2 is merely a list of candidates who have come out successful in the written test and this list is not arranged in order of merit. Respondents have further stated that according to the Departmental instructions, 60% is the qualifying marks in both written and viva-voce test and as the applicant was not able to get 60% of the qualifying marks in the viva-voce test, even though he got the qualifying mark in the written test, he was not found eligible because in the aggregate his marks became less than 60%. It is submitted by learned counsel for the applicant that the applicant has done very well in the viva-voce <sup>and</sup> <sup>^ V.V.M.</sup> as against the requirement of 2 years of service, he had put in ten years of service as Cabinman and accordingly under the heading of seniority and record of service, he should have been given higher marks. It is further stated that even though 50% of the vacancies are reserved for Lineman (A) / TPM (A) / Cabinman, in the list of selected candidates, in this category, not a single candidate has been qualified. It is further stated that out of the 61 posts, at least 30 posts are reserved for this category but only 21 posts have been filled up from this category and therefore, some more vacancies are already there and his case should be considered against those vacancies. We have considered the submissions of the learned counsel for both sides carefully. Merely because the applicant submits that his conception is that he has done very well in the viva-

voce can not be accepted that marks of the viva-voce has not been fairly given. Respondents have stated that the applicant failed to get the minimum requirement of 60% marks in the Viva-voce test and also did not get 60% marks in aggregate. Department instructions provide that the selected candidates must get 60% which is the minimum qualifying marks both in written and viva-voce and on the other hand applicant, obviously got 60% marks in the written in which he qualified but as according to the Respondents he did not get 60% marks in the viva-voce test, obviously he could not have been empanelled. The fact that certain number of vacancies are still left for 50% quota meant for Lineman 'A'/TPM 'A'/Cabinman, would not entitle the applicant to get selected on that ground alone. As regards, the submission that even in the list of 21 selected candidates not a single person from Cabinman has been selected it is to be noted that as promotion to the post of Switchman is on the basis of written and viva-voce test in case no Cabinman qualifies in the test, the appointment from that category can not be made. It is also to be noted that 50% has been reserved for Lineman 'A'/TPM 'A'/Cabinman and there is no special rule-quota amongst these three categories out of the quota of 50%.

6. In view of the above, we hold that the applicant has not been able to make out a case for the relief claimed for by him in this Original Application. The Original Application, is therefore rejected. No costs.

  
(J.S. DHALIWAL)  
MEMBER (JUDICIAL)

KNM/CM.

  
(SOMNATH SOM)  
VICE-CHAIRMAN