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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.530 OF 1999
Cuttack this the 29th day of August/2000

Rabindra Kumar Mahanty & Anr. ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.2000

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.530 OF 1999
Cuttack this the 29th day of August/2000

CORAM:

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

1. Rabindra Kumar Mohanty,
aged about 34 years,
S/o. Chakradhar Mohanty
Sr.Section Engineer,
S.E.Railway, Chandrasekharpur
Headquarter, Bhubaneswar-23,
Dist - Khurda
2. Prasanjit Chaudhury
aged about 32 years,
S/o. S.C.Chaudhury
Sr.Section Engineer (Construction)
Office of the Sr.Section Engineer Works
Railway Colony, Golbazar Chhack
Cuttack-3

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Applicants

By the Advocates:

M/s.G.A.R.Dora
J.K.Lenka
G.R.Dora
S.P.Mishra

-VERSUS-

1. Union of India represented through
its General Manager,
S.E.Railway, Garden Reach,
Calcutta-43
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta-43

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Respondents

By the Advocates:

M/s.Suroth Roy
A.A.Khan
A.Swain

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL): The two applicants and five other Graduate Engineers belonging to general community serving as Inspectors of Works Grade-I (Gr.C) under S.E. Railway earlier approached this Tribunal in Original Application No. 726 of 1997 challenging the list of 266 candidates published on 31.10.1997 to appear in the selection for the posts of Asst. Engineers (Grade-B) as against the 70% quota vacancies numbering 93 which were to be filled up under the R.S. Rules from the eligible Grade C employees whose numbers should be three times the number of vacancies. Though as per seniority these were not be included in that list but stacked their claim to be included in that list under Rule-203.2 of the Railway Establishment Manual as the name of their junior P.B. Mohapatra found place in that list.

2. Through interim order they were permitted to appear in the written test and if qualified in the viva voce test in the direction that their result should not be published without the leave of the Tribunal. The two applicants having qualified in the written test appeared in the viva voce.

3. While disposing of that Original Application on 4.1.1999 we directed the Department to publish the result of the two applicants and to consider their case as per rules of promotion to Gr. B in case they were found suitable and would have found place in the merit list in normal course. On 5.2.1999 final panel of 32 Gr.C employees participating in the selection for promotion to the post of A.E.N. (Gr.B) was published vide Annexure-A/4, without the names of the two applicants. The reason for their non-inclusion in the panel is that they

were found not suitable after their cases were examined under rules as per the direction of this Tribunal.

4. In this Application praying for quashing that portion of Annexure-A/4 finding them unsuitable and for direction to the Department to promote/appoint them in Group B Service as Asst. Engineers with effect from the date the persons named in Annexure-A/4 have been promoted with consequential service benefits, the case of the applicants is that out of 163 candidates appearing in the written test, only 41 including the two applicants passed that test and qualified for viva voce and in the viva voce 34 including the applicants were qualified by securing more than sixty percent number each in the written test and viva voce. Admitted vacancies being 93 out of which 69 are meant for general class, ~~non-inclusion~~ ^{non-inclusion} of the applicants in the panel treating them as unsuitable is unreasonable, arbitrary and mala fide being violative of Articles 14 and 16 of the Constitution.

5. There is no dispute that prior to filing this Original Application, applicants preferred Contempt Petition 7/99 alleging non-implementation of the direction of this Tribunal in the earlier Original Application. That was dismissed on 20.9.1999 mainly on the ground that there was no direction to publish the marks of the applicants. The Department, thereafter in the counter questioned the jurisdiction of this Tribunal to entertain the present application. There is, however, no denial as to the availability of the number of vacancies mentioned by the applicants and the applicants' qualifying in the written test and viva securing more than sixty percent of marks in each. But their case is that the applicants were found unsuitable in

view of their low seniority position.

6. Rejoinder filed by the applicants and reply to the rejoinder filed by the Department are more or less reiteration of the pleadings in argumentative form.

7. We have heard Shri G.A.R.Dora, learned counsel for the applicants and Shri S.Roy, learned Addl.Standing Counsel for the Department and perused the records.

8. We will at first deal with the point of maintainability raised by the respondents. In this connection we have verified the record of Contempt Petition 7/99. This C.P. was filed alleging non implementation of the direction of this Bench in O.A.726/97 inasmuch as the respondents had not declared the results of these two applicants with their marks. On contest by the Respondents, the C.P. was dismissed with an observation that there was no specific direction in the judgment dated 4.1.1999 that the Department should publish the marks of the applicant, and that direction to publish the result does not necessarily mean publishing the marks obtained by the applicants. In this application there is no such prayer for directing the Department to declare the results of the selection. On the other hand there is prayer for their promotion to Group B Service as Assistant Engineers on the date persons named in Annexure-A/4 have been promoted with all consequential service benefits on the ground that they were qualified both in the written as well as viva voce. Issues whether they were qualified in the selection and as such whether they were entitled to promotion were not the subject matter for ^{determination} ~~determining~~ in the Contempt Petition, the scope of which was to determine whether the Department deliberately flouted any direction issued by this Tribunal in O.A.726/97. We are, therefore, unable to accept the contentions advanced on

behalf of the Department that this application is not maintainable on the ground that Contempt Petition 7/99 filed by the applicants was earlier dismissed.

9. There is specific averment in pleadings of the applicants that they had qualified in the written test as well as in the viva voce by securing minimum 60% marks as required under the rules. This has not been denied by the Respondents in the counter. On the other hand at Page-4 of the counter the Department admitted that in the affidavit filed in the Contempt Petition it was submitted that the applicants had succeeded in the written as well as in the viva voce test, but were not found suitable in view of their low seniority position. Thus there is no dispute that the applicants had qualified in the written as well as in the viva voce test. In other words, in the selection held for filling up of 93 vacancies, of which 69 are meant for general category, 34 including two applicants ultimately became successful after qualifying in the viva voce test. The applicants have not been promoted not on account of non-availability of vacancies, but on the ground of their low seniority position, as stated in the counter. In other words, as reiterated in the counter they were found not suitable to be promoted in view of their low seniority position. At this stage we may as well quote our directions in Original Application 726/97 as under :

"We direct the respondents to publish their results. If any of them are found to be suitable and would have been found place in the merit list in normal course, respondents shall consider their cases as per rules for promotion to Group B within a period of 30 days from the date of receipt of copy of the order".

The expression "found to be suitable" mentioned in the aforesaid order has nothing to do with seniority. Because in

spite of their low seniority they had the right to appear in the selection under Rule-203(2) of Railway Establishment Manual, because Shri P. B. Mohapatra, who was admittedly junior to the applicants was selected to appear in the selection. Thus because because of inclusion of name of P. B. Mohapatra, their junior in the list of employees eligible to appear in the selection, the applicants under Rule-203(2) of the R.E.M. had acquired the legitimate right and eligibility in appearing in the selection. It is true that Shri P. B. Mohapatra had not ultimately appeared in the selection, but ^{ultimate} legitimate non-appearance in the selection/ test can never be the criterion for drawing ~~up~~ of the list to include in the zone of consideration. The authorities can never be able to know at the time of preparing the list whether a particular candidate would appear in the test or not. Hence on the ground that Res.5 ^{having} ~~not~~ ultimately appeared in the selection test, the applicants could not be said to have lost their legitimate right to be included in the list to appear in the selection/test by virtue of Rule-203(2) of the Railway Establishment Manual. Hence the question of low seniority position would not arise in such circumstance. On the other hand question is whether a candidate was eligible to appear in the selection test and whether by appearing in the selection he became successful to be placed in the merit list of selected candidates. This aspect of law was discussed by us in our final order in O.A.726/97 in Para.8. Hence the expression 'found suitable' mentioned in our direction would mean their securing qualifying marks. In a selection, even if a candidate secures qualifying marks to come out successful, yet there is no guarantee that his name would find place in the merit list, because, merit

list is drawn with reference to number of vacancies available. It is for this reason, we ^{have} ~~are~~ careful enough to mention that not only the applicants should be found suitable on their securing qualifying marks, but also their names must find place in the merit list, as by then, we had no idea as to how many candidates actually sat in the written test and ultimately qualified in the viva voce as against 93 vacancies. As earlier mentioned, pleadings in this case would reveal that ultimately only 34 candidates including these two applicants came out successful in the selection as against availability of 93 vacancies, of which 69 are meant for reserved categories. Thus there was no legal impediment/bar for the Department to mention the names of these two applicants in the final panel for promotion vide Annexure-A/4 dated 5.2.1999.

10. For the reasons discussed above, we hold that the two applicants cannot be termed as unsuitable for promotion and we directing the respondents to promote/appoint them in Group B service as Assistant Engineer, with effect from the date persons named under Annexure-A/4 have been promoted with all consequential benefits. This exercised shall be completed within a period of 60 (Sixty) days from the date of receipt of this order.

11. In the result, Original Application is allowed, but without any order as to costs.

(Signature)
(SOMNATH SOM)
VICE-CHAMAN
29.8.2000
B.K.SAHOO//

29.8.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)