

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 637 OF 1999.
Cuttack, this the 8th day of February, 2001.

Suresh Chandra Das & Others. Applicants.
Vrs.
Union of India & 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
8.2.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 637 OF 1999.
Cuttack, this the 8th day of February, 2001.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL)

1. Sri Suresh Chandra Das, S/o. Nidhi Das,
Village-Badaichapur, Bachura,
Po: Jatni, District-Khurda.
2. Sri Gada Sahoo, S/o. S. Sahoo, Matimandap Sahi,
Puri.
3. Sri M. Samser, S/o. M. Kallu, At-Gopabandhupali,
Ward No. 3, Rourkela.
4. Sri Mohan Pradhan, S/o. Simon Pradhan,
At-Penthakata, Puri.
5. Sri Sankar Nath, S/o. Kangali Nath,
Gr. No. 46, P.K.R.I.T Colony, Puri.
6. Sri Kamat Yadav, S/o. Mangal Yadav,
31, Ghoda Bazar, Puri.
7. Sri B. Mondol, S/o. V. Mrutyunjay Mondal,
Round Building Soro, Balasore.
8. Sri M. Sahoo, S/o. B. K. Sahoo, Karilo Patna, Cuttack.
9. Sri Bikram Kahar, S/o. Ganesh Kahar,
42, Talbania Road, Puri.
10. Sri A. K. Mohapatra, S/o. K. N. Mohapatra,
Retang, District: Khurda.
11. Sri K. C. Achari, S/o. Appa Rao Achari,
Village/Po: Vabandha, Purushottampur,
Ganjam.
12. Sri Sk. Sahauddin, S/o. Sk. Wavimullha,
Salt Road, Akatpur, Sunhat, Balasore.
13. Sri Srimadadev Haldar, S/o. B. P. Haldar,
21 Sarvodaya Nagar, Puri.
14. Sri Zainul Khan, S/o. V. Gaffar Khan,
At/Po: Mukunddas Pur (Near Masjid),
Pipili, Khurda.

15. Sri R.N. Mahato, S/o .N. Mahato, 29, Sarvoday Nagar, Puri.
16. Sri M.A. Naidu, S/o .M. Naidu, Penthakata, Puri.
17. Sri Ganesh Mahali, S/o .Jugal Mahali, Ghoda Bazar, Puri.
18. Sri Mantu Kajlee, S/o .N.N. Kajlee, 41, C.T. Road, Puri.
19. Sri Mukhtar Alam, S/o .Ghulam Mustafar, C/o .Sk. Fayaj, T/10-D, Railway Colony, Puri.
20. Sri B.C. Sahoo, S/o .H.K. Sahoo, Pipili, Puri.
21. Sri D. Mohapatra, S/o .Bipin Mohapatra, Raja Bazar, Balasore, Orissa.
22. Sri Bhola Pr. Sahoo, S/o .R.B. Sahoo, Water Works Ram Mandir Road, Puri.
23. Sri B. Mahato, S/o .Shanti Mahato, Matimandap Sahi, Puri.
24. Sri B.N. Sahoo, S/o .Bahulal Sahoo, At-Raj Hansa, Po: Paramahansa, Dist. Cuttack.
25. Sri Sonra Oran, S/o .Mundla Dran, Dolamandap Sahi, Puri.
26. Sri N.K. Patsani, S/o .Lingaraj Patsani, Vill/Po: Gangapada, Dist: Khurda.
27. S/o .Nasir Ali, S/o .Sk. Noor Ahemad, Pipili, Mukund Das, Puri-Khurda.
28. Sri L.D. Das, S/o .Arjun Das, Village/Po: Gangapada, District-Khurda.
29. Sri R. Appana, S/o .R. Thavdu, C/o P. Prasanta, C.T. Road, Puri-2.
30. Sri Gopal Ch. Bauri, S/o .Moti Bauri, 132, Sriketra Colony, Puri.
31. Sri P.K. Singh, S/o .Shatrughan Singh, At-Rajhansa, Po: Paramhansa, District; Cuttack.
32. Sri Karan Das, S/o .Kasinath Das, Village-Kantia, Po: Jatni, District-Khurda.

33. K.C.Das, S/o.V.Kasinath Das,
Village-Kantia, Post: Jatni, District: Khurda.
34. Sri Amir Bauri, S/o.Khudiram Bauri,
22 Sarvodaya Nagar, Puri.
35. Sri Anup Choudhury, S/o.Suranjan Choudury ,
Mochi Sahi, Puri.
36. Sri Ananta Ram, S/o.Achilal, 29 Sriketra Colony,
Puri.

By legal practitioner : M/s. Dr.V.Prithiviraj, ... Applicants.
S.V.R.Murthy, S.R.Jena,
S.Patnaik, Advocates.

-Versus-

1. Union of India represented through the
General Manager, South Eastern Railway,
Garden Reach, Calcutta-43.
2. The Divisional Railway Manager,
South Eastern Railway, Khurda Road,
3. The Divisional Railway Manager(P) ,
South Eastern Railway, Khurda Road.
4. The Sr.Divisional Commercial Manager,
South Eastern Railway, Khurda Road.
5. The Chief Commercial Manager(Catering) ,
South Eastern Railway, 9th floor, 14,
Strand Road, Calcutta-1.
6. The Chief personnel Officer,
South Eastern Railway, 8th floor,
14 Strand Road, Calcutta-1.
7. The Director of Traffic Commercial(Catering)
Railway Board, Ministry of Railways,
Railway Bhawan, New Delhi-1.
8. The Chairman, Railway Recruitment Board,
Bhubaneswar.

... Respondents.

By legal practitioner; Mr.B.Pal, Sr.Counsel for Res.No.2
M/s.D.N.Mishra, S.K.Panda, S.Swain
for Respondent No.8.
Mr.R.C.Rath, ASC for Res.No.2.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN;

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the 36 applicants have prayed for a direction to the Respondents to absorb them in service and regularise them in regular class IV cadre in their respective geographical locations of their place of working in terms of settled position of law with retrospective effect from the date of vacancies arose in the place of the illegally appointed candidates vide employment Notice at Annexures- 7, 8 and 9. They have also stated that the Respondents should be directed to regularise their services by restricting the process of open market recruitment. They have also prayed for implementing their promises and assurances made in meeting with the Staff association.

2. Respondents have filed counter opposing the prayers of the applicants and applicants have filed rejoinder.

3. We have heard Shri V. Prithiviraj learned counsel for the applicants, Shri B. Pal learned Sr. counsel and Shri R. C. Rath, learned ASC for the Respondents and have also perused the records.

3. For the purpose of considering this petition it is not necessary to go into too many facts of this case. Both the parties rely on the decision of the Hon'ble Supreme Court in the case of S.E. Railways Mens' Congress and others Vrs. The Chairman Railway Board, Vol. 88 (1999) CLT 233 (SC). In this decision the Hon'ble Supreme Court referring to an earlier direction given by Their Lordships of the Apex Court on 22.4.97

for absorbing the Commission Vendors and Commission Bearers in regular establishment and notings that no substantial steps have been taken by the authorities of the SE Railway to initiate process to absorb such Commission Vendors and Commission Bearers has ordered for payment of certain benefits as an interim measure to which we are not concerned in the present case. Applicants have stated that they are Commission bearers and in pursuance of the above decision and the law as laid down by the Apex Court they are entitled to be considered for the purpose of regular absorption. It is submitted by learned senior counsel for the Respondents that in the case before the Hon'ble Supreme Court there were 528 applicants and the list of 528 applicants have been circulated by the Railway Board and these 528 applicants is the Commission bearers/Vendors of different divisions of SE Railways. Respondents have stated and this is also not denied by the applicants that these applicants were not before the Hon'ble Apex Court. In the context of that it is submitted by learned Sr. Counsel for the Respondents that the decision of the Hon'ble Supreme Court is applicable to the petitioners before them and not to other Commission bearers/Vendors who did not approach before the Hon'ble Supreme Court. It is on the other hand submitted by learned counsel for the applicants that the decision of the Hon'ble Supreme Court deals with the class of ~~Commission vendors~~ vendors and Commission bearers and the order of the Hon'ble Supreme Court for regularising them in Gr. IV service in Railways is applicable to all similarly situated Commission Vendors and Commission Bearers. It is further submitted by learned

J. J. m.

Senior counsel for the Respondents that even granting for argument sake that the applicants are entitled to get the benefits of the direction of the Hon'ble Supreme Court for absorption in regular Gr.IV post, their cases can come up only after the cases of those persons who were the applicants before the Hon'ble Supreme Court are decided. In other words the applicants before the Hon'ble Supreme Court would always have higher priority than the present applicants in the matter of absorption, even in case it is held that they are entitled for eventual absorption under the Respondents. Respondents have further stated that amongst the list of 528 applicants before the Hon'ble Supreme Court, there were 64 applicants belonging to Khurda Division of SE Railway with which we are presently concerned. On a scrutiny of this list, Respondents have found that out of 64, 14 persons have already crossed the age of 60 years and are therefore, no longer available for absorption. As regards the balance 50 who are entitled to be considered for absorption, Respondents have stated that the total staff strength of the catering wing in the category bearers is 144 and the present strength of the said wing is 140 and therefore, there are only four vacancies. It is submitted that when out of these 50 applicants before the Hon'ble Supreme Court are awaiting their regularisation cases of the applicants can not be considered.

5. We have considered the above rival submission very carefully. From a plain reading of the above decision of the Hon'ble Supreme Court it does not appear that this decision is applicable to the petitioners who are before them. On the contrary Hon'ble Supreme Court has referred to an order of the

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Railway Board relating to Commission Vendors and Commission Bearers of SE Railway and it is quite clear that the said order also applies to the Commission Vendors and Bearers as a class. In any case even if it is taken for argument sake that the decision of the Hon'ble Supreme Court is applicable to the applicants before them, the Railways are obliged to consider the cases of persons who are exactly similarly situated in the same fashion. So far as the specific prayer of regularisation of the present applicants is concerned it is clear that in pursuance of the order of the Hon'ble Supreme Court the Railways have to consider the cases of those residual 50 persons who are applicants before the Hon'ble Supreme Court and therefore, the prayer of the applicants for a direction to regularise them straightaway is held to be without any merit and is rejected. We however, direct that after the Respondents regularise these 50 persons they should consider if the present applicants are similarly situated as those 50 and if so should also take up the cases of their regularisation in pursuance of the above decision of the Hon'ble Supreme Court.

6. In view of our above observations and directions it is not necessary to refer to various other contentions raised by the parties in their pleadings.

7. With the above observations and directions, the OA is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
8.8.01