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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 78 OF 1999.
Cuttack, this the 20th day of June, 2000.

SUKADEBA SWAIN.

APPLICANT.

-VERSUS-

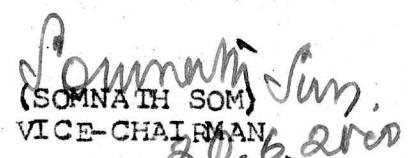
UNION OF INDIA & OTHERS.

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.


(J. S. DHALIWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN
20.6.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 78 OF 1999.
Cuttack, this the 20th day of June, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. J. S. DHALIWAL, MEMBER (JUDICIAL).

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SHRI SUKADEBA SWAIN,
Aged about 42 years,
S/o. Late Surendra Swain,
resident of Qrs. No. B-25/A,
Traffic Colony,
S. E. Railways, Khurda Road,
P.O. :- Jatni, Dist: Khurda-50,
at present working as Sr. Clerk,
Signal and Telecommunication Deptt.,
S. E. Railways, Khurda Road, PO:- Jatni,
District:- Khurda.

: APPLICANT.

By legal practitioner: M/s. DR. DINABANDHU MISHRA,
S. S. Das, A. P. Mishra,
T. K. Sahoo, P. K. Das,
Advocates.

- VERSUS -

1. Union of India represented through
its General Manager, S. E. Railway,
Garden Reach, Calcutta-43.

2. Divisional Railway Manager,
S. E. Railway, Khurda Road,
Jatni, Dist: Khurda.

3. Senior Divisional Personnel Officer,
S. E. Railway, Khurda Road, PO: Jatni,
Dist: Khurda, Pin- 752 050.

4. Senior Divisional Signal and Telecommunication
Engineer, S. E. Railways, Khurda Road, Jatni,
Dist: Khurda.

5. Ku. L. Bhanumati, Sr. Clerk,
O/o. the Sr. D. S. E. S. E. Railways,
Khurda Road, PO: Jatni, Dist. : Khurda.

6. Md. Usman, Sr. Clerk,
O/o. the Sr. S. E. S. E. Railway,
Khurda Road, PO: Jatni, Dist. Khurda,
PIN- 752 050.

: RESPONDENTS.

By legal practitioner: Mr. P. K. Mishra, Addl. Standing Counsel (Rly.).

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application u/s.19 of the Administrative Tribunals Act,1985, the applicant has prayed for quashing the order at Annexure-3 calling two persons other than the applicant for the suitability test. The second prayer is for a direction to the Respondents to include the name of applicant in the next suitability test as per Rules.

2. The admitted position between the parties is that the applicant is a Senior Clerk and in the seniority list of Senior Clerks, Ku.L.Bhanumati, Respondent No.5 and Md.Usman, Respondent No.6 are junior to him. Applicant along with one Abhiram Sethy, both Senior Clerks were called to a written test on 18.8.1998 for the post of Head Clerk in order at Annexure-2. In the result of the test published in order dated 25.1.1999, enclosure to Annexure-2, both the applicant and Abhiram Sethy were found unsuitable. Thereafter, in Annexure-3, Respondents 5&6 have been called to appear in the suitability test. Aggrieved with this order, the applicant has approached this Tribunal with the prayer referred to earlier.

3. *SJM*
Respondents have filed counter opposing the prayer of applicant. It is not necessary to refer to the averments made by the applicant in his petition and Respondents in their counter in support of their respective stands, as these will be referred to at the time of considering the submissions made by learned counsel for both sides.

4. We have heard Dr.D.B.Mishra, learned counsel for the applicant and Mr.B.K.Mishra, learned Additional Standing Counsel appearing for the Respondents and have also perused the

the records.

5. It is stated by learned counsel for both sides that the post of Headclerk is a non-selection post. Applicant's grievance is that after he was found unsuitable in the test held on 18.8.1998, result of which came out on 25.1.1999, according to Rule 214(C)(V), another suitability test should have been held only after six months and in that suitability test, all the eligible candidates, as per their seniority including those who failed at the last test should have been called. The period of six months is reckoned from the date of announcement of the result. Applicant's grievance is that the second suitability test which was called on 15.2.1999 is within a period of six months from 25.1.1999 the date of announcement of the result of the previous suitability test in which the applicant was found unsuitable. His second grievance is that in this suitability test, in which Respondent No. 5 and 6 were called, he was not called. Both these actions of the Respondents, are according to the learned counsel for the applicant violative of Rule 214(C)(V), of the Indian Railway Establishment Manual. Respondents on the other hand have submitted that the action taken by them is strictly in accordance with Rules. They have stated that according to the Railway Board's Circular dated 13.10.1967 circulated in Estt. Sl. No. 262/ 1967 and enclosed by Respondent at Annexure-R/1, it is provided as follows:

"(2) As for the future, Board have also decided that the number of candidates to be called for a suitability test to fill non-selection posts should be equal to the actual vacancies

existing and the anticipated vacancies so that persons who have passed such a test will not have to wait for promotion for a long period. If sufficient number of suitable candidates is not available, further candidates to meet the short fall may be called up in continuation and so on, but the original test and the continuation tests should all be completed within six months. If this period is exceeded any further test will assume the character of a fresh suitability test for which those who failed in the original test would also become eligible for reconsideration.

It has been submitted by learned Additional Standing Counsel that when persons who have been called in the suitability test are declared unsuitable, the post can not remain vacant for another period of six months when fresh suitability test would be called and in which persons who have earlier been declared unsuitable would also be called to appear. The above circular of the Board clearly provides for holding of continuity suitability test which should be completed within six months on declaration of the result. It also stands to reason that once in the first suitability test candidates who have been called are declared unsuitable, the post can not remain vacant for six months till such time again such candidates alongwith others are called for fresh suitability test. Therefore, in this circular of 1967 provision has been made for continuity suitability test. It has been provided that the continuity suitability test must be held within six months of declaration of the result of the first suitability test. In this ^{case} declaration of the result of the first test was made on 25.1.1999 and the continuity suitability test was ordered to be held on 15.2.99 i.e. within six months. The circular also clearly provides that in such continuity suitability test the persons who have been declared unsuccessful earlier, should not be called. In view of

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this, it is clear that Respondents have ordered for a continuity suitability test in their letter at Annexure-3 which also clearly mentions about the continuity suitability test and in such test under the above instruction, the applicant who has been found unsuitable in the first test is not required to be called. In view of the above, we hold that the action of the Respondents has been strictly in accordance with the Rules and Instructions and the prayer of the application is without any merit.

6. In the result, therefore, the Original Application is held to be without any merit and the same is rejected. No costs.

Jan 21/4
(J.S. DHALIWAL)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.