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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.40 OF 2000  
Cuttack this the 6<sup>th</sup> day of Dec. 2004

Rabi Narayan Mishra ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

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

*06/12/04*  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

*[Signature]*  
(B.N. SOM)  
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 40 OF 2000  
Cuttack this the 6<sup>th</sup> day of Dec. 2004

CORAM:

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

Sri Rabi Narayan Mishra, aged about 25 years  
S/o. Sri Kasi Prasad Mishra - residing at  
Jagannath Mandir Colony, PO-Bidharaja, P.S.  
Ainthapalli, District-Sambalpur

... Applicant

By the Advocates

M/s. A.K. Hota  
S.K. Panda  
D. Khuntia  
P.K. Pradhan

- VERSUS -

1. Railway Recruitment Board,  
At - Orissa Forest Development Corporation  
Building, 2nd Floor, A-84, Kharvela Nagar  
Bhubaneswar-751001, Orissa - represented  
through its Chairman
2. Union of India represented through its  
General Manager, South Eastern Railway,  
Garden Reach, Calcutta

... Respondents

By the Advocates

M/s. S. Roy  
A.A. Khan  
M/s. D.N. Mishra  
S.K. Panda  
S.K. Swain

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN : Applicant, Shri Rabi Narayan Mishra, who was a candidate for recruitment to the post of Train Assistant Driver (in short T.A.D.) has filed this Original Application under Section 19 of the A.T. Act, 1985, seeking the following reliefs:

- a) Quash the viva voce test held pursuant to the employment notice in Annexure-1;
  - b) Quash the provisional selection published in Annexure-4; and
  - c)
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- c) Direct the Respondent No.1 to draw the merit list on the basis of total marks in the written examination and psychological test".

2. It is the case of the applicant that he had applied for the post pursuant to the advertisement issued in The Employment News No.2/98 dated 30.12.1998. Although he came out successful in the written test and psychological test, he never received the call letter for viva voce test and later on he came to know that the final results have been declared. During the pendency of the recruitment pursuant to the aforesaid employment notice, another advertisement was issued for the same post in The Employment News No.1/99 dated 25.8.1999 and in the said employment notice, it was indicated that <sup>for</sup> the purpose of the recruitment to the post in question, there should be a written examination followed by psychological test, but no interview/viva voce. He has alleged that Res. 1 arbitrarily changed the selection procedure, and had not made due publication of the results of the examination conducted in pursuance of the Employment News No.2/98 dated 30.12.1998 nor had he issued call letters to the successful candidates in the written and psychological test for appearing at the viva voce/interview for the post of T.A.D. It is in this backdrop of the facts, the applicant has moved this Tribunal with the prayers referred to earlier.

3. Respondents have filed their counter opposing the prayer of the applicant. They have stated that the final results in respect of the posts so

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advertised were to be complied on total marks obtained both in the written examination as well as viva voce test and not on the basis of written and psychological/viva voce test, as mentioned by the applicant. The Respondents have pointed out that psychological test is essential only for safety category post. In any case the marks obtained in the psychological test does not count towards merit in the selection. They have also disclosed that the applicant had come out successful in the written as well as psychological test and his name had found place at Sl. No.6 of the select list. All the successful candidates including the applicant were issued with call letters as per the addresses given by the applicants in their application forms, but inspite of that the applicant was not present on the date fixed nor had he represented to the authorities for an alternative date. They have also submitted that the results bearing the Roll Nos. of the candidates, who were called for viva voce test were also published in the Employment News and the local Oriya Daily, The Dharitri, dated 28.10.1998, wherein it was categorically indicated that the candidates, who had been found suitable for the viva voce test, but had not received the call letters by 29.11.1999 should contact Railway Board Office on 30.11.1999 for collecting duplicate call letters. The said results were also displayed on the notice board of the R.R.B., Bhubaneswar. Respondents have submitted that the final results (panel) were published vide office order dated 23.12.1999 in The Employment News issued on 8-14.1.2000. Finally, the Respondents have submitted that as the applicant had not appeared at the viva voce test, the question of

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his roll no. appearing in the final result list did not arise.

4. The Respondents have made it clear that since the recruitment rules had been modified by the Railway Recruitment Board (Annexure-4) by eliminating the viva voce test from the recruitment process for the post of Train Asst.Driver, in pursuance thereof, Employment Notice No.1/99 dated 25.8.1999 was released stating that viva voce test was not a part of the selection procedure. With regard to <sup>the</sup> allegation of the applicant that viva voce test was conducted contrary to employment notice No.2/98, the Respondents have submitted that as the recruitment rules provided for viva voce test, the same had been done and there was no illegality in conducting the same. Lastly, they have submitted that it was the <sup>of the</sup> applicant, who did not respond to any notices and therefore, his name did not find place in the selection list. With all these submissions, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

5. We have heard the learned counsel of both the sides and perused the records placed before us. We have also gone through the Attendance Sheet of all the candidates who had already appeared before the R.R.B. Perusal of the same reveals that 910 candidates were called for viva voce/verification of documents of which 830 had appeared.

6. The learned counsel for the applicant has been strenuously arguing before us that the applicant did not receive the call letter and that such an eventuality

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could have occurred on account of super cyclone, which had hit the State of Orissa during that period. He also persuaded us to believe that the applicant could not have access to the concerned edition of Dharitri, in which the Respondents had called upon the successful candidates in the written test to contact R.R.B.'s office in case they failed to receive the call letters. He also submitted that he could come to know about the issue of the call letters and publication of the final results only when he happened to visit the office of R.R.B. in connection with some other work.

7. To verify the facts of the matter, we had called upon the Respondents to submit the documents to see how many candidates were actually affected by the dislocation in communication caused by the super cyclone, which had hurt the State in the month of October, 1999. Accordingly, the attendance-sheets of the candidates were placed before us from which it would appear that out of 910 candidates called upon to appear before the R.R.B. 830 candidates had actually appeared, which does not lend any strength to the plea of the applicant's counsel. We have, therefore, no doubt that the applicant was not alert in watching his interest. However, during the discussion, the learned Standing Counsel, on our query, submitted that had the applicant appeared with the relevant documents he could have been accepted and offered appointment as his name was within the list of successful O.C. candidates for appointment. It has also been submitted by the learned counsel that the applicant is still

without a job.

8. Having regard to these facts and circumstances of the case, we are inclined to take a positive view and direct the Respondents to consider the case of the applicant by asking him to produce the documents for verification and if the documents are found good in all respects, the applicant be offered with the appointment within a period of 120 (one hundred and twenty) days from the date of receipt of this order.

9. Before we part with this case, we would like to mention here that from the records it reveals that the applicant is now about 29 years of age. We, therefore, waive the age restriction, if any, which may stand in his way.

10. With the observations and directions made above, this O.A. is disposed of. No costs.

(M.R. MOHANTY) 6/12/84  
MEMBER (JUDICIAL)

BJY

(B.N. SOM)  
VICE-CHAIRMAN