

10
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 459 OF 2000
Cuttack, this the 22nd day of June, 2001

Sri Amar Prasad Nayak Applicant

Vrs.

Union of India and 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
22.6.01

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 459 OF 2000
Cuttack, this the 22nd day of June, 2001

CORAM:

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

.....
Sri Amar Prasad Nayak, aged about 25 years, son of Sri Fakir Charan Nayak, At-Baijanga, P.O-Baijanga, P.S/Dist.Jagatsinghpur, t present P/3, Paradeep Colony, Unit-8, Bhubaneswar, District-Khurda

..... Applicant

Advocate for applicant - Mr.S.K.Biswal

Vrs.

1. Union of India, represented by the Secretary, Department of Railway, Rail Bhawan, New Delhi.
2. Railway Recruitment Board, Bhubaneswar, D-79/80, Rail Vihar, B.D.A.Rental Colony, S.E.Railway, Project Complex, Chandrasekharpur, Bhubaneswar, represented by its Chairman.
3. Assistant Secretary, Railway Recruitment Board, D-79/80, Rail Vihar, B.D.A.Rental Colony, S.E.Railway, Project Complex, Chandrasekharpur, Bhubaneswar.
4. Member-Secretary, Railway Recruitment Board, D-79/80, Rail Vihar, B.D.A.Rental Colony, S.E.Railway, Project Complex, Chandrasekharpur, Bhubaneswar.
5. Chairman, Railway Recruitment Control Board, Railway Bhawan, New Delhi.

..... Respondents

Advocate for respondents - M/s S.Roy
A.A.Khan

O R D E R

S Som
SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for a declaration that he has come out successful in the examination for appointment to the post of Probationary Assistant Station Master and also for a direction to the departmental authorities to allow the applicant to join his post with retrospective effect after scrutiny of his documents with all service and financial benefits.

12 ✓

2. Respondent nos. 2 to 4 representing the Railway Recruitment Board, Bhubaneswar, have filed counter opposing the prayers of the applicant. No counter has been filed by Union of India and Chairman, Railway Recruitment Control Board. No rejoinder has been filed. We have heard Shri S.K. Biswal, the learned counsel for the applicant and Shri S. Roy, the learned Panel Counsel (Railways) for the respondents. At our instance the authorities of Railway Recruitment Board, Bhubaneswar, have filed certain documents in two sealed covers and we have perused the same.

3. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. Admittedly, in response to an advertisement for filling up 148 posts of Probationary Assistant Station Master, the petitioner applied for the post, took the written examination in which he came out successful, and was called to psychological test. It is necessary to note that out of 148 vacancies, 69 vacancies were for General Category candidates and the applicant belongs to General Category. As the applicant's name was not included in the final list of selected 69 General Category candidates, the applicant has come up in this petition stating that he has done very well in the psychological test, but because of extraneous reason his results have not been published and he has not been declared qualified.

J. Jom

4. The respondents have taken the stand in the counter that as the applicant failed in psychological test his case could not be considered for inclusion in the final list of 69 successful candidates.

5. The learned counsel for the petitioner in his written note of submission has stated that the authorities of the Railway Recruitment Board, Bhubaneswar, have not indicated the

relevant rules with regard to psychological test and therefore, declaring the applicant as unsuccessful in the psychological test is not legally sustainable. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in the case of Durga Charan Mishra v. State of Orissas and others, SCSR Vol.3 page 421, in which the Hon'ble Apex Court have held that where the rules do not provide for fixing pass marks for a test, it is not open for the Public Service Commission to fix the pass marks in the test.

6. We have considered the above submissions carefully. Respondents have pointed out that for this selection there were only written examination and psychological test and there was no interview. Paragraph 315.1 of the Railway Recruitment Board Manual, copy of which has been enclosed by the respondents, lays down that viva voce test has been eliminated in most of the RRB examinations with effect from 18.3.1999 and accordingly for this selection there was no viva voce or oral test. It is also mentioned in paragraph 316.1 that marks obtained in written examination alone will form the basis of merit and psychological test will be a qualifying test. Those failing in the psychological test shall be eliminated from the merit list. It is also provided in Paragraph 316.2 that the candidates belonging to SC, ST and OBC who have been selected on their own merit along with candidates belonging to other communities, will not be adjusted against the reservation quota and they will occupy position in the General Category. From the papers enclosed by the respondents we find that psychological test covers six attributes with one having two elements. Thus, there are six tests with seven test codes. Cut-off marks have been provided for each test code. In

SSom

XXXXXX
J J m

cut-off marks. From the above it is clear that in the General Category, out of 213 candidates who were called to the psychological test, a large number have not come out successful, may be because of their failure in the psychological test or even though successful in the psychological test, by way of marks in the written test they have not come within the first 60.

7. The learned counsel for the petitioner has stated that in the absence of any provision in the rule, it is not for the Railway Recruitment Board to fix the cut-off marks. We have gone through the decision of the Hon'ble Supreme Court in Durgacharan Mishra's case (supra). That case dealt with appointment to the post of Probationary Munsif in State Judicial Service. There were statutory rules for appointment to this post in the shape of Orissa Judicial Service Rules, 1964 and these Rules did not provide for minimum qualifying marks in the viva voce and in view of this Hon'ble Supreme Court have held that it is not for the Orissa Public Service Commission to fix the minimum qualifying marks in the viva voce. In the instant case the Railway Recruitment Board have not fixed cut-off marks for the seven different tests. The Rules provide that the tests are to be conducted by the Chief Safety Officer of the Controlling Zonal Railway and for the purpose of assessing success or failure in each of the tests, naturally the authority conducting the tests had fixed cut-off marks. The applicant has failed in two of the seven tests and cleared the other five. In view of this, it cannot be said that he has been unjustly failed in the psychological test.

8. In view of our discussions above, we hold that the applicant is not entitled to the relief claimed by him in the OA which is accordingly rejected. No costs. The documents submitted

by the Railway Recruitment Board in two sealed covers be returned to them forthwith.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath, Som.
(SOMNATH SOM)

VICE-CHAIRMAN

22.6.2001

CAT/CB/22-6-2001/AN/PS