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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 440 OF 2001
Cuttack, this the 26th day of February, 2004

S. Purusottam Rao & Ors. Applicants.
-Versus-
Union of India & Ors. 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? *yes*

B. N. SOM
(B. N. SOM)
VICE-CHAIRMAN

Manoj
26/02/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 440 OF 2001
Cuttack, this the 26th day of February, 2004.

C O R A M:

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN

A n d

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

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1. S. PURUSOTTAM RAO,
Aged about 54 years,
S/o. Late Laxminarayana,
JE (Elect.), Gr. I / Khurda Road,
as present residing at Railway
Quarter No. G 52 D, Accounts Colony,
Khurda Road, PO: Jatni, Dist. Khurda,
PIN-752 050.
2. ARUN DAM,
Aged about 38 years,
Son of Sri Santi Ranjan Dam,
JE (Elect.) Gr. I / Bhadrak at present
residing at Railway Quarter No. 1/
17/2, S.E. Rly., Colony, PO: Charampa,
Dist. Bhadrak, PIN-756 101.
3. DHIBAR DAS,
Aged about 36 years,
S/o. Late Khusali Das,
JE (Elec) Gr. I / Puri in the office of
Sr. Section Engineer (Elec.)
S.E. Railway, Puri.

.... APPLICANTS.

By legal practitioner: M/s. Achintya Das, S.C. Samantray, Adv.

- VERSUS -

1. Union of India service through General Manager,
S.E. Railway, Garden Reach, Kolkata-43;
2. Chief Personnel Officer, S.E. Railway, Garden Reach,
Kolkata-43;
3. Divisional Railway Manager, S.E. Railway, Khurda Road,
Po: Jatni, Dist. Khurda.

4. Sr.Divisional Electrical Engineer, S.E.Railway, Khurda Road, PO: Jatni, Dist. Khurda.
5. Sr.Divisional Personnel Officer, S.E.Railway, PO: Jatni, Dist. Khurda.
6. Sr.Divisional Electrical Engineer (TRD), S.E. Railway, Khurda Road, PO: Jatni, Dist. Khurda.
7. Sri B.K.Nayak, JE (Elec.) Gr.I, at present working under Workshop Electrical Engineer, Mancheswar, S.E.Railway, Dist. Khurda.
8. Sri Narayan Behera, JE (Elec.) Gr.I at present working under Sr. Section Engineer (Power), Electrical Office, Khurda Road, PO: Jatni, Dist. Khurda.
9. Sri K.C.Mohapatra, JE (Elec.) Gr.I (Cons.) at present working under Dy. Chief Electrical Engineer (Construction) S.E. Railway, BDA rental Colony, Chandrasekharapur, Dist. Khurda.
10. Sri Sarveswar Mohapatra, JE (Elec.) Gr.I at present working under Workshop Electrical Engineer, Mancheswar, Dist. Khurda.

.... RESPONDENTS.

By legal practitioners: Mr. Ashok Mohanty, Sr. Counsel for Rlys.

and

M/s. C.A. Rao, A. Tripathy,
Advocate

for Respondents, 7, 8, 9 and 10.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

The Three Applicants working as Junior Engineer (Elect.), Gr.I of the South Eastern Railway, by questioning the validity/legality and the manner/mode of selection for the post of Section Engineer (Electrical) (in the scale of pay of Rs. 6,500-10,500/- conducted by the Respondents

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pursuant to Memorandum dated 25-05-2001 have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, with the following prayers:-

- "8.1. to quash and set-aside the DRM(P)/KUR's letter No.P/Elect./SEE/Selection/2001, dated 25-5-2001 and issue fresh notification for conducting the selection of SE(Elect.) in the scale of Rs. 6,500-10,500/- by correcting assessing the vacancy position as per rules;
- 8.2. to issue directives to the respondents to set question paper for written examination as per extant rules contained in different circulars issued by the Railway Board and the provisions of IREM as corrected from time to time".

2. Respondents have filed their counter(denying the assertions made by the Applicants in their Original Application) submitting that since the selection was made as per the Rules, in a free and fair manner, this Tribunal should not interfere in the matter.

3. Learned counsel for the applicants, in support of their case, has submitted that all the three applicants had appeared the written test for the post in question, on 20.6.2001, but Respondent No.9 was allowed to appear in a special supplementary written examination on 18.7.2001. The vacancies as notified was not correctly assessed as per the rules. As per the Railway Board's letter dated 21.10.1997(Annexure-A/2), the assessment of vacancies for selection posts within a cadre will include the existing vacancies and those anticipated during the course of next 15 months, which had not been done in the

instant selection. Due to on going Railway Electrification work from Kharagpur to Visakhapatnam, some posts in this category are bound to have been sanctioned and created. Hence, keeping the above in view, the vacancies of SE(Elect.) has been under-assessed. As per the Railway Board's letter dated 17-04-1984, 50% of the total marks for the written test should have been made objective type and remaining questions could continue to be of (conventional) narrative type; which has not been followed. As per the Railway Board's letter dated 03.11.1988, 10% marks out of the total marks prescribed has not been made for official language policy and rules in the examination. No question on official language policy/rules was set in the question paper for written examination(main) held on 20.06.2001. The subject of 'passenger amenities' was not set as a part of the question papers. Applicants who came across such thing only on 20.6.2001 immediately made a representation on 21.6.01. Supplementary written test that was held on 18.7.2001 for the same promotion, for some persons (those who did not appear in the test held on 20.6.2001) must not have been done in the same manner. They have though brought these facts to the notice of the A.D.R.M./KUR, it did not yield any fruitful result. The norm notified in Railway Board's letter dated 19.2.1988 with regard to conducting the selection has not been adhered to. Even though so many irregularities/illegalities were made in the selection, which were drawn to the notice to the authorities, time and again, did not yield any result and having been unsuccessful in their attempts, they have come up in this Original

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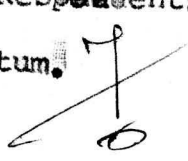
with an interim prayer to direct the Respondents not to hold the viva-voce test on 19.9.2001 as notified in letter dated 28.8.2001.

4. Learned Counsel appearing for the Respondents submitted that written test having been done in pursuance of the letter dated 25.5.2001 and the Applicant having not sought for any relief to set aside the said written examn. and having only applied to quash and set aside the letter dated 25.5.2001, the relief prayed for by the Applicants has become infructuous. Five posts were notified to be filled up; of which 4 was meant for UR and one for SC. As per the rules, personnel, three times of the number of vacancies, who were within the zone of consideration, were called to appear the test. As Respondent No.9 expressed his difficulties to appear the test on the date fixed (due to his father's funeral ceremony), he was permitted to appear in a supplementary test as per the rules. The allegation of the Applicants (that there was no uniformity) is far from truth. However, Respondent No.9 did not make any such grievance, even when results were published finding Respondents 7 and 10 eligible to attend the viva-voce. As per the Railway Board's letter the vacancies were calculated to be 7 but as there is an element of direct recruitment against 20%, 1 post remained unfilled and kept reserved for the direct recruitment quota. With regard to creation of more post, it was submitted that these are only presumption and imaginary. Question papers were set as per the prescribed norms of the Railway. The Applicants have over-looked the heading of the question papers 'short question'; which were

objective type questions. Question of official language policy and Rules should not be made compulsory. In sum and substance, it was placed by the Respondents that there was no irregularity or illegality in the matter of selection etc. It has been submitted by the Respondents that since the Applicants did not qualify in the test, they have come up in this Original Application to annul the test; which is not legally permissible. They have relied upon certain decisions of the Apex Court; which has been taken note of.

5. Respondents 7 and 10 have also filed their counter and the Applicants have also filed their rejoinder and notes of submission; with citations, which have also been taken note of.

6. The first and foremost question for consideration in this Original Application is as to whether the Applicants having appeared in the test and failed, have any right to challenge the constitution of selection committee, manner of preparing the question papers, manner of conducting the selection etc., in the face of various decisions relied upon by the Applicants as also Respondents which are discussed as under in a seriatum.



Respondents have categorically stated that all the norms and procedures have been adhered to in toto and relying on the following case laws, they have argued that candidates having appeared in the test and failed, cannot challenge the procedure later stating that the same is illegal and not according to Rules, which are as under:-

- a) UNION OF INDIA AND ANOTHER v. CHANDRASEKHARAN AND OTHERS - AIR 1998 SC 795;
- b) ORISSA SMALL INDUSTRIES CORPORATION LTD. AND OTHERS v. NARASIMHA CHARAN MOHANTY AND OTHERS- 87(1999)CLT 815 (SC);
- c) DHANESWAR SAHU AND OTHERS v. STATE OF ORISSA AND OTHERS -87(1999)CLT 818;
- d) VIJAY KUMAR SHARMA AND OTHERS v. CHAIRMAN, SCHOOL SERVICE COMMISSION AND OTHERS- AIR 2001 SC 1691; And
- e) PRASUN ROY v. THE CALCUTTA METROPOLITAN DEVELOPMENT AUTHORITY AND ANOTHER-AIR 1988

We are, however, of the view that the facts of this case are clearly distinguishable to the facts of the cases relied upon by the Respondents; because the objection ^{been} that had ~~raised~~ by the Applicants when the examination was not carried out according to the codified syllabus laid down for it; through various orders issued by the Railway Board, or the procedure to be followed in the matter of holding of the examination, could only be agitated after the examination is over. Learned Counsel for the Applicants, by relying on the following decisions has argued that the Respondents by deviating from the scheme

of the examination have entered into the arena, which was forbidden for them. The cases relied upon are as under:-

i) AIR 1936 Privy Council 253(2)-NAZIR AHMED v. EMPEROR;

And

ii) AIR 1975 SC 915 - RAMCHANDRA KESHAV ADKE (DEAD) BY LRS. v. GOVIND JYOTI CHAVARE AND OTHERS.

In the Privy Council's case it was held as follows:-

"The rule which applies is that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

In the case of Ramchandra (supra), the Hon'ble Apex Court held that if the provisions of law are mandatory and not directory, noncompliance with those provisions vitiates an action so taken. In coming to this conclusion, the Hon'ble Apex Court relied on the decision of the Privy Council, as rendered in the case of Nazir Ahmed (supra) and held that "this rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other". In the instant case, the Applicants have alleged that the Respondents for no good reason had held the examination / test, to fill up the vacancies of Section Engineer (Elect.) deviating from the procedures laid down in this regard in Estt. Sl. No. 78/96 dt. 18.6.1996 (Annexure-A/6). They have catalogued

the deviations in the following manner:

Firstly, that whereas it has been laid down in the circular in sub-para 5 under (iii) 'selection' that objective type questions may be set for about 50% of the total marks; secondly, that about 10% of the total marks allotted for written test should be set on official language policy and rules and, thirdly, that some questions on the subject of 'passenger Amenities' should also as far as possible, figure in the questions for written examination. Finally, at sub-para 9 under sub-heading (iii) 'selection' it has been clearly laid down that "the Railway Administration should ensure that there is no procedural irregularity whatsoever in the conduct of selections". Further at sub-para-11 it has been laid down that "all members of the selection Board should independently assess the candidates under the different headings and record their marks in the mark-sheet given to them xx xx."

7. The case of the Applicants is that not a single question in the written test was objective type, no question was set on official language and rules and that no question was put on 'passenger amenities'. The Respondents in their counter reply have not been able to refute the allegations effectively. They have sought to pass 'short questions' set in the question paper, as objective type questions. We are surprised to note that the Respondents have tried to cover the truth in this way; whereas in the conventional type of examination, an examinee's capacity to narrate the facts of a question with reason and his command over language are

tested; that in an objective type examination, the examiner seeks to test the alertness of mind of the candidate, his mental capacity, memory retrieval power, his command over the subject by offering multiple choice of answers to a question and asking him to answer a large number of such questions within a short span of time. Thus, these are two different and distinct types of examinations to test the intellectual faculties of the candidates by using two different methods, and, therefore, as admitted by the Respondents, at para-19 of their counter, by not including objective type questions in the Written test, they have, in fact, changed the system of examination and, thus, amended the examination scheme, as laid down by the Railway Board in Estt. Sl. No. 78/96. They have also not been able to refute the allegation that no question was set in official language; thereby deviating from the instructions no. 7 of the Selection scheme, referred to earlier. Similarly, it is now clear that they have not set any question on passenger amenities; thereby violating instruction no. 8 for holding the selection test. By violating the instructions on the procedure for holding the written test, the Respondents have openly and squarely infringed the regulations governing the procedure of holding the selection and thereby vitiating the selection test; because, they did something which was not permitted under Estt. Sl. No. 78/96. They have, thus, clearly

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vitiating instruction no.9, as quoted earlier.

8. It has been submitted at para-12 of the counter that the result of the said Viva-voce test has not yet been published. We also find that some of the Applicants had brought these irregularities in the matter of selection test to the notice of the authorities, by submitting representation to the Senior Divisional Engineer on 21-06-2001; which was received on the same day by the addressee. We are, therefore, unable to accept the plea of the Respondents that the Applicants were late to react to a situation and, therefore, should be seen as fence-sitters not entitled to any relief. Rules are enacted by the legislature and regulations are framed and notified by the executives to ensure rule of law in the interest of fairness and justice and that is how, Estt. Sl. No. 78/96 has been issued by the Respondents to ensure objectivity and transparency in the selection system; but by deviating, without any reason, from the condition Nos. 5, 7, 8 and 9 of the selection process, the concerned functionaries have seriously undermined the administration and it is necessary to intervene in the matter to restore the confidence of the concerned people/employees in the administration.

9. Having regard to the above facts and circumstances of the case, we find lot of force in the arguments advanced by learned counsel for the Applicants that the decision

rendered in the case of Nazir Ahmad (supra) that 'where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all' is eminently applicable in this case. This principle has been applied by the Hon'ble Apex Court also in the case of Ramchandra Keshav Adke (supra) thereby making it settled principle of law that if the command to do a thing in a particular way is deviated, the action so taken is vitiated; because there is an implied prohibition to do it in any other way.

10. In the result, this Original Application succeeds and the result of the written test held on 20.6.2001 and 18.07.2001 and viva-voce test held on 19.09.2001 are set aside; having been done in violation of the selection procedure laid down for this purpose in the Estt. Sl. No. 78/96 and the Respondents are hereby directed to hold a fresh selection test strictly according to the instructions laid down in the said Estt. Sl. No. 78/96 by calling all the officials, including the Applicants, who were eligible when the selection test was notified earlier on 25.05.2001, to the fresh selection test.

There shall be no order as to costs.


(B.N. SOM)
VICE-CHAIRMAN


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)