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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No.326,341 & 342 OF 2003
Cuttack, this the 30th day of September, 2005.

SUKANTA KUMAR MISHRA & 2 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 CAT or not? *yes*

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

M.R.MOHANTY
(M.R.MOHANTY)
MEMBER(JUDICIAL)
30/09/05

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C O R A M:

**THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL>)**

1. Sukanta Kumar Mishra, aged about 45 years,
Son of Nilakantha Mishra, AT Raja Bazar,
Po/Ps: Jatni, Dist. Khurda.
2. Pravat Kumar Mishra, aged about 46 years,
Son of Gopabandhu Mishra, At.Plot No.MIG-20,
Srikhetra Colony, PURI-2.
3. Surat Cherkia, aged about 43 years,
Son of Nilakantha Cherkia,
At/Po. Sulsulia, Via. Bhatli,
District- Bargarh-768 030.

APPLICANTS.

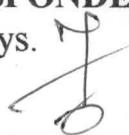
For the Applicants - M/s. M/s. B.S.Triathy, M.K.Rath,
Ms.S.Mohapatra,Advocates.

VERSUS

1. Union of India represented through the General Manager,
East Coast Railway, Chandrasekharpur, Bhubaneswar, KHURDA.
2. The Chief Commercial Manager, East Coast Railway, Khurda Road,
Khurda Road, Khurda.
3. The Divisional Railway Manager, East Coast Railway, Khurda Road,
District. Khurda.
4. The Senior Divisional Commercial Manager, East Coast Railway,
Khurda Road, Dist.Khurda.
5. The Senior Divisional Personnel Officer, East Coast Railway,
Khurda Road, Dist.Khurda.

..... **RESPONDENTS.**

For the Respondents -- Mr.P.C.Rath, Counsel for Railways.



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ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Three Applicants not having been selected for the posts of Head Ticket Collector/TTE represented and being aggrieved by the action of the Respondents-Railways (in rejecting the said representations) they have filed this Original Application under section 19 of the Administrative Tribunals Act, 1985; wherein they have prayed to quash the said order of rejection (Annexure-3 dated 17-04-2003) and to direct the Respondents to promote them (Applicants) with effect from the date of promotion of their juniors.

2. Respondents, after getting notice in this case, have filed their counter on 17th May, 2004 supporting the stand taken in the order of rejection of the representation of Applicants and opposing the stand taken by the Applicants in their Original Application.

3. We have heard Mr. B.S.Tripathy, learned Counsel appearing for the Applicant and Mr. P.C.Rath, Learned Counsel appearing for the Respondents/Railways and perused the materials placed on record.

4. Learned counsel appearing for the Applicants, in course of hearing has submitted that although, pursuant to the notification made



by the Respondents/Railways, the Applicants faced a selection test (for promotion to next higher grade) the same were cancelled, for the reasons best known to the Respondents. It has also been submitted by him that although the Applicants are senior, (and their names figured at Sl. Nos. 75,69, and 68 in the list of 189 candidates published by the Respondents) persons much below in rank got the berth in the final panel/list of 67 candidates (i.e. 59 UR + 8 SC) ; whereas the Applicants were not empanelled. It has been alleged by the learned counsel appearing for the Applicants that only to show favour to some of the candidates, the Respondents (instead of conducting the written test and viva voce test, as per the Rules) illegally prepared the panel only on the basis of the result of the Viva voce test. It has also been pointed out that more than 8 SC candidates having been selected as against 8 vacancies meant for SC, there were encroachment of the posts meant for general Candidates. By stating so, the learned counsel appearing for the Applicants reiterated his prayer made in this Original Application.

5. Per contra, learned Standing Counsel appearing for the Respondents-Railways, apart from reiterating the stand taken in the counter, has submitted that Applicants having taken chance in appearing the test for promotion, they are estopped to challenge the same (on the allegation of procedural irregularity) after being disqualified in the test; as they did not raise any immediate objection to the Notification

wherein it was specified that the selection will be based on the result of viva voce test/ Service records as provided under the Rules.

6. We have given our anxious thoughts to the issues raised by the parties and perused the materials placed on record. We find that none of the grounds taken by Applicants have any legal support to stand on the touch stone of judicial scrutiny; because the admitted position of both the parties is that the posts come under the category of "selection" and it is also settled position of law that where the posts meant to be filled up by way of selection, the merit is/was the sole criteria for selection and seniority has nothing to do for such promotion. Therefore, the plea of the Applicants "that being senior they ought to have been selected" has no legs to stand at all. That-apart, on perusal of para 215 (a) of IREM produced by the Respondents, it is crystal clear that as per the power vested it is purely the prerogative of the competent Authorities to decide as to whether the selection process shall be either on the basis of written test followed by a viva voce or **viva voce only**. Thus, by conducting the selection only on the basis of viva voce test (subject to verification of records), cannot be faulted in any manner. As regards the plea that as against 8 SC posts, 10 SC candidates were selected for promotion, it is the specific case of the Respondents that 2 SC candidates were selected/ promoted on merit and the rest 8 Scheduled Caste candidates were selected against reservation. Law is also well settled that

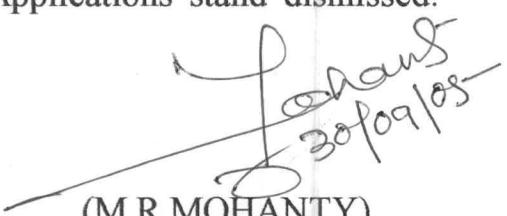
reserved candidates, when they secure more marks than general candidates, they are to occupy the place in their merit against OC candidates and, therefore, we find no fault on the above action of the Respondents. As regards the plea of the Applicants that they were superseded by their gross juniors, it is noted here that where the posts are meant to be filled up on the basis of "selection", supersession by juniors can lawfully be allowed and in case a junior person found more meritorious than his senior, he is bound to be preferred. Applicants have also not specified as to how they are senior and who are the superseding juniors. We also find that, at first instance, the result was published; wherein the names of applicants find place at the top but, as disclosed, final panel was prepared only on the basis of the marks secured by the candidates (from out of the 189 candidates) and, therefore, the Applicants cannot say that as because they were above in the first list, they have a better right than the persons those who have secured more marks in the tests. Law is also well settled that persons having taken chance by facing the selection, are estopped to challenge the process of selection or the manner/ conduct of the examination, after being disqualified in the selection. Applicants raised no grievance/objection of the Notification for selection. Respondents have also explained as to why the earlier selections were cancelled in exercise of their right to do so. We also find no illegality in such decisions of the Respondents. The Respondents have

rightly taken a plea that intervention of the Courts are uncalled for unless prejudicial or mala fide motive are shown in the selection process. No such plea has been taken by the Applicants in their pleadings. Furthermore, though Applicants claimed for promotion from the date any of the juniors were promoted, they have not made any such person as parties to have their say, in compliance of the principles of natural justice.

7. In view of the discussions made above, we are not inclined to interfere in the matter of selection/promotion given by the Respondents; which is the subject matter of challenge in this Original Application. Accordingly, these Original Applications stand dismissed.

No costs.


(B.N. SOM)
VICE-CHAIRMAN


30/09/05
(M.R. MOHANTY)
MEMBER(JUDICIAL)