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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.369 OF 2003
Cuttack this the 16th day of December 2004

Suresh Ch.Sahoo ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *Yes*

16/12/04
(M.R.MOHANTY)
MEMBER (JUDICIAL)

16/12/04
(B.N.SOM)
VICE CHAIRMAN

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CORAM:

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

Suresh Chandra Sahoo, aged about 36 years,
Son of Sri Khetrabasi Sahoo, working as
Sr.D.D.A./Cuttack under Sr.DME/KUR -
residing At/PO-Jemadeipur & Haripur,
Via-Sukinda, Dist-Jajpur, PIN - 755 018

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Applicant

By the Advocates

Mr. Achintya Das

- VERSUS -

1. Union of India service through General Manager,
E.Co.Railway, Rail Vihar, Chandrasekharpur,
Bhubaneswar, PIN - 751 023
2. Member Staff, Railway Board, Rail Bhavan,
New Delhi-110 001
3. Chief personnel Officer, E.Co.Railway,
Chandrasekharpur, Rail Vihar, Bhubaneswar,
Dist-Khurda, PIN - 751 023
4. Divisional Railway Manager, E.Co.Railway,
Khurda Road, PO-Jatni, Dist-Khurda, PIN-752050
5. Commissioner of Railway Safety (S.E.Zone),
14 Strand Road, Kolkata, PIN-700001
6. Sri Balaram Paricha, Driver, Loco Foreman's
Office, S.Co.Railway, Talcher, Dist-Angul
7. Sri D.K.Bhoumik, Chief Crew Controller,
Loco Foreman's Office, E.Co.Railway, Khurda
Road, PO-Jatni, Dist-Khurda, PIN-752050

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Respondents

By the Advocates

Mr. O.N. Ghosh, A.S.C.

ORDER

MR. B.N. SOM, VICE-CHAIRMAN: Applicant, Shri Suresh Chandra Sahoo has filed this Original Application challenging the order No.78 dated 13.1.2003 (Annexure-A/5) passed by the Power Controller, Khurda Road notifying that only viva voce test will be held for selection to the post of Goods

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Driver and Memorandum No.12/2003 & 13/2003 dated 13.2.2002 issued by the Sr.DPO/Khurda Road (Annexure-A/7) notifying a panel of Goods Driver and posting of Goods Driver.


2. The grievance of the applicant is that he along with 17 others were nominated to undergo Drivers' training at Supervisors' Training Centre, Kharagpur wherein the applicant was declared pass. . Thereafter by a circular dated 9.12.2002, the Sr.DPO, Khurda Road informed him that the applicant along with 69 other Sr.DDAs were required to appear in written test that was to be held on 23.1.2003 for selection to the post of Goods Driver, ~~lying~~ lying vacant. It was mentioned in that circular that the pre-selection coaching for SC/ST candidates would be imparted by the ADME(P)/KUR along with two Loco Inspectors for a period of 21 days with effect from 12.12.2002. While the applicant along with others were to appear in the written test on 23.1.2003, the Power Controller vide its order No.78 that was issued over telephone on 13.1.2003 intimated all concerned that instead of a written test, only a viva voce test would be conducted from 3.2.2003 to 7.2.2003. The applicant submitted a representation dated 16.1.2003 protesting against the proposed revision/amendment in the selection procedure. However, pending disposal of his representation, the applicant did appear in the viva voce test on 6.2.2003 under protest. The applicant submitted another representation on 21.2.2003 reiterating his grievance that written test

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could not have been cancelled as the same had been notified earlier by the Sr.DPO/Khurda Road, but to no effect. As his repeated representations did not yield any result, he has approached this Tribunal, in this Original Application under Section 19 of the A.T.Act, 1985, seeking the following reliefs:

- a) ... to direct the Respondents to cancel the panel of Goods Driver circulated vide Sr.DPO/KUR's Memorandum No.13/2003 dated 13.2.2003(Annexure-A/7);
- b) ... to direct the Respondents to get the rules examined and make proper amendment so that the positive act of selection for safety-category posts should be done by taking a written test and viva voce; and
- c) to direct the Respondents to conduct a fresh selection as per the Railway Board's directives.

3. The Respondents-Railways have opposed the application on all counts. They have pointed out that for promotion/selection to the post of Goods Driver, the Railway Board has framed rules which have been incorporated in Establishment Serial bearing No.59/96 (Annexure-R/1). As per the said rules, minimum two years service in the category of Loco Shunter is required for promotion/selection to the post of Goods Driver in the scale of Rs.5000-8000/-. In case of non-availability of Loco Shunter for promotion to the grade of Goods Driver, the following categories of Mechanical/Running Staff are eligible for selection subject to the personal approval of the General Manager of the concerned Railway.

- i) Six years combined service as FM-II/FM-I/D.D.A.
 - ii) Two years service as D.D.A.
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- iii) 60,000 kms. Foot plate experience as D.N.A.; and
- iv) Passing in the Driver's promotional-cum-Conversional course STC/S.E. Railway, Kharagpur

4. The applicant was called for the selection test in terms of the above rules along with 69 other eligible candidates vide Annexure-A/3. While admitting that the initial decision of the competent authority ^{was} to conduct the selection through written test and viva voce, the Respondents have stated that inasmuch as calling 17 Loco Shunters/Sr.Diesel Driver Assts. in one day for attending written test would cause dislocation of train services, which will cause heavy loss to the Department, it was later on decided to conduct the selection only through viva voce. On the other hand, they have submitted that calling the candidates for viva voce test separately over a number of days, would not affect the train service. Thus, the latter selection procedure was found the most **viable**. The Respondents have further submitted that the applicant had also applied for selection test and was accordingly called, but could not qualify in the said selection for empanelment as Goods Driver, whereupon being aggrieved he has filed this O.A. They have also submitted that in all 18 candidates **failed** in the selection and among them 12 candidates were senior to the applicant, but they have not challenged the selection, as has been ^{done} by the applicant. However, another selection test for recruitment to the post of Goods Driver was held from

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15.7.2003 to 18.7.2003, in which the applicant was one of the candidates and he qualified in the test, as a result of which he has been empanelled for the post of Goods Driver in the scale of Rs.5000-8000/-. The name of the applicant appears at Sl. No.14 of the select list published by the Respondents vide Memorandum No.58/03 dated 23.7.2003. The Respondents have further submitted that the applicant has already been granted actual promotion as Goods Driver by the D.P.O., Khurda Road vide his Memorandum No.59/03 dated 24.7.2003. It is with these submissions, the Respondents have craved indulgence of the Tribunal that the O.A. lacks in merit and have prayed for dismissal of the same.

5. We have heard the learned counsel for the parties and perused the records placed before us.

6. The Respondents, in support of their stand, have relied on the decisions of the Supreme Court in the case of Sardara Singh vs. State of Punjab & Ors. (reported in Supreme Court Service Rulings (1950-1996) Vol.22, Page-137) (1991 LAB.I.C. 2404(SC)) and in the case of Anzar Ahmad v. State of Bihar & Ors.(reported in Supreme Court Service Rulings, Vo.11, Page-291).

7. As regards the ratio decided by the Hon'ble Supreme Court in the case of Sardara Singh(supra) we are of the view that this decision will be of no help to the cause of the Respondents as it was held therein that adoption of viva voce as a method to select the candidate could not be ^{called} illegal.

8. So far as the decision in the case

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of Anzar Ahmad (supra) is concerned, that decision stands in a different context, that is, allocation of marks in the viva voce test, which is not the point at issue here, involved; and therefore, the same is not applicable to the instant case.

9. However, on the basis of the decisions cited in the above case laws, the law is well settled that adoption of viva voce test as a mode of selection cannot be called in question. In fact, their Lordships in the case of Anzar Ahmad have observed that selection made only on the basis of interview cannot be held to be suffering from the vice of arbitrariness.

10. The Respondents have brought to our notice the order dated 12.9.2004 passed by this Tribunal in O.A. No.708/200, wherein a promotion to the post of Senior Goods Guard was challenged on the ground that the Respondents-Department, instead of conducting the written test and viva voce carried out the selection based on the only viva voce/interview; and it was held by us that Rule - 2 (1) (5) as quoted in Railway Board's letter No.E(N) 1/85-Pen. 168 dated 3.9.1976 did not lay down that written test was a must; rather, the discretion was vested with the Department to either conduct a written test or not, but holding viva voce was a must. The applicant, by referring to the Recruitment Rules for the post of Goods Driver had argued that in terms of Railway Board's letter No. E (NG) 1-76/Pen/168 dated 3.9.1976 and letter No.E(NG)-1-99/PM.1/15 dated 26.7.1999, the Respondents have deviated from the contents therein both in letter and spirit.

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In this background, it would be profitable to quote hereunder the method of selection.

"... It is desirable to hold written test as part of a selection in respect of all initial selection grade posts in the different channels of promotion, but in every case a viva voce test shall be held. If a written test is proposed to be held, advance intimation shall be given to all eligible candidates".

By referring to the decision of their Lordships in the case of Praveen Singh v. State Punjab (reported in AIR 2001 SC 152), the learned counsel for the applicant pleaded that selection could not be made only on the basis of viva voce, as appointment made based on the viva voce test is not proper. It has been held in that case that interview should not be the only criterion for assessing the merit.

// Having gone through the above referred case by the applicant and also the rule position as quoted above, we are unable to uphold the stand taken by the applicant. Even in that case (Praveen Singh) the Hon'ble Apex Court had held that the administrative or quasi judicial authority vested with the power of selection and appointment ought to be left unfettered in adoption of procedural aspect provided it is not at the cost of fair-play, good conscience and equity. As has been brought to our notice that the Respondents have not laid down anywhere in the Recruitment Rules that selection to the post of Goods Driver can only be made by holding a written test as well as viva voce test. Vide their letters dated 3.9.1976 and 26.7.1999, the Railway Board have reiterated that it was

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desirable to hold written test as a part of selection only at the initial selection grade level, "but in every case viva voce test was held to be compulsory". This is also the ratio of Rule-215 of I.R.E.M. In other words, holding of written test is a matter of discretion. Had it not been so, the Respondents would not have in the last sentence of above quoted Rules (Rule-215) made the matter more conspicuous by saying that "if a written test is proposed to be held, advance intimation shall be given to all eligible candidates". It, thus, means that written test may or may not be held and to take a decision in that behalf, discretion solely vests with the competent authority. But under no circumstances, the Respondents could dispense with the viva voce test for selection and appointment to the post in question. However, the whole controversy appears to be of little avail as the applicant had participated in the selection test, held in the month of February, 2003, in which he could not qualify and subsequently in the selection test held during the month of July, 2003 he did appear and came out successful and accordingly, he has been appointed to the post of Goods Driver.

12. The law is well settled in the case of Om Prakash Sukla vs. Akhilesh Kr. Sukla (reported in AIR 1986 SC 1043) that one having appeared in the examination, cannot question the validity of the examination after realising that he would not succeed in the examination.

13. Having regard to what has been discussed above, we are of the view that the applicant has not been able to make out a case for any of the reliefs prayed for by him.

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In the circumstances, the O.A. is dismissed, leaving the parties to bear their own costs.

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16/12/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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(B.N. SOM)
VICE-CHAIRMAN

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