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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 725 of 2003
Cuttack, this the 30th day of June, 2005.

R.C.Behera.

.....

APPLICANT.


VERSUS


UNION OF INDIA & ors.

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether to be referred to the reporters or not? 42 .
2. Whether to be referred to all the Benches of CAT or not? 44 .


(M.R. MOHANTY)
Member(Judicial)


(B.N. SOM)
Vice-Chairman

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

ORIGINAL APPLICATION NO. 725 OF 2003

Cuttack, this the 30th day of June, 2005.

C O R A M:-

*THE HON'BLE MR. B.N.SOM, VICE-CHAIRMAN
A N D*

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

Shri R.C.Behera, Aged about 47 years,
S/o. Shri B.N.Behera, working as Office
Superintendent, Gr. I, under Senior Divisional
Personnel Officer, Khurda Road Division,
Residing at Chintamani Nagar, PO: JATNI,
Dist. Khurda.

..... APPLICANT.

FOR THE APPLICANT: MR.ACHINTYA DAS, Advocate.

VERSUS

1. Union of India service through G.M., E.Co.Rlys.,
Chandrasekharpur, Bhubaneswar-751023.
2. Chief Personnel Officer, E.Co.Rly., Chandrasekharpur,
Bhubaneswar.
3. Divisional Railway Manager, E.Co.Railways,
Khurda Road, Po: Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer, E.Co.Rlys.,
Khurda Road, Po: Jatni, Khurda.
5. Shri A.G.Unger, OS, Gr. I,
C/o. Sr. Divl. Personnel Officer,
E.Co.Railways, Khurda Road,

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6. Po: Jatni, Dist. Khurda.
S.C. Sahoo, Chief OS,
Co. Sr. Divl. Personnel Officer,
E. Co. Railways, Khurda Road, Jatni.
7. S.D. Sahoo, OS Gr. I,
Co. Senior Divl. Personnel Officer,
East Coast Railway, Khurda Road, Jatni.
8. Smt. Usharani Mohanty, OS Gr. I,
C/o. Dy. Chief Personnel Officer (Con.)
E. Co. Railways, C.S. Pur, Bhubaneswar.
9. P. Govinda Rajulu, OS Gr. I,
C/o. Sr. Divl. Personnel Officer,
Khurda Road, Po: Jatni, Dist. Khurda.
10. N. Rabindra Nath, OS Gr. I,
C/o. Sr. Divl. Personnel Officer,
East Coast Railway, Khurda Road,
Jatni, Khurda.
11. S.C. Naik, OS Gr. I,
Sr. Divl. Personnel Officer,
E. Co. Railways,
Khurda Road,
Jatni, Khurda.
12. H.H. Parida, OS GR. I,
C/o. Sr. Divisional Personnel Officer,
E. Co. Railways,
Khurda Road,
Jatni,
Dist. Khurda.

..... Respondents.

BY THE RESPONDENTS: M/s. S.K. Ojha, H.M. Das, Addl. S.C.
(Respondent Nos. 1, 3 & 4)

M/s. S. Parida, A.R. Nayak, Advocate
(Res. Nos. 5, 6, 7, 10, 11 and 12)

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O R D E R

MR. B.N.SOM, VICE-CHAIRMAN:-

Shri R.C.Behera, presently working as Office Superintendent (in short O.S.) Gr.I. in the Office of the Senior Divisional Personnel Manager, (Res.4), Khurda Road has filed this Original Application being aggrieved by the inaction on the part of the said Respondent No.4 in the matter of disposing of his representation dated 28.2.2001 (Annexure-A/5). This representation dated 28.2.2001, as it appears, was filed by the applicant assailing the order of Respondents in declaring him unsuitable in the suitability test for the post of O.S, Gr.I held on 9.2.2001 though he had been working in that capacity with effect from 3.11.1995 to till date without any adverse remarks against.

2. The case of the applicant is that while he was working as Head Clerk, being the senior most in the cadre, was ordered by the Res.No.4 vide Office Order dated 3.11.1995 to look after the work of O.S.,Gr.I in addition to his own work until further orders. He continued to officiate as such till 6.10.1997 when he was promoted on regular basis as O.S. Gr.II. Thereafter in order to fill up 11 posts of OS Gr.I, a suitability test was conducted by Res. No.4 on 25.1.2001. The results of the said test were published on 27.2.2001, but he was declared "un - suitable". It is in

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this background, the applicant had made a representation dated 28.2.2001 ventilating his grievance. While his representation was not replied to, Res.4 conducted another written test and viva voce test on 19.10.2001. This time the applicant was declared suitable and was promoted as OS Gr.I on regular basis from 12.11.2001. The grievance of the applicant is that he could not be declared unsuitable when he was working uninterruptedly though on officiating basis as OS, Gr.I from 3.11.1995, and, secondly, that OS, Gr.I is a non selection post and in terms of the Rules governing promotion to non selection post, the senior most official can ~~only~~ be denied promotion only if "he has been declared unfit for holding the post in question". A declaration of unfitness should ordinarily have been made sometimes previous to the time when the promotion to the Railway Servants was being considered (Reference- para-214 (a) of Indian Railway Establishment Manual (in short IREM). Such declaration of unfitness having not been made by the Respondents, they could not have subjected him to suitability test and declared him unsuitable. He has further submitted that as the Respondents had arranged a suitability test for promotion to OS, Gr.I and the list of successful candidates were made on the basis of the marks obtained in the test, he could not have been declared unfit/unsuitable unless he had secured less than 20% marks in that test. No such averment having been made by the Respondents, ever, his non selection was a case of denial of justice.

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3. The Respondents by filing a counter have opposed the prayer of the applicant. It is their stand that the applicant was deputed to the post of OS, Gr.I and he continued in that post as there was delay in filling up of the posts in the grade of OS II on regular basis on account of the Court Case in O.A.No.83/95 filed by Ch.V. Rangaram and Ors. The said O.A. was dismissed on 20.11.2000 and before that by the interim order dated 22.9.1997, the Tribunal allowed the Respondents to fill up the vacant post of OS, Gr.II as a result of which the applicant along with 12 others were promoted to the OS, Gr.II with effect from 6.10.1997. However, promotion to the post of OS, Gr.I on regular basis was dependent upon the recommendation of the DPC on the basis of record of service and/or departmental test. Since the post of OS, Gr.I posts carrying great importance in dealing with the establishment matters. Viz, appointment, welfare activities etc., it was decided to fill up those posts through departmental test as per Para 214(a) IREM, Vol.I. In the test, the applicant did not succeed in the written examination held on 9.2.2001 and was declared unsuitable. They have also raised the issue that the applicant having participated in the selection without raising any objection nor having objected thereafter to that effect, he is under law, estopped from assailing the selection process. They have further stated that as he was deputed to officiate as OS, Gr.I he did not have any vested right to be

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promoted to that post nor could he be exempted from qualifying in the subsequent selection.

4. We have heard the learned counsel for both the parties and have perused the records placed before us. The applicant has filed rejoinder to the counter and the Respondents have filed replies to the rejoinder. The applicant has also filed additional documents in support of his claim to promotion under reservation rules in respect of SC/ST employees.

5. The issue raised in this O.A. for our answer is whether the declaration of the applicant unsuitable by the Respondents in the written test for promotion to the post of OS, Gr.I vide Annexure-A/4 was in conformity with the provision / procedure for selection to the post of OS, Gr.I which is a non selection post.

6. At the outset, we must recall the rules governing promotion of Group C staff in the Railways as laid down in Para 213 of IREM (Vol.I). Para 213 deals with promotion and it enshrines therein that a Railway Servant may be promoted to fill any post whether a selection or ***non selection*** post only after he is considered fit to perform the duties attached to the post. It is further laid down that the General Manager or the Head of the Department or the Divisional Railway Manager may prescribe the passing of departmental or other test as a

condition precedent to a railway servant being considered fit to hold a specified post. In Para 214 (a) it is provided that non selection post will be filled up by promotion of the senior most suitable railway servant. It is also stated in this para that a senior railway servant may be passed over only if he/she has been declared unfit for holding the post in question and that such a declaration of unfitness should ordinarily have been made sometimes previous to the time when the promotion of the railway servant is being considered. It is also provided in sub para (b) of Para 214 that when a senior railway servant is passed over, the authority making the promotion shall record the reason for such suppression.

7. Having regard to the rules for promotion applicable to the non selection post, it is clear that the senior most railway servant may be passed over provided he has been declared unfit previous to the time when the promotion is made and the competent authority has also recorded reason for such suppression. Undoubtedly, by virtue of declaration of results at Annexure A/4 dated 27.2.2001, the Respondents declared the applicant unsuitable, i.e., unfit for promotion prior to making the promotion to the grade of OS, Gr.I on 8.3.2001 (Annexure-6). However, the Respondents have not neither in their counter nor in their additional counter or during the oral submission brought to our notice any reason that might have weighed with them for considering the applicant unsuitable. In fact the position of that Rule, i.e., Para 214 (b) has not been

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referred to by the Respondents at all. In the circumstances, the Respondents have failed to follow the procedure prescribed for making promotion of Group C staff rendering their action illegal and untenable.

8. The learned counsel for the applicant, by drawing out notice to the Railway Board's circular dated 10.9.1985 strongly submitted that the applicant being a Scheduled Caste official was entitled to relaxation in the qualifying standard in the test and obviously no such relaxation benefit was made available to him which was nothing but denial of constitutional guarantee to a reserved category official and thereby the action of the Respondents is rendered null and void. There is lot of force in his argument. The Respondents have not been able to persuade us to take a different view in the matter. Surprisingly, the Respondents in their further reply to the rejoinder have themselves referred to Annexure-A/15, RBE No.264/85, wherein the Board, relying on their earlier letter dated 31.8.1974, have stated that SC/ST employees, who secured a minimum of 20% total marks in the written/viva voce and record of service will be eligible for placement on the panel and such promotion should be given ***on ad hoc basis*** for a period of six months against the vacancies reserved for them. During this six months period the administration should give them all the facilities for improving their knowledge and coming up with the requisite standard, if necessary, by organizing special

coaching class. At the end of six months, a working report should be called for and put up to the competent authority. Based on this working report, if the reserved community candidates are found to have come to the requisite standard, their names should be included in the panel otherwise their names are to be excluded from the panel and the vacancies de-reserved. The learned counsel for the Applicant further by submitting additional document has drawn out notice to the Board's letter dated 28.6.1995 (Estt.Sl.No.163/95) wherein the aforesaid relaxation of standard to the SC/ST employees has been reiterated. It has also been reiterated that this procedure is to be applied to promotion on the basis of seniority-cum-suitability and that the review at the end of six months period should be carried out by the authority competent to approve the select list. The plea of the learned counsel for the applicant is that the Respondents have, for the reasons best known to them, denied the applicant the benefit of this circular and thereby committed gross irregularity and administrative impropriety in denying constitutional guarantee given to the reserved community candidates.

9. To resolve the controversy, we had asked the learned counsel for the Respondents to produce the proceedings of the ***Selection Committee*** and the total marks obtained by the applicant in the suitability test. The learned Standing counsel who brought the

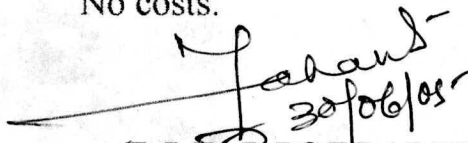
original selection proceedings informed us that the applicant had secured 39 marks in the test whereas the qualifying marks for the test was fixed at 50%. However, the Applicant had scored more than 20% to be eligible for promotion in term of RBE Estt. Sl No. 264/85 reiterated in Estt. Sl. No. 165/95. From the above disclosure of the marks obtained by the applicant, it is clear that the allegation made by the applicant that he was denied the fruits of the reservation policy in the matter of promotion in Government service as enshrined under the Board's letters referred to above stands proved beyond doubt.. As the applicant had secured more than 20% marks in the written test/viva voce/record of service, he was entitled to ad hoc promotion along with the officials who had passed the suitability test on 9.2.2001 and after six months when the next suitability test was taken in October, 2001 as he came out successful without applying the relaxed standard, he was entitled to count his regular promotion from the date of original panel dated 9.2.2001. In the aforesaid circumstances of the case, we have no hesitation to hold that he was entitled to promotion to the Grade of OS, Gr.I along with the other candidates, who were empanelled on the basis of the suitability test held on 9.2.2001 with effect from 8.3.2001 (Annexure-A/6) or from the date Shri A.G. **Unger** was so promoted.


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10. With these observations and directions, this O.A. is allowed.

No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN