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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 646-649 & 1316 of 2004
Cuttack, this the 22nd day of June, 2007.

Balabhadras Gope & Others ... Applicants
Versus
Union of India & 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 CAT or not? *No*


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

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

Original Application No.646-649 of 2004

&

Original Application No. 1316 of 2004

Cuttack, this the 22nd day of June, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

(OA 646/2004)

1. Balabhada Gope aged about 48 years, Son of late Sadananda Gope, working as Elect. Sr. Goods Driver, S.E.Railways, At/Po-Rourkela Railways Station, Dist-Sundargarh.

(OA 647/2004)

2. P.Vasudev Rao, Elect. Sr.Goods Drier, aged about 48 years, Son of late Polula Laxman Rao, S.E.Railways, At/Po-Rourkela Railway Station, Dist. Sundargarh.

(OA 648/2004)

3. Umakanta Goud, aged about 49 years, son of Bilto Gouda, Elect. Sr. Goods Drier, S.E.Railways, At/Po-Rourkela Railway Station, Dist. Sundargarh.

(OA 649/2004)

4. Satya Narayan Sharma, aged about 51 years, Son of Sri Mohan Sharma, Elect. Sr. Goods Driver, S.E.Railways, At/Po-Rourkela Railway Station, Dist. Sundargarh.

(OA 1316/2004)

1. Mollet Koteswar Rao, Aged about 49 years, son of late Mallet Ranga Rao, working as Elect. Sr. Goods Driver, S.E.Railway,

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At/Po-Rourkela Railway Station, PS-Plantsite, Dist. Sundargarh.

2. Uday Pratap Singh, aged about 48 years, son of Sridhara Singh, at present working as Elect. Sr. Goods Driver, S.E.Railway, At/Po-Rourkela Railway Station, P-Plantsite, Dist. Sundargarh. Applicants.

By legal practitioner: M/s. A.K.Sahoo, R.Khatua, P.Mishra, Advocates.

-Versus-

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Kolkata-700043.
2. The Divisional Personnel Officer, South Eastern Railways, At-Chakradharpur Railway Station, Dist. West Singhbhum, Jharkhand..
3. The Senior Divisional Elect. Engineer(Operation), South Eatern Railways, At-Chakradharpur, Jharkhanda.
4. R.K.Ram,Senior Goods Driver, O/O. C.C.Office, South Eastern Railways, At-Tata Railway Station, Post-Tata. Jharkhanda.
5. J.M.Jaiaria, Sr. Goods Driver, C.C.Office, S.E.Raiwlays, At-Bandhamunda Railway Station, Rourkela, Dist. Sundargarh.
6. K.N.Swamy, Senior Goods Driver, Office of the C.C.Office, S.E.Railways, At-Rourkela Railway Station, Dist. Sundargarh.
7. N.S.Rao, Sr. Goods Driver, South Eastern Railway, At-Bandhamunda Railway Station, Rourkela, Sundargarh.
8. H.M.Gope, Sr. Goods Driver, C.C.Office, S.E.Railway, At-Bangposi Railway Station, Jharkhanda.
9. Damu Tiria, SGD, C.C.Office, S.E.Raiplay, At-Bangaposi Railway Station, Jharkhanda.
10. S.K.Singh, SGD, S.E.Railway, Tata Railway Station, Jharkhand.
11. B.L.H.Rao, SGD, C.C.Office, S.E.Railway, Rourkela Railway Station, Sundergarh.

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12. M.L.Mahanta, SGD, C.C.Office, S.E.Railway, Tata Railway Station, Jharkhand.
13. J.B.Singh, GDS, C.C. Office, S.E.Railways, Tata Railway Station, Jharkhanda.
14. B.K.Das, SGD, C.C.Office, S.E.Raiways, Tata Railway Station, Jharkhanda.
15. Hiralal, SGD, C.C.Office, S.E.Raiwlays, Bandhamunda Railway Station, Sundargarh.
16. B.K.Das, SGD, C.C.Office, S.E.Railways, Rourkela Railway Station, Sundargarh.
17. N.Rama Rao, SGD, C.C.Office, S.E.Raiwlays, Tata Railway Station, Jharkhand.
18. G.A.Khan, SGD, C.C.Office, S.E.Railways, Tata Railway Station, Jharkhand.
19. S.K.Mohanta, SGD, C.C.Office, S.E.Railways, Chakradharpur Railway Station, Jharkhand.
20. J.Pramanick, SGD, C.C.Office, S.E.Railways, Chakradharpur Railway Station, Jharkhand.
21. A.P.Srivastav, SGD, C.C.Office, S.E.Railways, Tata Railway Station, Jharkhand.
22. Mohd. Shamsher, SGD, C.C.Office, S.E.Railways, Chakradharpur Railway Station, Jharkhand.
23. B.P.Rao, SGD, Tata Rilway Station, Jharkhand.
24. P.K.Pradha, SGD, Bandhamunda Railway Station, Rourkela, Sundargarh.
25. P.N.Sinha,
26. R.Prasad,
27. K.Durga Rao,
28. B.K.Pradhan,
29. B.Kerketa,
30. B.B.Pradhan,
31. B.B.Sone,
32. Girijashankar,
33. Randhir Singh,
34. S.D.Roy,
35. N.Sahu,
36. A.V.R.Murty
37. S.D.Ekka

- 38. R.K.Tappo,
- 39. T.V.G.Rao,
- 40. P.Soreng
- 41. S.K.Pati,
- 42. D.R.Behera
- 43. D.Sethi

(All are working as Senior Goods Driver, South Eastern Railways.)

... Respondents.

By legal practitioner: Mr.T.Rath, Advocate

ORDER

MR.B.B.MISHRA, MEMBER(A):

By filing these Original Applications under section 19 of the Administrative Tribunals Act, 1984, four Applicants who are working Electrical Sr. Goods Drivers in the erstwhile South Eastern Railways have challenged the empanelment of the private Respondents for promotion to the post of Electrical Pass Driver in the scale of Rs.5,500-9000/- (RSRP) under Annexure-2 dated 29th September, 2004. The grounds of challenge of the selection and empanelment of the private Respondents are that (a) though names of Respondent Nos. 4,5,29,31,32,33,34 were not included in the seniority list of Elect. Sr. Goods Driver under Annexure-I, they were permitted to take part in the

selection along with the Applicants; (b) the Respondents have given complete good-bye to seniority of the Applicants while preparing the panel for promotion to the post of Elect. Pass Driver although Rules clearly envisage that the said posts are to be filled up on the basis of seniority cum merit; (c) though the applicants had done well in the examination conducted by the Respondents in comparison to Respondents 4 to 43, they were intentionally ranked below only to deprive them the promotion to the higher post. They have, therefore, prayed to quash the communication under Annexure-2 and to direct the Respondents to give them promotion to the post in question.

2. Though notice was duly served on the private Respondents, neither they had appeared through any counsel nor filed counter in this case. However, the Railways have filed their counter stating therein that as per the Railway Board's Instruction dated 31.05.1982 the post of Passenger Driver comes under the Safety category and as per the Railway Board's Instructions dated 12.03.1987 (RBE No.40/87) also the post of Passenger Driver has been classified as Selection post. As per Para 140 of Indian Railway Establishment Manual, (1989 Edn.), the vacancies arising in the category of Passenger Driver are

to be filled up from among the eligible Goods Drivers and, therefore in terms of para 213 of Indian Railway Estt. Manual, eligible Railway Servant can only be promoted to the post whether by selection or non selection after one is being found fit. In term of S.E.Railway Estt. Sl.No. 124/03 and Estt. Sl.No.72/98 the post of Passenger Driver shall have to be filled up only by way of selection. Therefore, in order to fill up 40 vacancies (36-UR, 2-SC & 2-ST) in the category of Electrical Passenger Driver in the scale of pay of Rs. 5500-9000/- through notification dated 28.04.2004, 120 Goods/Sr. Goods Driver at the ratio of 1:3 were called upon to appear in the written test on the date and time fixed thereon. However, due to administrative reasons the said test could not be held on the date and time fixed earlier and, accordingly, all the candidates were intimated to appear in the test scheduled to be held on different dates during the month of August and September, 2004. As per the Rules the candidates are to face the test of 100 marks in different heads. For empanelment one must secure minimum 60% marks both in written test and in aggregate. But final list is to be prepared based on the place and position in the seniority list of the employees. In the present selection, there were 110 employees including Applicants who appeared in the

written test. But only 65 candidates had secured 60% or more marks in the written test, including Applicant No.1 (B.B.Gope). The other three Applicants could not secure the 60% marks in the written test. Shri B.B.Gope/Applicant though qualified in the written test, failed to secure an aggregate mark of 60% for being placed in the final panel prepared under Annexure-2. The Selection Board taking into account the marks secured in written test, personality, seniority, record of service has recommended a list of only 40 candidates. After obtaining approval of the ADRM, Chakradharpur, final panel, under Annexure-2 was published. It has been stated that the entire matter was processed and selection was done strictly in accordance with Rules without showing any favour to any of the employees. They have also questioned the maintainability of this OA for having the applicants approached this Tribunal without exhausting the departmental remedies as provided in the A.T. Act, 1985. Accordingly, the Respondents have prayed that this OA being devoid of any merit is liable to be dismissed.

3. Applicants by filing rejoinder have refuted the stand taken by the Respondents in their counter. It has been stated that up to 2002 there was no examination for filling up of the post in question. The posts were being filled

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up from amongst the Senior Goods Drivers strictly in accordance with their seniority. For filling up of the posts of Elect. Passenger Driver available before 01.11.2003, the Respondents had only conducted the viva-voce test during November, 2003 wherein the Applicants had also called upon to participate and, in fact, they participated in the said process of viva-voce test. But the result of the test was kept abeyance/cancelled for the reasons best known to the Respondents. By placing on record a copy of the Railway Board letter dated 06.01.2004 communicated on 23.01.2004 by the S.E. Central Railway, it has been pointed out by the Applicants that though the prevailing method of selection of filing up of the post in question has been wiped out by providing that the promotion should only be made on the basis of scrutiny of service records and confidential report, the Authority without paying regard to such instructions of the Railway Board conducted the test by wiping out the seniority of the employees whereby the Applicants have been debarred from getting the promotion. They have admitted in paragraph 6 of the rejoinder that the post of Passenger Driver comes under Safety category and classified as 'selection post'. But they have contested the manner of conducting the examination for adjudging the

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suitability of the candidates. They have also filed copies of the documents showing that they had taken up the matter with higher authority but there was no progress.

4. Since, through rejoinder, the Applicants brought on record some of the new facts, the Respondents filed their additional counter to the rejoinder filed by Applicants. In the additional counter, the Respondents have maintained that the grade of senior goods driver is identical to the grade of electrical passenger driver and, therefore, as per the Railway Board's letter dated 02.09.1994 goods driver are also eligible for being considered to the extent of 3:1 provided they fulfill other prescribed terms and conditions provided in the Rules. They have strongly denied to have conducted any viva voce test during the month of November, 2003 for giving promotion to the post of Electric Passenger Driver. The Respondents expressed their handicap to comment on the Railway Board's Instructions placed by Applicant under Annexure-A/4 to the rejoinder; this being not a complete one. According to them, they have strictly followed the Railway Board's Instructions under Annexure-R/3 in which it has been provided not to follow the procedure of restructuring of cadre in filling of the posts, even if available on or before 1.11.2003, when



the percentage was reduced in the lower grade and no new posts became available as a result of restructuring. According to the Respondents, in order to expedite the restructuring of various cadres the Railway Board have issued specific instructions to dispense with written examination or viva voce as an one time measure. This has absolutely no application in a case where, even applying the principles of restructuring of cadre no new post was created. Rather there was a decrease in the number of posts. In the present case due to restructuring of the cadre the pre-revised 80 posts of passenger drivers was reduced to 73. They have therefore, stated that question of dispensing with regular process of selection does not arise. Respondents have stated that on receipt of representation under Annexure-A/5 the Respondents cancelled the selection which was the subject matter of the representation and if the applicants were aggrieved in any manner, they should not have participated in the test conducted later. It has been stated that participation in the selection as per seniority is a matter of right but selection to a post is not a right and it purely depends on merit and fulfillment of other prescribed conditions. They have therefore, reiterated their prayer for dismissal of this OA.

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5. Learned Counsel for the Applicants has argued that even if the post of Passenger Driver in the Railways is classified as "Selection Post", the authorities, should not have adopted the procedure of selection by way of written test etc. By virtue of adopting such a procedure, the authorities have shown utter disrespect to the seniority position of the employees. His next submission is that instead of competitive, the selection/examination should have been qualifying one so as to enable the senior employees to have berth in the promotional post which has not been followed in this case. By laying emphasis on the instructions under Annexure-A/4, he has argued that since the Respondents adopted procedure beyond the Railway Board Instructions, the entire process of selection needs to be quashed by asking the Respondents to fill up the post on the basis of seniority in the Sr. Goods Driver.

6. On the other hand, Learned Counsel for the Respondents has argued that having participated and failed to secure the qualifying marks so as to get berth in the promotional post, the Applicants are estopped under law to challenge the manner of selection conducted by the Respondents. It is his submission that if the applicants feel aggrieved in any manner about the manner of conducting the examination or for that matter acted in

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any manner not provided in the rules, the Applicants should have brought it to the knowledge of the authorities alleging violation of the Rules and in the event of non consideration of their grievance, they should have taken shelter of the appropriate forum. They, being not vigilant of their rights, cannot claim equity by pointing out that the authorities did not follow the correct procedure in the matter of selection. However, he has reiterated the stand of the Respondents that this being a selection post, the Respondents have rightly decided to fill up the posts only after due selection in the manner provided in the Rules. As regards the document placed under Annexure-A/4, he has argued that, this being not a complete document, the genuineness of the same is yet to be tested.

7. After going through the materials placed on record, we have given our sincere thoughts to the arguments advanced by parties.

8. It is needless to emphasize that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted selection committee which has the expertise on the subject. The court has no such expertise. The

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decision of the selection committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved *mala fides* affecting the selection etc. (Ref. AIR 1990 SC 434-**Dalpat Abasaheb Solunke v. B.S.Mahajan**). The State, consistent with the requirements of the promotional posts and in the interest of the efficiency of the services, is not precluded from deciding the manner of filling up of the promotional post especially when the post comes under "safety category". Since there is no right to promotion but only a right to be considered for promotion, the requirement of 'equal opportunity' is satisfied, once an officer who is in the field of eligibility has been considered for promotion, even though he is found unsuitable for promotion. It is also settled law that where the post is meant to be filled up by way of selection, seniority plays a secondary role. But in the event of seniority cum fitness, a senior employee has a right to claim promotion, provided there is no disciplinary/vigilance case pending against him/her.

9. In the present case, the only grievance of applicants is that the authorities should not have adopted such hard and fast manner of selection consisting of written test etc. and that the test should have been only

by way of viva-voce. But the applicants have failed to produce any rule showing contrary to the test adopted by the Respondents. The Applicants have themselves admitted that the post in question comes under "selection" category which is also provided in the Rules. The Applicants have also failed to produce the entirety of the order under Annexure-A/4 so as to enable this Tribunal to examine the matter in detail after giving opportunity to the other side. Besides, applicants, having acquiesced to the situation and failed, have lost their right to challenge that there should not be any selection for filling up of the post in question.

10. In this view of the matter, we are unable to hold that the selection process adopted by the Respondents for filing up of the posts in question is regular and consequently hold the panel under Annexure-A/2 to be bad in law in any event. Accordingly, O.A. Nos. 646-649 of 2004 stand dismissed by leaving the parties to bear their own costs.

11. In view of the discussions made above and in view of non-joinder of parties named under Annexure-6, OA

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No.1316 of 2004 also fails and is accordingly dismissed. No costs.

~~N.D.Raghavan~~
(N.D.Raghavan)
Vice-Chairman

~~B.B.Mishra~~
(B.B.Mishra)
Member(A)

KNM/PS.