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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.1173 OF 2004

Cuttack this the 07<sup>th</sup> day of July, 2006

**Keshab Chandra Das & Another ... Applicants**

**-VERSUS-**

**Union of India & Others ... Respondents**

FOR INSTRUCTION

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*

*B.B.Mishra*  
(B.B.MISHRA)  
MEMBER(ADMN.)

*B.Panigrahi*  
(B.PANIGRAHI)  
CHAIRMAN

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CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.1173 OF 2006**  
Cuttack this the 07<sup>th</sup> day of July, 2006

**CORAM:**

**THE HON'BLE MR.JUSTICE B.PANIGRAHI, THE CHAIRMAN  
AND  
THE HON'BLE MR.B.B.MISHRA, MEMBER(ADMINISTRATIVE)**

1. Keshab Chandra Das, aged about 39 years, S/o. late M.M.Das, J.W.I Works ©, Office of the Dy.Chief Engineer ©-I, East Coast Railway, Jajpur Road, Dist-Jajpur
2. Susil Kumar, aged about 34 years, S/o. Sri Rikhiram, J.E.-I Works© Office of Dy.Chief Engineer ©-I, East Coast Railway, Jajpur Road, Dist-Jajpur

By the Advocates :

...Applicants  
Mr.G.A.R.Dora  
Smt. G.Rani Dora  
Mr.J.K.Lenka

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43, West Bengal
2. Chief Engineer (C-I) BBS, East Coast Railway, Bhubaneswar, Dist-Khurda

By the Advocates :

...Respondents  
Mr.B.Pal  
Mr.R.C.Rath

**ORDER**

**MR.JUSTICE B.PANIGRAHI, THE CHAIRMAN:** The short and important question involved in this case is as to whether relaxed standard of consideration is applicable to SC/ST candidates in case of vacancies coming under the safety category under the Railways. The factual scenario of the case as depicted in the O.A. are as follows :

2. Applicants ( 2 in number) having passed Diploma Course in Civil Engineering were directly recruited to the post of I.O.W. Gr.III, on the basis of written and viva tests in pursuance of the advertisement issued by

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the Railway Recruitment Board (in short RRB), Bhubaneswar. They joined the said posts in the year 1994. The aforesaid posts were re-designated as Junior Engineer, Gr.II in the scale of Rs.5000-8000/-.

3. A notification was issued on 5.3.2001 under Annexure-A/1 for formation of Group-B panel for the post of AEN (Group-B) through a process of Limited Departmental Competitive Examination (in short LDCE) against 30% vacancies of the Civil Engineering Department. Those who had completed five years of regular service in the scale of Rs.5000-8000/- as on 1.11.2000 in the Civil Engineering Department were eligible to be included in the said panel of AEN(Group-B). There were 28 vacancies out of which 20 were un-reserved, 5 were reserved SC and 3 were reserved for ST candidates. For the aforesaid empanelment written test was conducted on 14.10.2001. In the written test, 9 candidates were declared qualified as per letter dated 25.6.2002 (Annexure-A/2), who were subsequently called to viva voce test held on 8.8.2002 and resultantly, those 9 candidates were selected in order of merit. While the matter stood thus a dispute emerged in the manner of selection of SC/ST candidates on the ground that they were not provided pre-selection coaching, in consequence of which some of the aggrieved persons moved Jabalpur Bench of this Tribunal questioning the validity of the said panel. During pendency of the aforesaid dispute before Jabalpur Bench of the C.A.T., the Railway Board accepted the points raised by the reserved candidates and approved for holding a supplementary written test after giving them pre-selection coaching. In the supplementary test 42 eligible candidates were allowed to participate, of whom 33 including the

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applicants did appear. A panel of 13 candidates including the applicants were declared qualified in the supplementary written test as per the letter dated 21.6.2004 under Annexure-A/8 and consequently, they were called to the viva voce test. The applicants attended the viva voce test. The applicants could come to know that their names did not figure in the final selection list although they did much better than the other candidates. Out of 13 selected candidates, 8 were included in the panel and adding to the earlier combined panel of 9 candidates ( in toto 17 candidates ) the final select list was prepared as per Memorandum dated 17.9.2004 (Annexure-A/9). Of the 17 candidates, 8 belong to general category (UR), 8 SC and 1 ST. Out of total 28 vacancies, 5 were reserved for SC, 3 for ST. Under Annexure-A/9, out of 17 candidates, 8 SC have been included in the panel. The last person in the panel was from general (UR) category. All the 8 SC candidates have secured more marks than the last general category candidate and many other general candidates. Thus, reasonable inference can be drawn that a few number of SC candidates who had competed with the general candidates and also performed even better than them ought not to have been recruited against the reserved categories. Therefore, had such candidates been recruited against the general category, 5 posts reserved for SC would remain unaffected and thereby the applicants could have been appointed against the reserved quota. Law is fairly well settled that the reserved candidate can compete with the general candidate on merit and if such reserved candidate is able to compete on merit with the general category candidate, he will be adjusted against the post meant for general category and that would not affect or reduce the reserved quota to that

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extent. It is because only 8 un-reserved candidates have been selected against 20 vacant posts meant for general candidates, Respondent No.1 has wrongly and under misconception treated the reserved quota as un-reserved and has kept 11 posts out of which 5 belong to SC and 2 ST fall vacant for the general category candidates. The doctrine of reservation will be meaningless if no concession is given to the reserved candidates and on the other hand they are to be treated equally at par with the general candidates. In this case fixation of the same minimum qualifying marks both in the written and viva voce for general candidates and reserved candidates offend the provisions of the constitution. However, the applicants have secured the minimum qualifying marks both, i.e., in the written test as well as verification of service record, even then they were excluded from the panel for appointment. Applicant No.1 reliably learnt that he secured 23 marks and applicant No.2 18 marks out of 25 marks allotted for A.C.Rs. Therefore, the applicants have claimed for the following relief;

- a) Direct the Respondents to submit the marks of the last General candidate, namely Shri P.K.Shrivastava at Sl. No.17 and the marks secured by the applicants.
- b) Direct the Respondents to select and appoint the applicants as AEN against the five posts of AENs reserved for SC candidates with consequential benefits.
- c) Declare that reserved candidates are entitled to reserved posts with less merit compared to the higher merit of the general (UR) lest reservation for SC and ST candidates would be meaningless
- d) Issue any other order/direction which would afford complete relief to the applicants in the facts and circumstances of the case.

4. Respondent-Railways have filed their counter-reply wherein they have, inter alia alleged that in the year 2000-2001, a selection of AEN (Group-B) against 30% LDCE quota was processed for filling up 28 vacancies (UR-20,

SC-5, ST-3). 564 candidates along with the applicants did appear in the written test held on 14.10.2001. 9 candidates were qualified in the written test and an interview was held on 9.11.2002. Subsequently, a panel comprising 9 candidates (UR-8 and SC-1) was published vide memorandum dated 11.12.2002. Some of the SC candidates, being aggrieved with the manner of selection approached C.A.T., Jabalpur Bench in O.A. 536/2002 claiming that they were not extended the facilities of mandatory pre-selection coaching. Jabalpur Bench of the Tribunal vide order dated 21.8.2002 directed the Respondents therein to dispose of the pending representations of the applicants before finalization of selection. Accordingly, the Railway Board approved to conduct a supplementary written examination for reserved candidates, who had appeared in the main examination on 14.10.2001. Total 33 candidates including the applicants appeared in the supplementary written examination held on 16.5.2004. 13 candidates including the applicants qualified in the written test and were interviewed on 16.5.2004. The Selection Board, keeping in view the performance of the candidates in the written test, viva voce and assessment of ACRs recommended the names of 8 candidates for empanelment from this lot. Thus, the first panel was of 9 candidates and with the inclusion of 8 more names, a panel 17 candidates was published in order of merit on 17.9.2004. It has been alleged that since the applicants were unable to secure minimum qualifying marks under the head of record of service and viva voce, their names did not figure in the panel. Thus the availability of vacancies is of no consequence for considering their case. With these averments the Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

5. The applicants have filed a rejoinder wherein they have stated that although 5 posts were meant for SC candidates were available, not even a single post has been filled up. Reservation means – less merit compared to general candidates consistent with the maintenance of efficiency of administration. It has been submitted that all the works of the Railways relate to safety running of trains and if no relaxation is permissible, then there is no need to reserve 5 posts for SC and 3 posts for ST in the grade of AEN( Group-B). It has been further submitted that if reserved category candidates are expected to compete with the general candidates then the policy of reservation becomes infructuous.

6. Mr.G.A.R.Dora, the learned counsel appearing for the applicants has submitted that there is no dispute regarding the fact that the present applicants were selected in the written test whereafter they had been called for viva voce test and assessment of service records. Mr.Dora has further contended that reservation means – relaxed standard of consideration compared to the general category candidates. If such cardinal principle is not taken into consideration then the policy of reservation will render otiose. In this case, 7 candidates belonging to reserved categories were selected by competing with the general category candidates and by securing even higher marks than them. Therefore, by no means they can be regarded to come under the reserved categories. 5 posts of reserved vacancies are still available. But the authorities concerned reserve their right to fill those posts and ignore the claim of the applicants by not treating those vacancies meant for reserved categories. He has also placed reliance on the judgment of the Constitution Bench of the Supreme Court in R.K.Sabharwal and Ors. Vs. State of Punjab and Ors. (1995(1) SLR 791).

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Relying on the judgment of the Supreme Court in Shri Janki Prasad Parimoo and ors. Vs. State of Jammu and Kashmir and Ors. (1973(1) SLR 719), Shri Dora contended that for promotion, interview could not be the sole text. Of course, it is the prerogative of the Selection Committee to make a selection after conducting an interview. But there is no hard and fast rule that after verification of service records, the criterion of selection should be based on the performance of viva voce/interview. He has relied upon a Railway Board's circular No. P/R/14/30/70A dated 29.12.2000 whereby the Railway Board has made the previous circular dated 27.3.2000 inoperative. In other words relaxation/concession in the matter of promotion of candidates belonging to SC/ST by way of lower qualifying marks/lesser standard of evaluation which existed prior to 27.3.2000 be restored on the basis of O.M. No.36012/23/96-Estt.(Res.)-VOL.II dated 3.10.2000 issued by the DOP&T.

7. In this case undoubtedly the applicants have secured more marks than the required minimum qualifying marks in the written test whereafter they were called for the viva voce test. In the matter of assessment of service records, it is found that they have secured more than the minimum qualifying marks. But although they had anticipated to secure more marks in the viva voce, but the Respondents have, however, not appreciated their performance and held that they could not secure the minimum qualifying marks. Mr.Dora has relied upon the proviso to Article 335 of the Constitution, which reads as under:

**"Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or a State".**

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8. Article 335 enjoins that "the claim of the members of Scheduled Castes/Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State".

9. Mr.R.C.Rath, learned counsel appearing for the Respondent-Railways has stated that the post of A.E.N. (Group-B) comes under the safety category post and therefore, relaxed standard of consideration for promotion in case of reserved categories does not apply. The relevant instructions of the Railway Board's letter No.81-E(SCT)15/26 dated 23.3.1981 as contained in brochure of reservation for SC/ST in Railway service published by the Government of India is clear that Group-B posts in Civil Engineering, Mechanical Engineering, Signal & Telecommunications, Electrical Engineering and Transportation(Traffic) Departments should come under the purview of safety category and the scheme of promoting "the best among failures" will, therefore, not apply while filling the reserved vacancies in Group B posts in these Departments. The plea of the applicants that 5 vacancies having been notified reserved for SC, the Respondents were duty bound to promote the applicants against the reserved slot by applying relaxed standard is not tenable for following reasons.

10. In the matter of promotion from Group-C to B, the principle of reservation is to be followed in terms of the Railway Board's instructions as contained in letter No.89-E(EST)SCT/1/49/5(Pt.) dated 20.12.1995/1.1.1996 by computing the reserved quota in the manner prescribed therein. The gist of the instructions is that out of total number of posts in Group-B reserved for SC

and ST will be 15% and 7.5% respectively. Therefore, 5 posts should go to SC/ST and 3 posts to ST. Relaxed standard of consideration will only apply in case of LDCE for promotion to non-safety categories. Thus there was no anomaly or incongruity in the Respondents' action in notifying reserved vacancies nor allowing relaxed standard of consideration while filling up the posts of AEN. Shri Rath further submitted that in safety category posts even if vacancies are reserved for SC/ST candidates, those candidates have to secure the minimum qualifying marks as applicable to general category candidates and by no means relaxed standard of consideration is permissible. But in non safety category relaxed standard of 3/5<sup>th</sup> of the qualifying marks as applicable to general candidates is admissible against the reserved categories. Mr. Rath has, however, submitted that some of the candidates belonging to reserved category filed a case before the Jabalpur Bench of this Tribunal in O.A.No.1065/04, but their applicability was dismissed in line with the decision of the Supreme Court in Durga devi & another vs. State of HP & Ors. (AIR 1997 SC 2618), in which the Apex Court had held that no judicial review is permissible to examine the decision taken by the Selection Committee with regard to the relative merits of the candidates appeared before them.

11. Mr. Dora, the learned counsel for the applicants placed a critical analysis of the decision of the Jabalpur Bench of the Tribunal by stating that the ratio decided therein has hardly any application to this case, because, the matter of reservation as well as relaxed standard of consideration or otherwise in case of safety category posts was not considered therein.

12. Let us now advert to the first point raised by Mr. Dora as to whether the judgment rendered by Jabalpur Bench in D.N. Ram vs. Union of India & Ors. shall not have the binding precedent to this case. While appreciating his contention, we have gone into the details of the judgment of the Jabalpur Bench. No where could we notice that the points raised by Mr. Dora in the matter of relaxed standard of consideration in case of SC/ST candidates for safety category posts and non stipulation of minimum qualifying marks in the viva voce test were taken into consideration in the previous judgment. Nor any issue as regards the applicability of proviso to Article 335 of the Constitution was placed before the Bench. Therefore, we are unable to place any reliance on the aforesaid judgment of the Jabalpur Bench. We, however, note that there is no dispute on the principles decided in the case referred to above with regard to judicial review in the matter of relative merits of the candidates assessed by the Selection Committee.

13. An important question raised by Mr. Dora is as to whether the reserved category candidates participating in the selection test competing with the general category candidates are selected on merits, would they still be regarded as reserved category candidates. His contention based on R.K. Sabarwal case (supra) is that if those candidates selected on merits competing with the general category candidates, they could not be regarded to have been selected against the reserved vacancies. It has been held in the aforesaid judgment as under:

“When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that posts shown at the reserve points are to be filled from amongst the members of reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete

for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State if not adequately represented in the services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State services. When the State Government after doing the necessary exercise make the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Service may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of appointees/promotees belonging to the Backward Classes against the general category posts the given percentage has to be provided in addition".

14. In an earlier judgment in *Indra Sawhney vs. Union of India*, 1992 "Supp.(3) SCC 217 (1992(6)SLR 321(SC), the Supreme Court held as under:

"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates".

15. In a recent judgment reported in 2006(3) SLR 56 (*Union of India vs. Satya Prakash*) the same principle has been reiterated by the Hon'ble Supreme Court. Therefore, by virtue of the consistent view taken by the Hon'ble

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Supreme Court the question referred to above is no longer res integra that the candidates belonging to reserved category, if they are selected from the open competition with the general category candidates, they shall not still be regarded to have been selected from such reserved category. It has also been held that so far as the selection of candidates from the general category is concerned relaxed standard of consideration shall not be applicable to them. In the instant case, the candidates belonging to Scheduled Castes having been selected by competing and securing more marks than the general category candidates, even in the interview as well as service records, they could not be regarded to have been selected against reserved category posts. Therefore, 5 vacancies in the category of SC and 3 in the category of ST are still available to be filled up from that slots.

16. Mr. Rath, learned counsel appearing for the Respondents has advanced an inexorable plea by contending that a candidate after being selected in the written test has to secure the minimum qualifying marks 15 in the service record as well as 15 marks in the viva voce test. Since both the applicants have not secured the minimum qualifying marks in viva voce test, although they secured the minimum qualifying marks in service records, they could not therefore, be selected. While examining the aforesaid contention, we have noticed that no minimum qualifying mark or standard of evaluation had been prescribed for the viva voce test although the same had been prescribed in respect of record of service. Viewed from this, a candidate may secure 25 out of full marks 25 in service record and may secure 5/6 marks in viva voce, still he can be considered for selection. It is true that both the applicants could not secure 30 marks comprising viva voce and service records. But the

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selection based on which the applicants were taken out of purview of appointment cannot be regarded as valid or legal in the absence any yardstick fixed for standard of evaluation for viva voce. It appears that applicant No.1 (K.C.Das) has scored 28.70 as against the minimum qualifying marks 30 as prescribed under the rules, in both the tests, i.e., service record and viva voce. Similarly, applicant No.2 (Susil Kumar) has secured 26.80 as against 30 marks, which is hardly 2 marks less than the required minimum qualifying marks. It is true that in the matter of assessment of merits of the different candidates neither the Court/Tribunal has no scope to interfere nor can sit as an appellate authority to oversee the relative merits of each of the candidates assessed by the Selection Committee. But in the instant case since the applicants belong to reserved category, it would be profitable to consider whether relaxed standard consideration will be applicable to them.

17. There is no dispute that Group-B posts in Civil Engineering, Mechanical Engineer, Signal & Telecommunications, Electrical Engineering and Transportation(Traffic) Department are regarded as safety categories, as per the notification of the Railway Board's letter No.82-E(SCT)41/6 dated 15.11.1983. It also reiterates that the principles of best among the failed SC/ST candidates for selection to Group-B posts through LDCE will have no application. In so far as the other departments are concerned, the Railways were advised that the matter was being examined in consultation with the Department of Personnel & Administrative Reforms. The Ministry of Railway in the year 1992 (date illegible) issued a circular addressed to all General Managers reiterating that they have no intention to withdraw/curtail relaxation already provided to SC/ST candidates in the matter of promotion as well as

LDCE. The existing scheme of giving promotion to best among the failed candidates still held good. In so far as non- safety category posts are concerned, even if they secure 3/5<sup>th</sup> of the qualifying marks prescribed for general candidates, they could be considered for selection. Reliance has been placed on the Railway Board's letter No.P/R/14/30/70A dated 29.12.2000 by virtue of which previous instructions contained in the Ministry's letter dated 27.3.2000 became inoperative from 3.10.2000 after the enabling provisions to Article 335 were incorporated. It has already been noted that the employers have been given unbridled powers to make provisions in favour of members of SC/ST in the matter of relaxed standard of evaluation/lesser standard of consideration for promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State. So far as the principles enshrined in the provision are concerned, there could hardly be any dispute or controversy. But the question here arises to be answered is whether in the instant case the Railway authorities can be compelled to make provisions of concession or relaxed standard of evaluation for reserved category candidates in the matter of promotion in so far as safety category posts are concerned. As regards non- safety category posts, even in Group-B cadre, relaxation is applicable as per the circular noted above. But it is the specific case of the Railways that there could be no compromise in respect of safety category posts since it involves health hazards and also safety of passengers. In that view of the matter, no Court/Tribunal can compel them to apply relaxed standard of consideration for SC/ST in case of safety category posts.

18. In the above backdrop of the case, let us analyze whether the selection by which the applicants as well as other reserved category candidates were

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excluded from being considered is valid or not. In this regard, we have already noted above that there was no minimum qualifying marks or standard of evaluation prescribed for the viva voce test. What qualifying marks the Railways have prescribed is for service record only. This being a striking point, we are of the opinion that those who have secured the minimum qualifying marks in the service record, for them the best interest of justice could be served if we direct the Railway Administration to hold a further viva voce test.

19. It is to be noted that 5 vacancies for SC and 3 for ST are yet to be filled up from amongst the reserved category candidates who have secured the qualifying marks in the service records.

20. This being the factual scenario, we direct the Railway authorities to hold a further viva voce test for those reserved category candidates who have secured the minimum qualifying marks in the service records and if they qualify in the viva voce test to be conducted by the Respondents, they may be considered for appointment to the grade of AEN(Group-B) against the reserved vacancies. The entire exercise shall be completed within a period of 120 (one hundred & twenty) days of the date of receipt of this order.

21. We are constrained to issue a direction to the Respondent-Railways for holding a further viva voce test as because the posts meant to be filled up by the reserved category candidates are still vacant. It is true that those posts come under the purview of safety category and no leniency can be shown in the matter of selection. But one of the striking features present in this case is that these SC candidates have already secured qualifying marks in the service record, but unfortunately failed by a margin of 2/3 marks in the viva voce test.

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Had those posts been meant for the un-reserved candidates, such a direction would have been uncalled for.

22. With the above observation and direction, this O.A. is disposed of. No costs.

*B.B. Mishra*  
(B.B.MISHRA)  
MEMBER(ADMN.)

*B. Panigrahi*  
(B.PANIGRAHI)  
CHAIRMAN