

0 27.


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.798 of 2005
Cuttack, this the 17th day of February, 2009

Manoj Kumar Mohanty & Ors. Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.798 of 2005

Cuttack, this the 17th day of February, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

1. Manoj Kumar Mohanty, aged about 46 years, Son of Kabira Kishore Mohanty, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. (OA No. 798/2005)
2. M.Durga Prasad Rao, aged about 30 years, Son of M.China Surya Narayan, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. (OA 811/2005)
3. Nirmal Kumar Biswas, aged about 34 years, Son of J.N.Biswal, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 812/2005)
4. Jiwan Masih Barjo, aged about 32 years, son of Daud Barjo, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 813/2005)
5. Sasadhar Baral, aged about 27 years, son of Banamali Baral, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 814/2005)
6. Md.S.Akhtar, aged about 30 years, son of Md.S.Akhtar Ansari, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 815/2005)
7. Rakesh Kumar Singh, aged about 28 years, son of Rajanandan Singh, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 816/2005)
8. Harekrushna Sethy, aged about 31 years, son of Achyutananda Sethi, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 817/2005)
9. Ajayhari Pradhan, aged about 37 years, son of Surendranath Pradhan, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 818/2005)

- 9
10. Srimanta Kumar Behera, aged about 38 years, son of Jagabandhu Behera, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 819/2005)
 11. Prabha Kumar Singh, aged about 32 years, son of S.K.Singh, Senior Assistant Loco Pilot, C/o. Loco Booking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur. . (OA 820/2005)

.....Applicants

By Advocate: M/s.P.K.Mohapatra, S.K.Nath, K.Ghosh.

- Versus -

1. Union of India represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Secretary, Railway Board, Rail Bhawan, New Delhi.
3. Divisional Railway Manager (P), Sambalpur Division, East Coast Railway, Sambalpur.
4. Senior Divisional Mechanical Engineer, East Coast Railway, Sambalpur.
5. Divisional Personnel Officer, Sambalpur Division, East Coast Railway, Sambalpur.
6. Shri T.B.K.Mishra, Goods Driver, C/o. Loco Booking Office, Sambalpur Railway, Khetrajpur E.Co.Railway, Sambalpur.
7. Shri M.K.Panda, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.
8. Shri S.K.Pradhan, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.
9. Shri H.Sandhibigraha, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.
10. Shri R.K.Mahakur, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.
11. Shri R.K.Teli, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.
12. Ch.Govinda Rao, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.
13. N.Swain, Goods Driver, C/o.Loco Boking Office, Sambalpur Railway Khetrajpur, E.Co.Railway, Sambalpur.

....Respondents

By Advocate :Mr. R.C.Rath, for Res.Nos.4&5.

M/s.Aswini Kumar Mishra, Sr.Counsel
and M/s.J.Sengupta, D.K.Panda, G.Sinha,
A.Mishra
for Respondent Nos. 6, to 9, 11 and 12.

l

ORDERMR. C.R. MOHAPATRA, MEMBER (A):-

Eleven Applicants, who are working as Senior Assistant Loco Pilot under the Sambalpur Division of East Coast Railway, joined together in filing this Original Application questioning the selection conducted by the Respondents for filling up of the posts of Goods Driver. They have also challenged the order of rejection of their representations.

2. According to the Applicants all of them are senior and trained persons. They have passed Driver Promotional Training Posts from Supervisor's Training Centre, Kharagpur (STC/KGP). This is the pre-requisite qualification of being considered for the post of Goods Driver. This was reiterated in Estt. Srl.No.83/83 dated 16.04.1963 and 33/2002 dated 15.03.2002 (Annexure-A/3 & A/4). In the selection conducted in Khurda Division, only candidates having pre-requisite qualification of promotional training course were called to face the selection for Goods Driver; whereas in the selection in question for Sambalpur Division candidates having no such qualification were allowed to face the test. They have also questioned the manner of setting up the question papers contrary to laid down provision of

L

9/ Estt.Srl.No.177/2002 dated 27.02.2002 providing that question paper should be both narrative and objective. Further case of the Applicant is that representation filed against such irregularity having yielded no result they approached this Tribunal in OA No.678/2005. This was disposed of by this Tribunal on 22.8.2005 with direction to the Respondents to consider and dispose of the representation of the Applicants. But without due application of mind the Respondents rejected and communicated the result to the Applicant under Annexure-A/8 dated 2.9.2005 which they seek to quash by annulling the entire selection conducted in the Sambalpur Division for filling up of the posts of Goods Driver.

3. Respondents by filing counter have strongly refuted the allegation of the Applicants that the selection in question was conducted in gross violation of the Rules/instructions available in the matter of conducting and setting up the question papers. By placing reliance of the provision contained in Estt. Srl.No.33/02 it has been averred by the Respondents that completion of training would be linked to promotion for safety category only and there is no bar for calling of even untrained candidates for

32 ✓
selection to the post in question in the ratio of 1:3 as per seniority. Further it has been clarified that pre-promotional course is mandatory for promotion to the posts of Goods Driver and staff can be insisted upon even after selection and before effecting actual promotion. It has been stated that as per the rules the posts were meant to be filled up by way of positive act of selection. Their contention is that all the applicants appeared at the selection on the date and time fixed for that purpose and after becoming unsuccessful they have questioned the manner of conducting the selection which they are estopped to do. Accordingly, they have prayed for dismissal of this OA.

4. In the line of reply filed by Respondents 1 to 5, other Respondents by filing separate counters have strongly opposed the maintainability of this OA both on merit as also on the locus standi of the Applicants.

5. Having heard the rival submissions of the parties, perused the materials placed on record including the rules relied on by the Applicants. We find no reason to go deep to the matter in view of the settled position of law that in regard to eligibility conditions-Qualification etc, Court ordinarily would not interfere with the opinion of expert

2

- 6 -

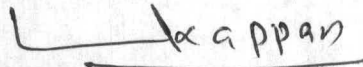
committee as regards qualification and eligibility of candidates. It is also well settled principle of law that it would be an administrative function of the appointing/appropriate authority to take a decision as to which method should be adopted for recruitment or any particular post. It may depend on various factors relevant for the purpose e.g. status of the post, its responsibilities and job requirement, the suitable qualifications as well as the age as may be desirable may also be taken into consideration while making such an administrative decision. Hence, we find no substance in the allegations levelled by the Applicants so as to annul the entire process of selection which was conducted to meet the urgent nature of job in public interest.


6. Besides the above, it is seen that the applicants questioned the process of selection only after becoming unsuccessful in the selection. To a focused question as to whether in the circumstances, application filed by such persons is maintainable, the Applicants' counsel failed to distinguish the decisions rendered by the Apex Court on the subject in the cases of **Union of India and others v S.Vinodh Kumar and others**, 2008 (1) SLR 397 (SC) and

Marripati Nagaraja v Govt. of AP, (2008) 1 SCC (L&S) 68

holding that candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same.

7. In the light of the discussions made above, we find no merit in this OA No.798 of 2005. As a consequence, OA No. 798 of 2005 stands dismissed. In view of the dismissal of OA No. 798 of 2005, OA Nos. 811 to 820 of 2005 assigned to each of the Applicants for statistical purposes stand dismissed. No costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)