

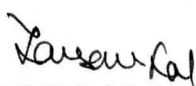
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 99,100,1001 & 103 of 2006
Cuttack, this the 28th day of September 2007.

Anama Charan Beheras and Others ... Applicants
Versus
Union of India & Others ... 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?


(TARSEM LAL)
MEMBER(ADMN.)


(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

For concurrence of


M.C. Jaiswal



Hrishe Nath

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 99, 100, 101 & 103 of 2006
Cuttack, this the 28th day of September, 2007.

C O R A M:

THE HON'BLE **DR.K.B.S.RAJAN**, MEMBER (J)

A n d

THE HON'BLE **SHRI TARSEM LAL**, MEMBER(A)

O.A.No.99/2006

Anama Charan Behera aged about 43 years, son of Late Nitia Behera, working as Cabin Master at Sadasivpur under Senior Divisional Operations Manager, E.Co.Railway, Khurda Road, at present residing at Ranapasi, PO-Gengutia, Dist. Dhenkanal, PIN-759 013.

O.A. No.100/2006

Trinath Sethi aged about 45 years, son of Late Nakul Sethi, working as Cabin Master at Dhenkanal under Sr. Divisional Operations Manager, E.Co.Railway, Khurda Road resident of Village Bachra, PO: Jatni, Dist. Khurda, Pin-752050.

OA No.101/2006

B.C.V.Raju aged about 37 years son of Sri B.R.J.Rao working as Cabin Master at Meramandali under Senior Divisional Operations Manager, E. Co. Railway, Khurda Road, resident of Gopinath Bhavan, Batchra Patna, PO-Jatni, Dist. Khurda, PIN-752 050.

O.A.No.103/2006

Sarat Kumar Behera aged about 31 years, son of late Laxman Behera, working as Cabin Master at Dhenkanal under Senior Divisional Operations Manager, E.Co.Railway Khurda Road, staying at Odapada, PO.Nindol Road, Dist. Dhenkanal, PIN-759 019.

W

..... Applicants.
By legal practitioner: Mr.Achintya Das, Advocate.

-Versus-

1. Union of India service through General Manager, E.Co.Railway, Chandrasekharpur, Bhubaneswar.
2. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO-Jatni, Dist. Khurda, PIN-752 050.
3. Senior Divisional Personnel Officer, E.Co.Railway, Khurda Road, PO-Jatni, Dist. Khurda, PIN- 752 050.
4. Senior Divisional Operations Manager, E.Co. Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN- 752 050.
5. Sri B.P.Jally, Cabin Master at Salegaon, C/o.Station Superintendent, Salegaon Railway Station, PO: Salegaon, Dist. Cuttack..

...Respondents.
By legal practitioner: M/s.S.K.Ojha, A.K.Sahoo, Standing Counsel (Railways)
Mr.S.L.Patnaik, Advocate
for Respondent No.3.

ORDER

DR.K.B.S.RAJAN, MEMBER(J):

The applicant is holding the post of Cabin Master in the scale of Rs 4,000 – 6000/-. The next higher post is Goods Guard in the scale of pay of Rs 4,500 – 7000



for which Annexure A-2 notification dated 15-12-2004 was issued for conducting a selection for formation of panel of 70 Goods Guards (UR 57 + SC 10 + ST 3) under the Departmental quota (60%). Applicant fulfilling the requisite experience of 1 year as on 31-12-2004 in the grade of Rs 4,000 – 6,000/- appeared in the examination and having qualified in the written exam, he was called for interview. Results were published in two phases, one with a panel of 27 persons and another 10 in which one Mr. B.P. Jally, Cabin Master/Salegaon was also figuring in. According to the applicant, this individual does not fulfil requisite experience as on 31-12-2004 as his promotion to the post of Cabin Master was only on 8/12-04-2004.

2. Challenge has been made against the multiple panel on various grounds including one that the provisions of Para 219(j) of the IREM Vol I (1989 Edn) read with

Advance Correction Slip Nos 66 and 152 have not been followed, as per which, the minimum marks prescribed for profession ability was only 30 out of 50 and the applicant had attained the same which is evidenced from the fact that he was declared successful in the written exam and was called for viva voce. Further, the applicant has in fact a comfortable ACR gradings, as no adverse remarks had ever been communicated to them.

3. Respondents have contested the OA. According to them, the minimum marks for selection are respectively, 60% in written and 60% in aggregate as well and though the applicant had secured 60% in written exam, thereby qualified for viva voce, he did not secure 60% in aggregate. As regards bifurcation of the panel, in fact, certain clarifications were sought and hence, the panel was bifurcated. It has been averred by the respondents that in



all 37 individuals qualified with 60% in aggregate in addition to their securing 60% in the written test. As regards the private individual, the contention of the official respondents is that the said individual was promoted as Cabin Master as early as 3-12-2003 and thus he fulfilled the requisite tenure of experience. ACRs were considered and marks thereof provided ^{while} ~~which~~ calculating the marks in aggregate.

4. The applicant has filed rejoinder denying the contentions raised by the respondents in the counter.

5. Earlier, by an MA, the applicant had prayed that the respondents be directed to make available the relevant records to verify whether the applicants had passed or failed in the aggregate. Accordingly, the same



was made available and it is found thereunder that the marks obtained by the applicant is as under:-

	Written	Viva	ACR	Seniority	
Anama Charan Behera	30	11	9	8.91	Total-58.91

6. Counsel for the respondents has also filed one affidavit stating that the prayer of the applicant being one for a direction to the respondents to consider empanelment, the same would be considered in case vacancies are available. The said affidavit reads as under:-

“In Para-8 of the Original Application the Applicant has claimed the certain relief(s) . For better appreciation para 8 of the Original Application is reproduced below:

8. Relief sought:

- (a) That it is prayed before your Lordships to kindly issue direction to the Respondents to consider empanelment of the applicant as Goods Guard by observing the procedure of



formation of panel through the process of general selection.

- (b) That any other relief, as their Lordships deem fit including cost."

It is true that the applicant as well as the Respondents have filed their pleading opposing the points raised by the respective parties. In spite of that it is settled position of law that a person can not be deprived up from consideration if he/she is fulfilling the eligibility criteria for a particular post is likely to be filled up. At the same time the Hon'ble Apex Court also settled the law that the Court/Tribunal cannot compel the Authority to appoint a particular person, since the selection, promotion, transfer etc. is the domain of the executive. Hence, the judiciary should not interfere ordinarily except in exceptional cases.

In view of the settled position of law and looking into the limited grievance and relief claimed by the applicant in his Original Application, it would be proper to accept the same by the Respondents without going into the further controversy. Therefore, the relief sought by the applicant may be accepted and appropriate order may be passed, giving liberty to the Respondents to consider the case of the applicant for the promotional post of Goods Guard, as and when the vacancy will arise

provided he should come within the zone of consideration by that time."

7. Records were perused by us personally and the respondents have clearly reflected marks obtained by various candidates in different faculties (written, viva, ACR and seniority) have been accurately reflected. In so far as written test is coding and decoding had taken place and the marks obtained were extracted in a particular statement and the same incorporated in the consolidated statement. Comparison of the same has been made and it is seen that there is absolutely no error in such incorporation. So has been the case with reference to the seniority. The table had been duly verified by certain authorities and found to be correct. Thus, no fault could be located in the allocation of marks and the applicant having secured less than 60%, he could not be included in the select list.





8. We would have suggested consideration of moderation in the marks as per the prevailing rules. However, on scrutiny of the statement of marks, it is observed that some persons who have secured more than 60% in the aggregate could not be accommodated in view of non availability of vacancies. As such, merit was considered and selection restricted to the number of vacancies. On deep scrutiny, it is found that 27 persons were initially held to be passed and empanelled and ten more passed could not be empanelled due to the endorsement as vacancies not available and it is this group of 10 who have been, after ascertaining the availability of vacancies, had been included in the second panel. This is the reason for the issue of the panel in installments.

9. Thus, in so far as the exam in question is concerned, the applicant could not make it up. Hence, no

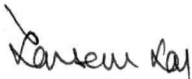


fault could be found in the non selection. However, taking into account the affidavit as aforesaid, the OA is disposed of with the direction that in case of availability of vacancies, the name of the applicant be considered subjecting the applicant to the normal test as of others and on the basis of their performance further action be taken.

11. Since common question of facts and law are involved in all these four cases, though we heard the matters one after the other, this common order will govern in all these four cases.

10. With this observation, the OAs are disposed of.

No cost.


(TARSEM LAL)
MEMBER(ADMN.)


(DR.K.B.S.RAJAN)
MEMBER(JUDL.)

KNM/PS.