

23


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.500 of 2006
Cuttack, this the 14th day of May, 2009

Nigamananda Sahoo & Another. 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.)

24

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.500 of 2006
Cuttack, this the 14th day of May, 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. Nigamananda Sahoo, aged about 40 years, S/o.Gandharba Sahoo, Senior Section Engineer (Works-Construction) Sambalpur, East Coast Railways, At/Po/Dit. Sambalpur.
 2. Shri Prasanna Kumar Sahu, aged about 39 years, S/o. Late Jagannath Sahu, Senior Section Engineer (Works), At-Araku East Coast Railway, Waltier, At/Po.Araku, Dit. Visakhapatnam.
.....Applicants

Advocate for Applicant: M/s. Jayant Kumar Rath, D.N.Rath,
S.N.Rath,P.K.Rout, .K.Rajguru,
S.Mishra.

-Versus-

1. Union of India represented through the Secretary, Ministry of Railway, New Delhi.
2. General Manager, East Coast Railway, Chandrasekharapur, Bhubaneswar, At/Po/Ps-Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer East Coast Railway, Bhubaneswar, At/Po/Ps-Bhubaneswar, Dist. Khurda.
4. Deputy Chief Personnel Officer (Gazetted) East Coast Railway, Bhubaneswar, At/Po/Ps-Bhubaneswar, Dist. Khurda.
5. Shri T.K.Das, Senior Section Engineer (Works) promoted to Group B post.
6. Shri D.B.Mandal (ADEN), Office of the Assistant Divisional Engineer (Open Line), Near Railway Station East Coast Railway, Bhubaneswar, Orissa.
7. Shri C.S.Saranga (ADEN), O/O. the Assistant Divisional Engineer, Mahaba, North Central Railway, Mahaba, At/Po.Mahaba, UP.

....Respondents

Advocate for Respondents: M/s.R.N.Pal, R.K.Behera,
M.R.Mishra,K.Mohapatra
and Laxmidhar Swain.

O R D E R

Per-MR.C.R.MOHAPATRA, MEMBER (A):-

Shri Nigamananda Sahoo is the Applicant No.1 and Shri Prasanna Kumar Sahu is the Applicant No.2 in this Original Application. Both of them are working as Senior Section Engineer at different places of the East Coast Railway. Being aggrieved by their

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non-promotion to Group B and promotion of the Respondents 5 to 7 to Group 'B' posts, the Applicants have approached this Tribunal in the present Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"to direct the Opposite Parties to grant promotion to the petitioners in group B posts made available for general candidates by directing them to exclude the names of the Scheduled Caste candidates and thereby to incorporate the name of the petitioners for promotion to Group B posts as they have been found eligible and suitable in all respects and to grant such benefit with effect from the date the persons mentioned in the Memorandum vide Annexure-A/3 to the Original Application have been extended the said benefit."

2. Fact of the matter is that to fill up 21 posts of AEN Gr.B under 70% quota selection comprising written test followed by viva-voce was conducted by the Respondents. Out of 21 posts, 16 posts were earmarked to general candidate, 3 posts for SC and 2 posts for ST. The posts were meant to be filled up on the basis of seniority cum suitability. According to the Applicants their names figured in the qualified list of candidates so as to be promoted to the post of AEN/Gr.B, the Respondents committed gross injustice by allowing the SC candidates to occupy the posts meant for general candidate thereby depriving the applicants their rightful dues of promotion. Their stand is that three posts were meant to be filled up through SC candidates. When three SC candidates got qualified in the tests to occupy the posts meant for them, there was no reason to promote three more SC candidates i.e. Respondent Nos.5 to 7 as against the vacancies meant for general candidate; especially when they have already availed the concession of reservation at the time of their appointment and as such, the action of the Respondents in promoting Respondent Nos.5 to 7 amounts to gross discrimination besides being opposed to Rules and constitutional mandates. Their further stand is

that since the posts were meant to be filled up on the basis of seniority cum suitability irrespective of the position in the tests, the Respondents 5 to 7 were not at all entitled to occupy the seats meant for general candidate. Hence, they reiterated grant of the relief claimed in this OA.

3. The contention of the Respondents is that securing of 60% marks in each written and viva voce test and 60% in record of service by a candidate was a mandatory requirement as per rules. Written test comprises 150 marks and 25 marks each for viva voce and record of service. Since Applicant No.2 could not secure the minimum qualifying mark of 60% in the viva voce test and not in seniority also, he was not empanelled for such promotion. So far as Applicant No.1 is concerned, it has been pointed out by the Respondent that Applicant No.1 qualified in the test but his name did not appear in the panel as his seniority retained in the integrated seniority list by virtue of which his UR category seniors have been empanelled against 70% quota vacancy as per Rule outlined in Chapter-II (Section-A) Paragraph 202 of IREM, Vol-I 1989 edition. It has been contended that there were 21 vacancies out of which UR-16, SC-3 and ST-2. Sixteen candidates as per the seniority were promoted against UR category and rest five vacancies (SC-3 and ST-2) remained unfilled due to non-availability of qualified reserve candidates. RBE No.103/2003) clearly provides that "SC/ST candidates who are selected by applying the general standard and whose name in the selected list/panel appears within the number of unreserved vacancies are to be treated as selected on their own merit." In view of the above a part panel containing 14 names was published. Two persons namely Shri T.K.Das (SC) and Shri S.N.Mishra though senior

and selected could not be promoted as Shri Das was undergoing major penalty and Shri Mishra was under medical test. After the punishment period was over Shri Das was promoted to the post of AEN Gr.B and since Shri Mishra was declared medically unfit, next to him Shri Guru was promoted to the said post. By stating so, it has been contended by the Respondents that as there has been no injustice caused in the decision making process of the matter, this Original Application is liable to be dismissed.

4. After giving in-depth consideration to the rival contentions of the parties we have perused the materials placed on record. It was not the case of the Applicants that they are the seniors to the persons who were empanelled and promoted to the AEN/Gr.B posts. The only point reiterated on behalf of the Applicants is that Respondents 5 to 7 being SC candidates ought not to have been promoted as against the vacancies meant for UR candidates. Respondent by filing the rule clearly establishes that if SC/ST candidates who are selected by applying the general standard and whose names in the selected list/panel appear within the number of unreserved vacancies are to be treated as selected on their own merit. Applicants failed to substantiate by showing any other rule contrary to the rules relied on by the Respondents. According to the Respondents Applicant No.2 could not be qualified by securing the required marks. Since passing of the test is a mandatory requirement, absolutely, he has no grievance. Similarly, since rule specifically provides promotion of SC/ST candidate whose name finds place in the select list within the number of unreserved vacancies we find no wrong in the promotion of Respondent Nos.5 to 7. Besides the above, the Applicants approached this Tribunal straightaway without exhausting the remedies by way of

828
filing representation to their authorities. They have also not sought quashing of the order of promotion of Respondent 5 to 7 in this OA. This view is also fortified by the earlier decision of this Tribunal dated 26th March, 2009 in OA No. 623 of 2006(Puspak Ranjan Nayak v Union of India and Others).

5. Viewed the matter from any angle, we find no infirmity in the decision making process of promoting the Respondents 5 to 7 to AEN/Gr.B posts. As a result, this OA stands dismissed by leaving the parties to bear their own costs.

K. Thankappan
(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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

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