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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Date of order: 17/04/2008

O.A. Nos. 527 and 532 of 2002

Braja Bihari Nayak & Another .... Applicants  
Vs.  
Union of India & Ors. .... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *No*
2. Whether it be circulated to all the Benches of the CAT or not? *Yes*

(C.R.MOHAPATRA)  
MEMBER (A)

(K.V.SACHIDANANDAN)  
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK.

Date of order: 17/04/2008

PRESENT:

THE HON'BLE MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN  
A N D  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER(ADMN.)

O.A. Nos. 527 and 532 of 2002

Braja Bihari Nayak & Another .... Applicants  
Vs.

Union of India & Ors. .... Respondents

(Particulars of parties are attached in separate sheet)

For the Applicants :Dr.D.B.Mishra, Counsel  
For the Respondents. :Mr.R.C.Rath, Counsel

O R D E R

Per-MR.K.V.SACHIDANANDAN, VICE-CHAIRMAN:

There are two Applicants in this case and both are working as Head Clerk in the Office of the Senior D.P.O., E. Co. Railway, Khurda. Their grievance is that due to non-adherence of the principles of Reservation for PH candidates, time gap between successive events and not giving due weightage to various ingredients of assessment as outlined in para 219 of IREM Vol. I, by the Respondents in the matter of selection for promotion to the post of OS Gr.II, they have been deprived of their legitimate expectation of promotion and thereby the Respondents 5 to 8 have been allowed to be

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superseded. Therefore, by filing the present OAs, they have sought for the following relief(s):

**“8. RELIEF(S) SOUGHT**

- (i) To admit this Original Application;
- (ii) Issue Notice to the Respondents as to why the impugned selection for promotion to O.S. II dt. 21.05.2002 (Annexure-2B) be not declared void being contrary to the Rules at Annexure-4, 5 and 6).
- (iii) Pass appropriate order encompassing the spirit of full justice to the applicant which would be a pointer to uphold the majesty and authority of law;
- (iv) Issue direction to the Respondents to rescind the promotion order dated 21.05.2002 (Annexure-2B) and make a fresh selection as per Rules as at Annexure-4, 5 and 6;
- (v) Call for records of selection for a judicial review.”

3. Respondents have filed their counter statement contending that the posts of OS-II in scale of Rs.5500-9000(RSRP) in the Ministerial cadre has been classified as “selection” post and following the relevant principles and procedures as envisaged in Chapter II/Selection-‘B’ of the Indian Railway Establishment Manual, Vol. I (Revised Editon-1989), for filling up ‘selection posts’ selection process, consisting of written and viva voce test was undertaken to draw a panel of 09 staff (viz. UR-05, SC-02 and ST-02). The post of Head Clerk in the scale of Rs. 5000-8000/- (RSRP) is the feeder grade from which the staffs are promoted to the post of OS Gr. II carrying



the scale of pay of Rs. 5500-9000/- (RSRP) by a positive act of selection. The field of eligibility of staff is opened to the extent of 03 times the numbers of staff to be empanelled. Accordingly, 23 staff from the feeder cadre (i.e. H.C.) were called for the written test. Out of the 23 staff 6 (SC) staff at Sl. Nos. 1,7,11,18,22, and 23 of Annexure-R/1 were called against two posts meant for SC. Only 2 ST staff at Sl. Nos. 17 and 21 were called against two posts of ST since no more ST candidates were available in the feeder cadre. Therefore, due to non-availability of required number of ST candidates in the feeder cadre, total number of candidates called for the written test was limited to 23 instead of 27. As per scheduled, written examination was held on 23.11.2001 in which seven candidates appeared and another six candidates including Respondent No.4 did not attend the test due to sick leave; for which supplementary written test was held on 03.01.2002 in which five absentees appeared and one absentee Smt. S.Bharati Devi gave her unwillingness to appear the test and Shri R.Tigga did not turn up. At the end only five staff including the applicant and Respondents 5 to 8 had qualified for the viva-voce test vide letter under Annexure-R/2 dated 21.03.2002. Candidates named at Sl. Nos. 1,5 and 7 of Annexure-R/2 belong to reserve community. They were qualified on relax standard excluding seniority marks and staff at Sl. Nos. 2 and 3 of Annexure-R/2 qualified for viva voce test on modified procedure after

adding notional seniority marks to her written test marks as per the procedures contained in the Railway Board's instruction contained in S.E. Railway Estt. Srl. Nos. 248/1984 and 63/1985 (Annexure-R/3 and R/4). Respondent No.4 qualified in the written and viva voce tests on general merit by securing 60% and above marks in the written test. Both written and viva-voce test were held for assessing the professional ability of staff in a selection for promotion to selection post and the marks of written test should not be less than 35 out of 50 and a candidate must secure minimum 60% marks in the written test for the purpose of being called for the viva-voce test. Further a candidate must secure not less than 60% ( 30 out of 50 in the professional ability consisting of written and viva voce tests) and not less than 60% of the total of marks stipulated for written examination and for seniority. Accordingly, Applicant and Respondent No.4 were called to face the viva voce test vide letter dated 21.03.2002 with the specific understanding that promotion to the above post of OS Gr.II shall be subject to securing 60% marks in the professional ability as well as 60% marks in the aggregate. Since the Applicants did not secure the 60% marks they were not selected/promoted.

4. Applicants have filed rejoinder contending that they have received no adverse communication during their entire service career and therefore, they expect a good score under record of service for which 15

marks are earmarked. He has prayed that there was no proper marking in the records of service of applicants and if records are called for it can be ascertain as to whether marks under different heads have been given according to rules and whether either has been any over writing or correction or whether intentionally 1 or 2 marks less than the qualifying marks have been awarded to the applicants with a view to declare them as unsuccessful in the interview.

5. We have given our anxious consideration to the submissions made by the parties and have also gone through the materials placed on record. We have also gone through the results sheets/connected papers of the selection produced, pursuant to the direction of this Tribunal dated 18.03.2008, by Mr. R.C.Rath, Learned Counsel for the Respondents.

6. It is an admitted fact that the post of Head Clerk is the feeder cadre of OS Gr. II and is to be filled up through a positive act of selection consisting of the marks secured in the written, viva voce and records of service. According to Learned Counsel for the Applicants, Applicant No.2 being a PH candidate, she should have been considered under PH quota. From the records, we find that there was no post earmarked for PH candidate. Also her selection and continuance as Head Clerk was not under PH quota. Therefore, even assuming that Applicant No.2 is a Handicapped, in absence of any earmarked vacancy for PH quota, she cannot claim any

preferential treatment when the vacancies were intended to be filled up on merit. Learned Counsel for the Applicants has drawn our attention to the Office Memorandum of Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, New Delhi dated 20<sup>th</sup> November, 1989 (Annexure-A/5) contending that there should be reservation for PH candidates in posts filed by promotion. We have gone through the OM under Annexure-A/5 and we find that in the said OM it has been made clear that the applicability of reservation, will however, be limited to the promotions being made to those posts that are identified as being capable of being filled/held by the appropriate category of physically handicapped. The posts in question are not identified as being capable of being filled under PH quota and therefore, we find no force in the above submission of the Learned Counsel for the Applicant to hold the entire selection as illegal.

7. To fortify that the selection was not conducted in accordance with the codified provisions, Learned Counsel for Applicant has taken us through the Railway Board's instruction No. E (NG) I-79/PM 1-320 dated 23.12.1979 found place at Sl. No. 219 IREM (Annexure-6). For clarity, operative portion of the above instructions is quoted herein below:

"E (NG) I-79/PM 1-320 dated 23.12.1979

(g) Selection should be made primarily on the basis of overall merit, but for the guidance of Selection Board the

factors to be taken into account and their relative weight are laid down below:

E(NG)1-69/PM 1-126 dated 18-9-69.

		Maximum Qualifying Marks	Marks
(i)	Professional ability	50	30
(ii)	Personality, address, Leadership and academic Qualification	20	-
(iii)	A record of service	15	-
(iv)	Seniority	15	-

Note (i) The item 'record of service' should also take into consideration the performances of the employee in essential Training Schools/Institutes apart from the examining CRs and other relevant records.

E(NG) 1.72/PM 1/192 dt.27.6.73.

(ii) Candidates must obtain a minimum of 30 marks in professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests are held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidates must secure 60% marks in written test for the purpose of being called in viva-voce test. This procedure is also applicable for filling up of general posts. Provided that 60% of the total of the marks prescribed for written examination and for seniority will also be the basis for calling candidates for viva-voce test instead of 60% of the marks for the written examination.

E (NG) I/72/PM-1/158 dt.12.12.73 & E (NG) I/83/PM 1/65 dt.5.12.1984.

(h) The importance of an adequate standard of professional ability and capacity to do the job must be kept in mind and a candidate who does not secure 60% marks in professional ability shall not be placed on the panel even if on the total marks secured be qualifies for a place. Good work and a sense of public duty among the consciousness staff should be recognized by a

warding mere marks both for record of service and for professional ability."

8. By placing the above guidelines under Annexure-R/3 & R/4 to the counter, the Respondents have stated that there were no deviation of the procedures in the matter of selection and the selection was conducted strictly in accordance with Rules and as the applicants have not secured the 60% marks in the professional ability they are not entitled to the relief claimed in this OA. Pursuant to the directions of this Tribunal the Respondents have produced the procedure adopted in the selection and the marks obtained by different candidates in whom the name of Applicant No.1 is placed at Sl. No.8 and Applicant No.2 is placed at Sl.No.4. Marks obtained by Applicants as well as Respondents 5 to 8 are extracted herein below:

	Total marks obtained out of 100 in w. Test.	W. test out of 9	Viva voce test out of 35 marks as calculated from 15 marks	%marks obtained out of 50	Personality address,leadership,& aca- marks	Record of service 15 marks obtained out of 20marks	Seniority marks obtained out of 15 marks	Total marks out of 100	Total of Col 12,13,14 & 15
8. B.B.Nayak	66	23.1	06	29.10	12	10	0.8.77	59.87	
4. Smt. Meena Mohanty	60.05	21.17	07	28.17	13	09	12.33	62.50	
6. Smt.Sabita Mishra	60.05	21.17	10	31.17	13	09	10.55	63.72	
9. Smt. R.Rama Devi	65.5	22.92	11	33.92	12	12	07.88	65.80	
13. Shri J.N.Khuntia	60.05	21.17	11	32.17	12	12	04.32	60.49	
14. Shri B.N.Satpathy	60	21	12	33	13	11	03.43	60.43	

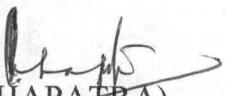
9. On going through the mark sheet we find that Applicant No.2 although secured 60 marks in aggregate, she has only secured 28.17 marks both in written and viva voce tests. Similarly Applicant No. 1 has secured

only 29.10 marks both in written and viva voce and 5.9.87 in aggregate as against the marks of 30 and 60 respectively whereas the Respondents 5 to 8, besides fulfilling the required conditions as envisaged in the rules, have secured the qualifying marks and, therefore the selection and appointment of Respondents 5 to 8 cannot be held to be illegal in any manner.

10. As regards the plea of Applicants that the selection is vitiated due to non-adherence of the time within which the selection ought to have been finalized, the Respondents in their counter have explained that the delay was not deliberate or intentional. Delay in finalization of the selection took place due to non-availability of the Sr. DPO for some time and due to administrative reasons. From the explanation given in paragraphs 5 and 6 of the counter, we <sup>are</sup> fully convinced that the delay, if any, caused in the selection process was not willful and no prejudiced or mala fide can be attributed in it. It may be noted that the applicants alone had not appeared for the examination. If delay has occasioned the same is also applicable to the selected candidates. Therefore, it cannot be a ground for setting aside the entire process of selection. Further the aspiration of the Applicants that some over writing or correction would have been done in the mark sheet is not genuine as on going through the records we find that no such incident took place in the mark sheet of the candidates. The evaluation has been made correctly as per the Rules and marks have been awarded to candidates

in different heads. Absolutely there has been no iota of doubt of any manipulation in the mark sheet.

11. For the reasons stated above, we find no force in the contention of the Applicants. Hence both the OAs stand dismissed. There shall be no order as to costs.

  
(C.R.MOHAPATRA)

MEMBER (A)

  
(K.V.SACHIDANANDAN)

VICE-CHAIRMAN

KNM/PS.