

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

O.A.NO. 779 OF 2002  
Cuttack, this the 30th day of March, 2004

V.V.S.S.A.K.Patnaik ..... Applicants

Vrs.

Union of India and others ..... 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 Central Administrative Tribunal or not? ye

*M.R. Mohanty*  
30/03/04  
(M.R.MOHANTY)  
MEMBER(JUDICIAL)

*B.N. Som*  
(B.N.SOM)  
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN  
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

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Shri V.V.S.S.A.K.Patnaik, aged about 31 years, son of V.Venkata Suryanarayana, at present working as Gangman, SE/P/LKMR, South Eastern Railway, Lakshmipur Road, Koraput, Orissa....Applicant.

Advocates for the applicant - M/s A.K.Mishra, J.Sengupta, PRJ Dash, D.K.Panda, & Gopal Sinha.

Vrs.

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta 43.
2. Chief Personnel Officer, South Eastern Railway, Garden Reasch, Calcutta 43.
3. Additional Divisional Railway Manager, South Eastern Railway, Visakhapatnam.
4. Divisional Personnel Officer, South Eastern Railway, Visakhapatnam, Waltair

..... Respondents

Advocate for the Respondents - Mr.D.N.Mishra.

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ORDERSHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been filed by Shri V.V.S.S.A.K.Patnaik challenging the order of cancellation of Limited Departmental Competitive Examination (hereinafter referred to as 'LDCE') to fill up 25% of vacancies of Supervisor (Permanent Way) in the pay scale of Rs.4500-7000/- in the Civil Engineering Department, vide order dated 31.7.2002 (Annexure 4) issued by Respondent No.4. That order has been challenged on the ground that the order of cancellation of LDCE did not disclose the reasons leading to the cancellation of the same more than stating that certain procedural irregularities had taken place. It is the case of the applicant that LDCE being an integral part of the Recruitment Rules, the Respondents could not have abandoned this method of recruitment for filling up of the posts of Supervisor (Permanent Way) without showing good and sufficient reasons. The applicant has, therefore, submitted that unless the order of Respondent No.4, at Annexure 4, is quashed by the Tribunal, he will suffer irreparable loss by way of losing promotional opportunity against 25% of the vacancies in the grade of Supervisor (Permanent Way) to be filled up by examination on merit.

2. The Respondents in their reply have admitted that in terms of the Recruitment Rules for the post of Supervisor (Permanent Way), which was earlier called 'Permanent Way Mistry', 50% of the vacancies are to be filled up by promotion by seniority (based on suitability), 25% of vacancies through LDCE, and 25% vacancies by direct recruitment through Railway Recruitment

Board. In November 2000 the Senior Divisional Engineer (Coordination) had requested the Divisional Railway Manager (P) to fill up direct recruitment quota vacancies by promoting departmental candidates by relaxing the eligibility condition as one time exception as the headquarters could not post the required number of candidates through Railway Recruitment Board during the last three years. The matter was formally referred to Respondent No.2 on 29.12.2000 requesting him to accord permission to the Division to conduct selection for filling up all the vacant posts of Supervisor (Permanent Way) against both the direct recruitment and departmental promotion quotas as a one time exception as per the procedure laid down in the Respondent No.2's letter dated 7.4.1995. Respondent No.2, however, agreed to the proposal of the Division to fill up only departmental quota vacancies, i.e., 25% LDCE quota for which he opined that Respondent No.4 was competent to do the needful. It has been submitted by the Respondents that while implementing this order, Respondent No.4 misunderstood the instructions issued by Respondent No.2 and relaxed the educational qualification from 10+2 with Science and Mathematics to that of Matriculation with Science and Mathematics. Accordingly, a circular was issued on 9.8.2001 calling the candidates possessing Matriculation qualification to apply and the applicant had applied in response to the said notification. A written examination was held on 10.11.2001 in which the applicant along with 166 other departmental candidates appeared. The applicant and 33 other candidates came out successful in the written examination and were called for viva voce test on

26.11.2001. The selection proceedings were then put up to Respondent No.3 for his approval and publication of the panel. At that stage, the said authority noticed the administrative error in allowing the Matriculate candidates to appear at the examination and therefore, decided to cancel the examination held earlier.

3. We have heard the learned counsel for the rival parties and have perused the records placed before us. The applicant has also submitted a detailed rejoinder to the counter and we have perused the same.

4. The short question to be answered in this case is, whether the applicant has a vested right to be called for LDCE and therefore, he is within his rights to challenge the cancellation of the LDCE advertised by the Respondents, as discussed above. It is an undisputed fact of the matter that as per the Recruitment Rules governing the post of Supervisor (Permanent Way) 50% of the vacancies are to be filled up by promotion on seniority based on suitability, 25% by holding LDCE, and the remaining 25% by direct recruitment. In other words, 75% of the vacancies are reserved for departmental promotion and the feeder grades for promotion to the post are the grades of Gangmaen/Keymen/Mates. The applicant belongs to the grade of Gang man and therefore, he has a right to be considered for promotion either under promotion by seniority quota or under LDCE quota. We, therefore, answer the *first* question in affirmative that the applicant being a Gang man, which is a feeder grade for promotion to the grade of Supervisor (Permanent Way) and 25% of

vacancies being reserved for filling up through examination, he has a right to be heard in the matter.

5. The other question that the applicant has raised is that Respondent No.3 while cancelling the examination did not come out clean about the reasons for cancelling the same. In their counter affidavit the Respondents have disclosed that they had to cancel the examination because in the circular that they had issued on 9.8.2001 (Annexure 1) calling for applications for LDCE they had notified the educational eligibility condition in violation of the provisions of the Recruitment Rules. In terms of the Recruitment Rules, the vacancies through LDCE are to be filled up only from among those Gang men/Key men/Mates who have educational qualification of 10+2 with Science and Mathematics whereas in the notification dated 9.8.2001 the educational qualification was prescribed as Matriculation/HSLC . The Respondents have argued that as the notification for examination prescribed the eligibility conditions which are at variance with the notified Recruitment Rules, the examination notification was held irregular and against the Rules and therefore, had to be cancelled. As the selection process had to be cancelled due to administrative error, the applicant has no right to demand that the administration could not have cancelled the examination. They have further stated that the post of Supervisor (Permanent Way) is not a direct<sup>or</sup> regular channel of appointment for the post of Gang man. However, the employees belonging to Gang man cadre have been given an opportunity to be promoted to the post of Supervisor (Permanent Way) by participating in LDCE. We are,

however, not impressed by this argument of the Respondents. For the sake of clarity, we quote herein below the relevant provisions regarding filling up of vacancies of Permanent Way Mistries (Supervisor (Permanent Way), vide Railway Board's letter No.E(NG)I-97/PM5/5 dt.7.11.97 (RBE No.152/97) (Annexure R/3):

“In terms of para 1(ii) of instructions contained in Board's letter No.E(NG)II-86/RC2/35 dated 19.8.88 as modified vide their letter No.E(NG)II-86/RC2/35 dated 27.6.95 25% of the vacancies in the category of Permanent Way Mistries since redesignated as Supervisors (P.Way) in the pay scale of Rs.1400-2300(RPS)/4500-7000 (RSRP) are required to be filled through a Limited Departmental Examination (LDCE) from amongst those Gang men and Key men who have the qualification of 10+2 with Science and Mathematics and have put in a minimum of three years regular service after regularisation, the short fall, if any, being made good by direct recruitment through Railway Recruitment Boards.

2. A demand has been raised by both the Federations including a demand in the RNM=JRF vide Item No.11/97 that the adequate number of employees working in Civil Engineering Deptt. are not available with the qualification with Science and Maths at +2 stage and hence the qualification may be relaxed.

3. The Board have considered the matter and decided that while the existing qualification of 10+2 with Science and Maths may continue

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for appearing in the LDCE for promotion to the post of Supervisor (P.Way) in scale Rs.1400-2300/-(RPS)/4500-7000/- (RSRP) against 25% quota of the vacancies, shortfall, if any, against the quota may be made good from among Gangman/Keyman/Mates having the qualification of Matriculation/HSLC with three years regular service. Further shortfall, if any, may be added to the direct recruitment vacancies hitherto.”

In terms of the recruitment procedure for selection of officials in LDCE quota as quoted above we find that it has been laid down that the first attempt should be made to fill up 25% vacancies through LDCE by calling departmental candidates from among Gang man/Key man/Mates who have educational qualification of 10+2 with Science and Mathematics. However, if there would be shortfall in availability of qualified candidates to fill up all the vacancies in 25% quota, that shortfall may be made good from amongst those having the qualification of Matriculation/HSLC with three years regular service. If there would be shortfall even thereafter, these vacancies would be added to the direct recruitment vacancies. The Recruitment Rules have thus given enough flexibility to the Respondents to fill up the vacancies under 25% LDCE quota by making built in provision of relaxing educational qualification. The vacancies are, however, to be filled up in the first attempt from among the candidates having educational qualification of 10+2 with Science and Mathematics, failing that from among the concerned departmental candidates having educational qualification of Matriculation/HSLC with three years

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regular service. In this case, as it appears from the facts of the case, as stated by the Respondents, they had called for applications for LDCE from departmental candidates in the first instance itself from Gang man/Key man/Gang mates having educational qualification of Matriculation/HSLC with three years regular service instead of specifying that the selection to the post would, in the first instance, be confined to the candidates who are having educational qualification of 10+2 with Science and Mathematics and have put in three years service. If there will be still vacancies available for appointment, the candidates having educational qualification of Matriculation/HSLC will be considered. We had also called for the relevant file dealing with this matter of holding LDCE. We have perused the notes of the functionaries of the Personnel Branch, i.e., D.P.O.(I) and D.P.O.(II), A.D.R.M. and D.R.M. We find that the D.P.O.(I) had suggested that the Respondents had the option either to continue with the selection as it has been held or could cancel the examination and <sup>reassess</sup> assess the vacancies by taking out direct recruitment quota vacancies which will result in reducing the number of vacancies from 33 to 7. It was also disclosed in his note that out of 181 applications received in response to the vacancy circular dated 9.8.2001 only 7 candidates possessed the educational qualification of 10+2 with Science and Mathematics. The Additional Divisional Railway Manager(ADRM) recommended that the selection be cancelled and this was approved by the Divisional Railway Manager(DRM).

6. From the facts of the case it clearly comes out that there were only 7 candidates available in the selection process who possessed educational qualification of the first category, i.e., 10+2 with Science and Mathematics and the remaining 174 candidates possessed Matriculation/HSLC. In other words, had the Respondents methodically followed the provisions made in the Recruitment Rules/Railway Board's letter dated 7.11.1997, they could not have filled up all the vacancies with candidates having educational qualification of 10+2 with Science and Mathematics. In the circumstances, it was not necessary for them to have cancelled the examination as they have done vide their letter dated 31.7.2002.

7. We are conscious that the Hon'ble Apex Court in the case of R.C.Roongta v. Union of India and others reported in 30(1995)ATC 462 have held that it is not for the Tribunal/Court to make roving enquiry into the disputed facts and enter into findings of its own. Judicial review of administrative orders is to be directed not against the decision itself but it is to be directed against the decision making process. Being fully conscious of our jurisdiction, we are of the view that it is the responsibility of the Tribunal to satisfy itself that the decision making authority has reached a conclusion justified by law and established facts. In this case, the decision making authority had taken two decisions. Firstly, they had clubbed the vacancies under 25% LDCE quota and 25% direct recruitment quota for filling up through LDCE. Secondly, while notifying LDCE, they have mentioned educational qualification as Matriculation/HSLC with three years regular

service. After obtaining clarification/instruction from Respondent No.2, it was decided not to include the direct recruitment quota vacancies and to cancel the selection process altogether. The reason that weighed with Respondent Nos.3 and 4 to annul the selection process appears to be based on the observations made by the D.P.O.-I that with the reduction in the number of vacancies from 33 to 7, 'in every likelihood the field of eligibility would be considerably reduced in the fresh proceedings.' The question is whether this apprehension expressed by the said functionary was correct or not. We do not see how with the reduction in the number of vacancies to be filled up through LDCE the field of selection would have been reduced. Because if the notification is again made showing both the fields of eligibility, first field being those possessing 10+2 with Science and Mathematics qualification, and the second field being those possessing Matriculation/HSLC, it is unlikely that the number of persons responding would be vastly less than 181 applications received in response to the notification dated 9.8.2001. The only problem would have been that the vacancies had been notified at Annexure 1 as 17 UR, 5 SC and 2 ST, in all 24, which would get reduced to 7 in all. This information regarding reduction of vacancies on account of the decision not to fill up the direct recruitment vacancies through LDCE shall have to be advertised to all. As LDCE is an integral part of the recruitment by promotion and as we find that the apprehension which was there in the mind of the decision maker was not real, we hold that it was not necessary for the Respondents to cancel the examination nor would it be illegal to make

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selection for filling up the post of Supervisor (Permanent Way) from among the candidates who had already applied in response to the vacancy circular (Annexure 1) provided the revised vacancy position is notified and in the matter of selection, the candidates possessing educational qualification of 10+2 with Science and Mathematics are considered first before selecting anyone possessing Matriculation/HSLC qualification.

8 In the circumstances, this Original Application succeeds and we direct the Respondents to re-notify the vacancies giving reasons for reduction in the number of vacancies and also to clarify that the candidates having 10+2 with Science and Mathematics will be considered **first** for the vacancies notified and in case of **shortfall** those having Matriculation/HSLC qualification will be considered for selection and appointment. No costs.

  
(M.R. MOHANTY)

MEMBER(JUDICIAL)

  
(B.N. SOM)

VICE-CHAIRMAN