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O.A.Nos. 813 & 814 of 2002 & 830/02

ORDER DATED 25-06-2004.

Both these Original Applications are disposed of by a common order; as facts and issues involved are similar.

2. These cases were called out repeatedly when one Mr. Birja Pr. Nanda appeared and made a request for a pass over which was allowed. However, even after sometime, no body appeared and Shri Nanda failed to make any submission regarding these cases. Therefore, we have proceeded to decide these OAs on the basis of the materials available on records of both parties. It is also to be noticed that Mr. S. L. Patnaik, and Mr. B. K. Bal, learned Counsel for the Railways were present in Court. They did not render substantial help on the ground that they wanted to seek instruction but what instructions they were required to be sought was not known. However, after hearing them for sometime, we have proceeded to decide these cases on the basis of the materials placed on record.

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O.A.No.813/2002

3. This application has been filed by Mr. Akadasi Behera seeking a direction from this Tribunal to declare him pass as he belongs to SC community and also to give him promotion to the post of Telecom Maintainer (L-I) (TCM-L-I for short) w.e.f. 21.6.2002. He has also sought for consequential benefits.

4. It is submitted by Mr. Behera, Applicant that he joined as Telecommunication Maintainer (Line) Gr. III in the year 1983 and in due course, he was promoted to the post of TCM L-II in the year 1989. It is further submitted by the Applicant that the post of TCM(L) and TM are in equal footing and, therefore, the gradation list and seniority list of both categories of posts are jointly published. According to the Applicant, the Senior Divisional Personnel Officer, Res. No. 4, issued notification dt. 18.3.02 (Annexure-2) for trade Test for the purpose of promotion to the post of TCM (L)/TM-I. The Applicant also states that he appeared in the trade test and result was published by the Respondent No. 4 vide order dated 21.05.02 (Annexure-3) and he was marked as 'failed'. The claim of the Applicant is that he had performed very well in the written as well as viva-voce and practical test, and he should have been allowed to have been declared as pass since he belongs to SC

community. Since the Respondents have not done so, he has filed this O.A. claiming the reliefs as stated earlier.

O.A.No.814/2002, & 830/02

5. This application has been filed jointly by S/Sri Sahadev Baliarsingh and Pujari Chitti Panda. Applicant No.1 Sri Baliarsingh joined the Railway Service in the year 1974 as Khalasi. In due course, he was promoted to the post of Telecom Maintainer (TM-II) on 6.7.1989. He was retained against a post of TM-I after his promotion as TM-II. He also held the charge of TM-I from one Sh.S.K.Mitra. Sri P.C. Panda, Applicant No.2 joined the Railway service on 27.3.1973 as Khalasi and he was promoted to the post of TM-II and working against the higher post of TM-I as per order dated 8.4.1999 (Annexure-1). He also appeared in the selection test for the purpose of promotion to the post of TCM(L)/TM-I, as per the notification dated 18.3.02 (Annexure-2). Applicant appeared in the selection procedure/test but was marked as failed as per the result of the selection dated 21.5.2002 (Annexure-3). Applicant No.2 claims that he has been continuously working satisfactorily in the post of TM-I and therefore, he could not have been declared failed. Therefore, he has claimed similar reliefs as claimed by the Applicant No.1 Sri Baliarsingh in this O.A.

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6. The Respondents have filed replies challenging the reliefs claimed by the Applicants in both these Original Applications. In the replies filed by the Respondents, it has been stated that the Applicants have not impleaded persons who are holding the post of T.M Gr.I as parties and in ^{the} case of success by these Applicants, their seniority ^{is} likely to be affected. Therefore, these applications should be dismissed on this short ground alone. It is also stated by the Respondents that in terms of the existing instructions, on the subject, Trade tests were held and the Applicants were not found suitable. So they were declared failed. It is also pointed out by the Respondents that the remark of 'SC' against a person belonging to SC was not shown because of an error in the marking. If this was pointed out the same could have been corrected. However, this does not ultimately affect the result. It has also been pointed out by the Respondents that after the results as per order dt. 21.5.02 (Annexure-3) were declared, fresh process of selection was proposed to be taken. Accordingly, a fresh notification dt. 17.9.02 (Annexure-R/2) was issued. However, in view of the orders of this Tribunal, further steps were not taken. Learned Counsel of the Respondents, who are present in court submit that they have not been able to know what happened thereafter and for that purpose they wanted time to seek instruction from the Respondents.

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7. The Applicants have also filed rejoinder. In the rejoinder, the same points as in the OAs have been re-iterated. It is also stated that the Applicants who have been working for long period, have been declared failed with mala fide intention. There was no chance of being declared them failed in view of their meritorious records and good performances in the trade Test by the Respondents.

8. We have perused the materials available on records. We have also heard the learned counsel for the Respondents.

9. This Tribunal by order dated 20.09.2002 allowed the Applicants to take the Trade Test scheduled to be held on 23.09.2002 but it was directed that the result of the Applicants should be kept in a sealed cover till disposal of the O.As. There was no restriction on the Respondents to carry out the Trade test as proposed. We have not been informed as to whether any trade test was conducted thereafter. It is an admitted position that all the Applicants were regularly promoted to TM II and for further promotion to TM-I, they have to pass the Trade Test. Respondents should have taken the Trade test as per their rules as there was no stay order of this Tribunal. In view of their averments in the counter, filed by the Respondents, we are of the view that the Respondents should hold a Trade test as per rules within next three months after intimation to the Applicants in this regard. They should

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also consider the cases of the Applicants in the category to which they belong. So far the earlier results declared by the Respondents as per order dated 21.05.2002 is concerned, we do not find any justification to interfere with the orders of the Respondents. Therefore, the reliefs as claimed by the Applicants cannot be allowed. To that extent these OAs are rejected. However, the direction to the Respondents is made in view of their own averments in the counter replies filed, as stated earlier to hold a suitability test/Trade test as per the rules within next three months if they have not done so earlier; as there was no interim orders by this Tribunal prohibiting the Respondents to do the same.

10. In view of what has been stated herein - before, these Original Applications are disposed of without any order as to costs.

Manoranjan Mohanty
25/06/04
(Manoranjan Mohanty)
Member (Judicial)

R. K. Upadhyaya
(R. K. Upadhyaya)
Member (Admn.)