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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.166 of 2007
Cuttack, this the ~~30th~~ day of April, 2009

Mallipudi Vijaya Kumar Raju & Ors. Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

3. Whether it be referred to the reporters or not?
4. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.166 of 2007
Cuttack, this the ~~30th~~ day of April, 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. Mallipudi Vijaya Kumar Raju, aged about 42 years, son of Late M.V.Raju at present working as Sr. Loco Pilot (Goods) Grade-I, Office of the Chief Crew Controller, S.E.Railway, Chakradharpur, At/Po.Chakradharpur, Dist. West Singhbhum, Jharkhand.
2. Jaibir Kumar, aged about 42 years, Son of Sumer Prasad, at present working as Sr. Loco Pilot (Goods) Gr.I, Office of the Chief Crew Controller, S.E.Railway, Chakradharpur, At/Po.Chakradharpur, Dist. West Singhbhum, Jharkhand.
3. Bikash Chandra Gayan, aged about 41 years, son of H.N.Gayen, at present working as Sr.Loco Pilot (Goods), Office of the Chief Crew Controller, S.E.Railway, Chakradharpur, At/Po.Chakradharpur, Dist. West Singhbhum, Jharkhand.
4. Sachindra Mandal, aged about 41 years, son of Sakhi Charan Mandal, at present working as Sr. Loco Pilot (Goods) Gr.I, Office of the Chief Crew Controller, S.E.Railway, Chakradharpur, At/Po.Chakradharpur, Dist. West Singhbhum, Jharkhand.
5. Kartik Chandra Behera, aged about 48 years, son of Janardan Behera, at present working as Sr. Loco Pilot (Goods) Gr.I, Office of the Chief Crew Controller, S.E.Railway, Chakradharpur, At/Po.Chakradharpur, Dist. West Singhbhum, Jharkhand.

.....Applicants

Advocate for Applicant:M/s.P.K.Mohapatra, S.K.Nath
-Vs-

1. Union of India represented through its General Manager, South Eastern Railway, Garden Reach, Kolkata.
2. Secretary, Railway Board, Rail Bhawan, New Delhi.
3. Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur, Dist. West Singhbhum (Jharkhanda).
4. Senior Divisional Electrical Engineer (OP), S.E.Railway, Chakradharpur, Dist. Singhbhum (jharkhanda).
5. Crew Controller, S.E.Railway, Bondamunda, At/Po-Bondamunda, Dist. Sundergarh.

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6. S.Bhadur, Loco Pilot (Goods) Gr.I, Office of Chief Crew Controller, S.E.Railway, At/Po. Jamsedpur, Dist. East Singhbhum, Jharkhand.
7. N.Das, Loco Pilot (Goods) Gr.I, Office of Loco Inspector Office, S.E.Railway, At/Po. Adityapur, Dist. West Singhbhum, Jharkhand.
8. Basant Lall, Loco Pilot (Goods) Gr.I, Office of Chief Crew Controller, S.E.Railway, At/Po. Jamsedpur, Dist. East Singhbhum, Jharkhand.
9. N.P.Sarkar, Loco Pilot (Goods) Gr.I, O/OCrew Controller, S.E.Railway, At/Po. Chakradharpur, Dist. West Singhbhum (Jharkhand).
10. P.G.Manna, Loco Pilot (Pass Gr.II), Office of Chief Crew Controller, S.E.Railway, At/Po. Jamsedpur, Dist. East Singhbhum, Jharkhand.

....Respondents

Advocate for Respondents: Mr.S.K.Ojha & T.Rath.

ORDER

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

The Applicants are working as Senior Loco Pilot (Goods) Grade I in the East Coast Railway. They challenged the action of the Respondents in not empanelling them for promotion to the post of Elect.Loco Pilots (Pass), Gr.II on various grounds including the ground of illegality in the constitution of the Selection Committee. Respondents by filing their counter have opposed the contentions raised by the Applicants in the present OA. Having heard Learned Counsel for both sides, perused the materials placed on record. We find that questions raised in this OA were the subject matter of consideration in OA No518 of 2007. Taking into consideration the contentions raised vis-à-vis the earlier order of this Tribunal dated 3rd March, 2009 passed in OA No.134 of 2006, this Tribunal, in its order dated 21st April, 2009 dismissed the aforesaid Original Application.

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Extract of the orders passed in OA Nos. 518/2007 & 134/2006 are extracted herein below:-

"4. We feel there is no necessity to record details of the facts and grounds taken by the applicants as well as by the Respondents in their counter. During the course of hearing of the matter it was brought to our notice by the Learned Counsel for the Respondents that the selection in question was under challenge in another OA No.134 of 2006 disposed of on 3rd March, 2009 filed by similarly placed unsuccessful candidates, like the present applicants and after giving holistic consideration of the entirety of the matter this Tribunal ultimately rejected the said OA. Relevant portion of the issues raised by both sides and the conclusion reached by his Tribunal are quoted herein below:

The applicants are presently working as Sr. Loco Pilots (Goods), Gr.I. In pursuance to the advertisement dated 20.10.2005, published by the Sr. Divisional Personnel Officer, Chakradharpur, the 3rd Respondents, for filling up of 38 vacancies of Electrical Loco Pilots (Pass), Gr.II, the applicants being qualified above, applied for the same. 114 candidates, including the applicants, were found eligible for appearing in the viva-voce test held on various dates commencing from 14.11.2005 to 12.12.2005. However, the applicants having not been found fit were not selected. While the matter stood thus, the Respondents published a select list of 38 candidates for promotion to the post of Electrical Loco Pilots (Pass) Gr.II as per the Annexure-A/2 dated 09.02.2006. Aggrieved by the above list so drawn up by the Respondents, the applicants have filed this O.A. with the prayer referred to above.

5.Ld. Counsel appearing for the applicants, Mr. Prafulla Mohapatra has advanced the following contentions in support of his case. Firstly, as per Annexure-A/1, only 114 candidates were found eligible for appearing viva-voce test, in which the names of the persons at Sl.Nos. 35 to 38 contained in Annexure-A/2, select list, were not found place and if so, the inclusion of the above candidates in the select list is irregular and illegal. Secondly, the above four candidates and the contesting Respondents 6 to 43 were not qualified for appearing at the selection as they did not have the requisite qualification of passing training course



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and had no experience in the post of Loco Pilot (Goods) as they were attached to the official work. Hence, the selection of above Respondents are on the basis of the sweet will and pleasure of the Selection Committee, which is against the instructions and circulars issued by the Railways from time to time. Thirdly, the names of four Scheduled Caste candidates, who have been now selected as per Annexure-A/2, did not find place within the 114 candidates called for appearing viva-voce test and hence, their selection is also irregular and illegal. Lastly, the applicants being senior to all the candidates selected, especially, at Sl.No. 35 to 38, and having undergone passenger driving course from ELTC, Tata, and, having more experience than those, their non-selection to the posts of Elect. Loco Pilot (Pass) Gr.II is irregular and, therefore, the entire select list is liable to be quashed by this Tribunal.

7. Relying on the above, Mr. S.K.Ojha, Ld. Standing Counsel for the Respondents, resisting the contentions of the applicants, contended that since the applicants have not succeeded in the viva-voce test conducted by the authorities, their names did not find place in Annexure-A/2 panel and, at the same time, the inclusion of the names of the applicants in Annexure-A/1 by itself will not confer any right on the applicants to be selected to the post of Elect. Loco Pilot (Pass) Gr.II. Further, the Ld. Counsel for the official Respondents contended that none of the grounds urged in the O.A. is tenable in the light of the fact that the applicant did not become successful in the viva-voce test conducted by the Department. The inclusion of the names of the applicants is only to show that the applicants are eligible to appear or rather qualified to appear in the viva-voce test and they are coming under the eligibility criteria and under the feeder category for promotion to the post of Elect. Loco Pilot (Pass), Gr.II on the basis of the advertisement published by the Department. The applicants having appeared in the viva-voce test conducted by the Department, are estopped to challenge the rules or the procedures followed by the Department for drawing a select list or panel for promotion. The contention of the Ld. Counsel for the applicants that the names at Sl. Nos. 35 to 38 are on the basis of irregular selection or illegal inclusion is not correct as these candidates were selected as per Annexure-R/4, select list dated 15.12.2005. All these candidates

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are coming under the reserved category and they were selected separately in order to fill up the reserved vacancies. Further, it is contended by the Ld. Counsel that as per rule regarding passing of promotional training course shall be construed as per the Railway Board Letter No. 182/03 dated 15.10.2003, in which it is specifically stated that the instructions do not imply that all eligible candidates in the zone of consideration have to be necessarily imparted training before the selection process, which according to the Ld. Counsel for the Respondents, is in consonance with Board's letter No. E(NG)I-81-PM1-268 dated 09.07.1982. Further, it is contended by the Ld. Counsel appearing for the official Respondents that as per Annexure-R/3, Railway Board's Letter No. E(NG)1-2000/PM1/41 dated 07.08.2003, the Ministry of Railway, after obtaining views of the Railways, has decided that while written test may be continued for promotion as Passenger Driver, the selection may be on the basis of viva-voce after passing the prescribed promotional course. Further, it is stated that the revised procedure for filling up the post of Passenger Drivers will be applicable to the selection notified on or after the date of issue of the letter. If so, passing of the driving course is not a must for the selection in the panel for promotion. The Ld. Counsel further submitted that the contention that the private Respondents did not have the required experience for considering them for drawing the selection panel list is incorrect, as all the private Respondents were qualified to appear in the viva-voce test for the selection to the post in question and therefore, they having been found fit, their inclusion in the select list cannot be said irregular or illegal.

9. On anxious consideration of the rival contentions of the Ld. Counsel appearing for the parties and on perusing the relevant rules and orders issued by the Railway Board as well as the other documents produced in the O.A., we are of the view that the applicants have not been able to make out any case to be decided in favour of them. Admittedly, the applicants appeared viva-voce test and became unsuccessful in the said test and if so, they are estopped from challenging the procedures, rules, and/or the manner of selection by the Selection Committee. That apart, the Railway Board had issued Annexure-R/2 orders and the Rules regarding promotion by selection and also

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Annexure-R/4 notification for filling up of 38 posts including 4 posts for reserved categories. Though Annexure-A/1 is a list showing the names of the eligible candidates for appearing viva voce test, that by itself does not mean that the applicants are bound to be selected by the Selection Committee constituted for the purpose. Further, it could be noted that the acquisition of passenger driving training is not a must for inclusion of candidates for appearing at the selection. As per Annexure-R/2 circulars and letters issued by the Railway Board, the Selection Committee may be constituted under the orders of the General Manager/Head of Department or other competent authority. Further, the method to constitute the Selection Committee and the procedure to be followed for assessment of vacancies and assessment of eligibility conditions and such other matters as are required for the purpose having already been published by the Railway Board, we are of the view that as the selection made by the Selection Committee, as evidenced from Annexure-A/2, is in strict compliance with the circulars and notifications issued by the Railway Board from time to time, the inclusion of the names of private Respondents on the basis of the selection made by the Selection Committee and assessment made thereby are not irregular or illegal. Once a candidate having appeared and failed in a test or selection is estopped to challenge the selection process later as held in **Sanjay Kumar vs Narinder Verma's** case reported in (2006) 2 SCSLJ 135 and also in the judgment of the Apex Court reported in AIR 1976 SC 2408 in **Union of India vs Subhramanyam**.

10. In the light of the above principles laid down by the Apex Court and also in the finding entered by this Tribunal, we see no merit in this O.A., which stands dismissed. No costs."

2. In this case also the Applicants challenged the procedure adopted by the Respondents in the matter of selection only after becoming unsuccessful in the process of empanelment for promotion. We find no difference between the case considered and rejected by this Tribunal in earlier cases and in the present OA. Hence, we accept the view already expressed by this Tribunal in rejecting the claim of the

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applicants in the earlier OA. Accordingly, this OA stands dismissed.

No costs.

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(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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

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