

17

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.

O.A. No.892 & 893 of 2010
Cuttack this the 5th day of March, 2014

CORAM
HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

IN O.A.NO.892/2010

1. A.Eswari aged about 41 years D/o-A. Trinath Rao At-Qr.No.A/213/A-Side, Loco Colony, P.o-Jatni, Dist-Khurda.
2. K.Satyanarayana aged about 38 years son of K.Adiya At-Qr.No.A-8/Q, Loco Colony, P.o-Jatni, Dist-Khurda.
3. Sanjay Kumar Nanda aged about 46 years Son of G.C.Nanda of At/Po/Ps/Dist-Dhenkanal.
4. Laxmidhar Behera aged about 46 years Son of Bhima Behera of Haripur, P.o-Godipat-Matiapara, Via-Jatni, Dist-Puri.
5. Dillip Kumar Jena aged about 40 years Son of Ullash Jena of Haripur, P.o-Godipat-Matiapara, Via-Jatni, Dist-Puri.
6. Pitabas Jena aged about 43 years Son of Nanda Kishore Jena of Haripur, P.o-Godipat-Matiapara, Via-Jatni, Dist-Puri.
7. Akshaya Kumar Behera aged about 40 years Son of Arjun Behera of Haripur, P.o-Godipat-Matiapara, Via-Jatni, Dist-Puri.
8. K.Venkat Rao aged about 43 years Son of K. Basu Rao of Door No.38/30/222/2 Hussen Nagar, Maripalam, Visakhapatnam, A.P.
9. K.S.R. Somayajulu aged about 45 years Son of K.V.J. Sastry, C/o-D. Ramakrishna, Qr.No.421/A, Railway Colony, P.o-Jatni, Dist-Khurda.
10. Abdul Aziz Khan aged about 43 years Son of Khadar Walli, C/o-Sk.Rashid Basha, Qr.No.G-18-B, Traffic Colony, Khurda Road (R.S), Post-Jatni, Dist-Khurda.

P
Ree

18

11. Subash Chandra Mohanty aged about 41 years Son of Prahalad Mohanty of At/Po-Kushamati, P.s-Jatni, Dist-Khurda.
12. Bishnu Prasad Jena aged about 38 years Son of Nakul Jena of At/Po-Kushamati, P.s-Jatni, Dist-Khurda.
13. Hrushikesh Sahoo aged about 46 years Son of Bhaskar Sahoo of At/Po-Kushamati, P.s-Jatni, Dist-Khurda.
14. Asraf Alli Khan aged about 43 years Son of Late Asu Khan of village Baradapada, P.o- Biswalpara Via-Rench, Dist-Khurda.
15. Gobardhan Parida aged about 44 years Son of Kirtan Parida of Humar, P.o-Beraboi, Dist-Puri.
16. S.Murali Mohan aged about 46 years Son of Late S.V.Rama Rao At-Retang Colony, Qr.No.435-B, P.o-Jatni, Dist-Khurda.
17. Balaji Satpathy aged about 37 years Son of Late Kanhu Charan Satpathy At-Regional College of Management, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
18. Patitapaban Barik aged about 38 years Son of Bhimesen Barik of At/Po-Kudiary, P.s-Jatni, Dist-Khurda.
19. Sakuntala Nayak aged about 38 years D/o-Dhruba Charan Nayak of Barapada, Godiput Matiapāda, Puri.
20. Binaya Kumar Patajoshi aged about 41 years Son of Mahadeb Patajoshi of Ramachandrapur Bazar, P.s-Jatni, Dist-Khurda.
21. N.Ramana Rao aged about 36 years son of N.Ramu of Govindapuram, House No.1-II, P.o-Pundi(RS), P.s-Vajrapkuthru, Dist-Srikakulam, A.P.
22. R.Niranjan Rao aged about 42 years Son of R.Simhachalam of Qr.No.A-46/E, Loco Colony, Po-Jatni, Dist-Khurda.
23. Ratnakar Muduli aged about 40 years son of Laxman Muduli of Aragarha, P.o-Godiput-Matiapada, P.s-Delanga, Dist-Puri.
24. P.Krishna Prasad aged about 46 years son of Late P. Ramarao of S-3/125, MIG-1, BDA, Phase-II, Niladri Vihar, P.o-Saliashree Vihar, P.s-Chandrasekharpur, Dist-Khurda.
25. Sujit Mishra aged about 41 years son of Late Gopinath Mishra C/o Satyajit Mishra At-Bachrupatna, P.o-Jatni, Dist-Khurda.

D
neu

26. Daitari Behera aged about 39 years son of Purno Behera At-Godasahi, P.o-Godiput- Matiapada, Dist-Puri.
27. S. Bhaskar Sharma aged about 43 years son of S.Samba Murty At-Brahmin Street, P.o-Arasavlli, Dist-Srikakulam, A.P.
28. N.Nagabhusan Rao aged about 42 years son of N.S.Narayana At/Po-Kasibuga, Dist-Srikakulam, A.P.
29. Pankaj Biswal aged about 42 years son of Bhikari Biswal At-Gopalpada, P.o-Hinipur, Dist-Puri.

...Applicants

By the Advocate(s)-M/s. B.Mohanty
 S.Pattnaik
 A.Patnaik
 B.S.Rayguru

-VERSUS-

1. Union of India, represented by the Secretary to the Government of India, Railway Board, Ministry of Railways, Rail Bhavan, New Delhi-110 001.
2. The General Manager, East Coast Railway, Chandrasekhapur, Bhubaneswar, Dist-Khurda, Orissa.
3. The Divisional Railway Manager, Khurda Road Division, P.o-Jatni, Dist-Khurda.
4. The Senior Divisional Personal Officer, Khurda Road Division, P.o-Jatni, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.KOjha

IN O.A.NO.893/2010

1. Somanath Narayan Patnaik aged about 40 years Son of Sarat Chandra Patnaik of Gajapati Nagar, Near Santosi Maa Tample, At/Pc-Jatni, Dist-Khurda.
2. Sanjaya Kumar Mohanty aged about 39 years son of Kunjabihari Mohanty of Gopinathpur, P.o-Jatni, Dist-Puri.

20

3. Amiya Kumar Swain aged about 43 years Son of Raghunath Swain of Madhusudan Nagar, Near Sidheswar Temple, At/Po-Jatni, Dist-Khurda.
4. Rajib Kumar Ray aged about 40 years Son of Pravakar Raya of At/Po-Gadakaramula, Dist-Puri.
5. Suvendu Kumar Parija aged about 43 years Son of Sarat Chandra Parija of Balichhaka Sahi, At/Po-Jatni, Dist-Khurda.
6. Sk.Sakuruddin aged about 39 yeas Son of Sk.Rahim, At-Trafic Colony, Po-Jatni, Dist-Khurda.
7. Prafulla Kumar Sabat aged about 40 years Son of Gobinda Sabat of At/Po-Loco Colony, Po-Jatni, Dist-Khurda.
8. Saibala Samantaray aged about 43 years Wife of Gopal Chandra Parida of Adarsa Nagar, At/Po/Dist-Puri.
9. Tophan Kumar Samantaray aged about 32 years Son of Biswamber Samantaray of At/Po-Satangoi, P.s-Delanga, Dist- Puri.
10. Dhusasan Baral aged about 41 years Son of Sankar Baral of At/Po-Satangoi, P.s-Delanga, Dist-Puri.
11. Jayakrishna Mohanty aged about 46 years Son of Jagabandhu Mohanty of At/Po-Kushamati, P.s-Jatni, Dist-Khurda.
12. Gagan Behera aged about 37 years Son of Late Raghu Behera of At/Po-Hatabazar, P.s-Jatni, Dist-Khurda.
13. Surendranath Behera aged about 38 years Son of Dukhishyam Behera of At/Po-Badatopa, Dist-Khurda.
14. Bijaya Kumar Das aged about 40 years C/o-Gopal Das of Bachharapatna, P.o-Jatni, P.s-Jatni, Dist-Khurda.
15. Udayanath Swain aged about 46 years Son of Lingaraj Swain of Hatabazar, Po/Ps-Jatni, Dist-Khurda.
16. Balajinath Panigrahi aged about 44 years Son of Sarat Chn. Panigrahi of Hatabazar (Near Radha Mohan Mandir), P.o-Jatni, Dist-Khurda.
17. Gopal Chandra Parida aged about 36 years Son of Bhalabhadra Parida of Hatabazar P.o-Jatni, Dist-Khurda.

Q

18. P.Prem Kumar aged about 39 years Son of P.Seeta Ram of Hatabazar P.o-Jatni, Dist-Khurda.

19. Riyaz Mohammad aged about 43 years Son of Gulzar Mohammad, C/o-Fiahayaz Mohammad, Railway Qr.No.D-14-A, Traffic Colony,Po/Ps-Jatni, Dist-Khurda.

20. Madan Pradhan aged about 48 years Son of Purna Pradhan, C/o-S.N.Pradhan of Traffic Colony, Qr.No.C-7/A side, Po/Ps-Jatni, Dist-Khurda.

21. Bidhan Mohapatra aged about 48 years Son of Late Markanda Prasal Mohapatra Of At/Po-Gajapati Nagar, Dist-Khurda.

22. Siba Mohapatra aged about 36 years Son of Bihari Mohapatra of Barapada, Godiput, Matiapada, Via-Jatni, Dist-Puri.

23. Ganesh Ojha aged about 37 years Son of Sitaram Ojha of Kudiary Bazar Po/Ps-Jatni, Dist-Khurda.

24. Jagadananda Rajguru aged about 45 years Son of Purna Ch. Praharaj of Guachauka, Po/Ps- Delanga, Dist-Puri.

25. Rajendra Prasad Tiwari aged about 43 years Son of Balaji Das Tiwari of Gopinathpur, P.o-Jatni, Dist-Puri.

26. Horatio D.Costa aged about 43 years C/o-G.D.Costa of Balichak Sahi, Jatni, Dist-Khurda.

27. Abdul Karin aged about 42 years Son of Abdul Waheed of village Rajabazar, P.o-Jatni, Dist-Khurda.

28. Ramakanta Rout aged about 43 years Son of Bhagaban Rout of Village/Po-Boral Pokhari, Dist-Balasore.

29. Sk.Abdul Subhan aged about 37 years Son of Abdul Nazir of Gajapati Nagar, P.o-Jatni, Dist-Khurda.

30. Sri Debendra Kumar Samal aged about 41 years, Son of Chintamani Samal of At/Po-Boral Pokhari, Dist-Balasore.

31. Dusasan Mohanty aged about 43 years Son of Bandhu Mohanty of Green, P.o-Charampa, Dist-Balasore.

32. Somayajula V.S.Subrahmani aged about 47 years Son of S.K.Viswanatan of At/Po-Jatni, Dist-Khurda.



22

33. Abdul Waheed aged about 48 years Son of Sri Alam of Mehrabpur, P.o-Haripur, Via-Singipur, Dist-Puri.
34. Subal Swain aged about 45 years Son of Goji Swain of Mahichina, P.o-Birapurusattampur, Via-Delang, Dist-Puri.
35. Nabakishore Samantray aged about 43 years Son of Bansidhar Barik of Tarimi, P.o-Kalaparaghata, Dist-Khurda.
36. Sukanta Kumar Barala aged about 42 years Son of Gopi Barala of Tarini, P.o-Kalapara, Dist-Khurda.
37. Debananda Sethi aged about 44 years, Son of Hadu Sethi of Handiola, P.o-Kaluparaghata, Dist-Khurda.
38. Surendra Jena aged about 43 years Son of Rama Jena of Mundala, Po-Kaluparaghata, Dist-Khurda.
39. Brundabana Barik aged about 42 years Son of Bancha Barik of Mundala, P.o-Kaluparaghata, Dist-Khurda.
40. Kailash Raj aged about 42 years Son of Baikuntha Raj of Brahmandi, P.o-Pariorada, Dist-Khurda.
41. Sudhir Naik aged about 40 years Son of Madan Naik of Loco Colony, P.o-Jatni, Dist-Khurda.
42. Suvendu Rout aged about 43 years Son of Bishnu charan Rout of College Road, Pokhariapara, P.o-Pattamundai, Dist-Kendrapara.
43. Sukumar Behera aged about 43 years Son of Pravat Ch. Behera of Madhusudan Nagar At/Po-Jatni, Dist-Khurda.
44. Chandrasekhar Samantray aged about 33 years Son of Late Parikhita Samantaray of Village Godasahi, P.o-Godiput, Matiapara, Dist-Puri.
45. Bhagyarathi Nisank aged about 35 years W/o-Nabakishore Nisank, of village Hunipur, P.o- Godiput, Matiapara, Dist-Puri.

...Applicants

By the Advocate(s)-M/s. B.Mohanty
 S.Pattnaik
 A.Patnaik
 B.S.Rayguru

-VERSUS-

1. Union of India, represented by the Secretary to the Government of India, Railway Board, Ministry of Railways, Rail Bhavan, New Delhi-110 001.
2. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Orissa.
3. The Divisional Railway Manager, Khurda Road Division, P.o-Jatni, Dist-Khurda.
4. The Senior Divisional Personal Officer, Khurda Road Division, P.o-Jatni, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.KOjha

ORDER

R.C.MISRA, MEMBER(A)

Since the facts involved are the same and similar, both the above mentioned Original Applications are being disposed of through this common order. For the sake of reference, the facts advanced in O.A.No.892 of 2010 are briefly summed up as follows.

2. Respondent No.2, i.e., General Manager East Coast Railways issued a notification dated 13.8.1990 inviting applications from the children of the Railway employees who had retired on superannuation or voluntarily retired after 1.1.1987 and will be retiring from service from 31.12.1993 for enrollment of fresh faces as substitutes for utilizing them against day to day causalities in the Railways, in response to which applicants made their applications to Respondent No.2 in this regard. A screening test was conducted from among the applicants on different dates in the year 1991-

gym

92. Applicants herein also went through this screening test. In the meantime, without any result of the screening test being published, the Vigilance Department of the Railways detected some irregularities in the process of selection and seized all the records in January, 1992 for the purpose of inquiry. Since the results of the screening test were not published some of the candidates being aggrieved by the action of the Respondents filed Original Application Nos. 511/94, 590/94 and 369/95 . The Tribunal disposed of all the Original Applications by directing Respondent Nos. 1 and 2 to order the Vigilance Organization to complete the enquiry and submit their report within a period of 90 days and take further action with regard to interview /test on the basis of the findings of the Vigilance organization. Aggrieved with the above decision, some of the applicants further approached the Hon'ble High Court of Orissa in W.P.(C) No.6149/1999 and the Hon'ble High Court disposed of the said Writ Petition vide order dated 5.7.2001 granting liberty to the petitioners therein to approach the Tribunal by challenging the order of cancellation of interview dated 22.02.1999 because in the meantime, Railway authorities had cancelled the interview which was conducted in pursuance of notice dated 13.8.1990. Thereafter, some of the applicants of O.A.No.511 /94 approached the Tribunal again in O.A.No.520/2001 which was disposed of by this Tribunal vide order dated 20.4.2004 with a direction that as under the existing policy of the Respondent-Department, there is no bar for considering the wards of the railway employees for enrollment of substitutes along with the outsider candidates, they should

25

consider the cases of all the applicants who had applied in response to notification dated 13.8.1990 as and when they would take action for enrollment of substitutes under their organization. Respondent-Railways being aggrieved by the aforesaid order of the Tribunal moved the Hon'ble High Court of Orissa in W.P. © No.8814/2004. The Hon'ble High Court disposed of the said Writ Petition on 17.3.2006. While the Hon'ble High Court confirmed the order of the Tribunal they only set aside that part of the order which imposed costs on the Railways. After the said order was passed, the Railway authorities did not implement the orders and therefore, the applicants in O.A.No.520/2001 filed a contempt proceedings against the Railways. While the matter stood thus, the Respondents did consider the case of the applicants in O.A.No.520/01 and issued orders of appointment. Subsequently, some of the candidates approached the Tribunal in O.A.Nos. 256 and 336 of 2005, in which the Tribunal directed the applicants therein to file individual representation before the Railway authorities which would be considered by them in accordance with the previous judgment passed in O.A.No.520/2001. After receiving such representations, the Railway authorities disposed of the same by stating that Writ Petition was pending against the orders of the Tribunal in O.A.No.520/2001 before the Hon'ble High Court of Orissa. However, even after the disposal of the Writ Petition No.8814 of 2004 on 17.03.2006, Respondents did not consider the representations. The orders of appointment in respect of applicants in O.A.No.520/2001 were issued only after the applicants moved the Hon'ble High Court. The

submissions made by the applicant^s in the present O.As are that they are similarly situated persons and have faced the same interview as that of the applicants of O.A.No.520/2001, but they have been denied appointment as substitutes by the Respondents.

3. Respondent-Railways in their counter affidavit while admitting the facts of the case, have inter alia stated that it is a fact that the Hon'ble High Court of Orissa in W.P.(C) No.8814 of 2004 modified the order of the Tribunal to the extent that on availability of vacancies, the petitioners shall invite applications according to their requirement by making publication in the newspapers having wide circulation and the applicants shall also be allowed to apply along with other outsiders and in case they make a claim that they were applicants who applied as substitutes in pursuance of the earlier notification dated 13.8.1990 then the cases of the applicants who had become over-aged shall be considered for relaxation and the select list shall be prepared without any discrimination between the wards of ex railway employees and outsiders who are declared selected. On the basis of this order, the Respondents have submitted that the claim made by the applicants on the basis of notification dated 13.8.1990 is unacceptable considering the fact that this notification had already been cancelled. They have also cited the judgment of Hon'ble Apex Court in case of Ghulam Rasool^l Lone vs. State of Jammu & Kashmir & Ors. in which it has been laid down that even if a benefit has been extended to similarly situated persons, the same cannot

Rai

be extended to persons who have slept over the matters for a long period of time. Further, the applicants should have filed documents to ^{ve} *prove* that they were the applicants in response to earlier notification and had appeared at the test. Mere mention of this fact will not be acceptable to the Respondents in the absence of any documentary proof to that effect.

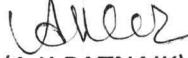
4. We have heard the learned counsel for both the sides and perused the records. In course of hearing, it has come to the notice of the Tribunal that in many cases in the past, after taking into consideration similar objections raised by the Railways, the O.As. have been disposed of by granting liberty to the applicants to make their individual representations before the Respondents enclosing thereto proof in respect of submission of applications pursuant to notification dated 13.8.1990. It has been further directed by this Tribunal that on receipt of the proof, the Respondents will do well to take further action in the light of the decision of the Hon'ble High Court in W.P. © No.8814/2004 within a stipulated time. Similar orders has been passed in O.A.No.611/2009 disposed of on 4.1.2013 by the Tribunal and also O.A.No.265/10 disposed of on 14.3.2014. This being the situation, we find no reason to deviate from the decisions already taken by the Tribunal in the earlier matters in the light of the decision of Hon'ble Apex Court in *Su-Inspector Rooplal vs. Lt.Governor (2000) 1 SCC 644*. Therefore, both the OAs are being disposed of with liberty being granted to the applicants to make applications before the Respondents enclosing thereto proof in respect of

28

submission of applications pursuant to notification dated 13.8.1990 and
on receipt of the same, the Respondents will do well in the light of the
decision of the Hon'ble High Court dated 17.3.2006 in W.P.(C)
No.8814/2004, within a period of sixty days from the date of receipt of
this order. No costs.


(R.C.MISRA)
MEMBER(A)

BKS


(A.K.PATNAIK)
MEMBER(J)