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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 591 of 2011
Cuttack, this the ~~23~~ day of February, 2016

D.K.Chhotaray & Anr. Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judl.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 591 OF 2011
Cuttack, this the 23rd day of February, 2016

COR AM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

.....

1. D.K.Chhotaray
aged about 33 years,
S/o Sri Dibakar Chhotaray,
Working as TPM 'B' under
Sr. Divisional Operations Manager,
Sambalpur, East Coast Railway,
residing at Thakurpur, PO- Modipara,
Sambalpur, PIN-768002.

2. Mahimud Mohammad
aged about 32 years,
S/o Wahid Mohammad,
Working as Token Porter under
Chief Controller, East Coast Railway, Sambalpur,
residing at Thakurpur, PO- Modipara,
Sambalpur, PIN-768002.

...Applicants

(Advocates: Mr. G.Rath)

VERSUS

Union of India Represented through

1. General Manager,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar, PIN-751017.
2. Chief Personnel Officer,
East Coast Railway,
Rail Vihar, Chandrasekharpur,
Bhubaneswar, PIN- 751023.
3. Divisional Railway Manager (Personnel),
East Coast Railway, Sambalpur,
At/PO- Khetrajpur, Dist- Sambalpur-768003.
4. Divisional Personnel Officer,
East Coast Railway, Sambalpur,
At/PO- Khetrajpur, Dist- Sambalpur-768003.
5. Principal,
Zonal Railway Training Institute, Sini,
PO- Sini, Dist.- Singhbhum, Jharkhand-833220.

Vall

6. Bhagirathi Kumar Singh,
Sr. Gate Keeper, At/PO- Deogaon Road,
Dist- Bolangir- 767029.
7. Sri Sushanta Moharana,
Sr. Gate Keeper, Bona Railway Station,
PO- Kishore Gang, Dist- Angul.
8. Sri Banamali Gukhura,
Sr. Gate Keeper, At-Pardiah Palli,
PO- Sakrina, Dist- Sambalpur.
9. Sri Manoranjan Barik,
Sr. Gate Keeper, At- Sagipalli,
PO- Kalyanpur, Via- Rajkishore Nagar,
Dist- Angul, PIN- 759126.
10. Sri Minaketan Panda,
Watcher, Vigilance,
C/o. Chief Vigilance Officer,
East Coast Railway,
Bhubaneswar, G.M.Building,
(1st Floor), PIN-751017.
11. Sri Keshab Chandra Bhoi,
TPM 'B', At/PO- Jujumura,
Dist- Sambalpur- 768105.

... Respondents

(Advocate: Mr. S.K.Ojha)

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O R D E R

A.K.PATNAIK, MEMBER (JUDL.):

The whole gist and caboodle of the case of the applicants, absolutely necessary for adjudication of the dispute, is that in order to draw a panel of 06 posts (UR-05, SC Nil & ST-01), for promotion to the post of Jr. Trains Clerk in scale of Rs. 3050-4590/- (pre revised) as PB-1 with GP Rs. 1900/- against 33-1/3% DPQ by positive act of selection, in Operating Department of the Railway, vide Notification No. EO/ Optg/ Jr.TNC/ Sele/ 33-1/3%/ DPQ/ 2008 dated 26.09.2008. The applicants being the eligible candidates applied, appeared at the test, conducted by the Respondents, and got empanelled along with four others, as per the result published on 04.01.2010, and, consequently, they were sent for



training to the Zonal Railway Training Institute, Sini. They also successfully completed the training. Thereafter, without putting any notice or giving any reason, in compliance with the principles of natural justice, the respondents modified the selection list vide Memo dated 24.02.2011 in which the names of the applicants did not figure. The applicants submitted representation dated 04.03.2011 to the DPO, SBP, as against the modified select list as published on 24.02.2011. As nothing was communicated to them, they filed OA No. 220 of 2011 which was disposed of on 21.04.2011 with direction to the Respondent No.4 to consider and dispose of the representation so preferred by them. Thereafter alone, on the representation dated 04.03.2011 intimated the result vide letter dated 23.05.2011; which is quoted hereunder for ready reference.

“In order to draw a panel of 06 (UR-05 & ST-01) posts of Jr. TNC against 33-1/3 % DPQ, Notification No. EO/Optg/Jr. TNC/Sele//33-1/3 % DPQ/2008 dated 26.09.2008 was issued in terms of Estt. Srl. No. 145/2003 (RBE No. 165/2003) calling options from eligible staff. In response, 74 staff applied for the said post out of which only 71 were found eligible. The written test was accordingly conducted wherein only 67 staff appeared and the result of written test was published vide No. EO/Optns/Selection/Result/TNC/10 dated 04.01.2010 wherein 42 candidates were declared “passed”. In the light of instructions in RBE No. 113/2009 issued in meantime, the provisional panel was drawn in the order of merit and the six provisionally empanelled candidates were sent for promotional course of training to ZRTI/SINI.

It was however, advised by HQ that such selections are to be as per Advance Correction Slip No. 154 & 155 (Estt. Srl. No. 145/2003) i.e. Selections against 33-1/3% as per seniority and 16-2/3 as per merit. Accordingly, the provisional



panel was modified with the approval of competent authority and the result was published in the order of seniority vide this office Memo No. Optg/15/2011, dated 24.02.2011.”

The Applicants being aggrieved by the aforesaid communicated dated 23.05.2011 preferred this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8. RELIEF SOUGHT:

8.1. To quash the modified panel issued vide Memo No. Optg/15/2011 dated 24.02.2011 by the DRM (P)/SBP at Annexure-A/5 in view of the Railway Board's instructions issued vide No. E (NG)I-2008/PM7/4 SLP dated 19.6.2009 which was issued in accordance with the direction of the Hon'ble P&H High Court and confirmed by the Hon'ble Apex Court and as per the decision of this Hon'ble Tribunal in OA No. 26/2008 Binapani Panda vs UOI & Others decided on 22.1.2010 and OA No. 300 of 2007 Paresh Chandra Tarai & Others vs UOI and Others decided on 06.01.2011, before the candidates empanel in modified list are appointed in the posts in question;

8.2. To restore the panel published on 30.04.2010 at Annexure-A/3 in quashing the DRM (P)/SBP's letter No. SBP/DPO/Staff/Optg/Jr.TNC/Court case/2011 dated 23.05.2011 at Annexure-A/8;

8.3. That any other relief, as their Lordships deem fit including costs.”

2. The Respondent-Department have filed their counter in which they have not disputed the factual aspects of the matter but it has been stated that before effecting promotions, a doubt was arisen regarding applicability of the instructions contained under RBE No. 113/2009. Hence, clarification was sought from HQs, BBS vide letter No. DPO/SBP/election/Jr.TC/DPQ/10 dated 22.11.2010. In reply thereto, the CPO, ECoR, BBS vide letter dated 20.12.2010 informed that the selection of TNC from Gr. D to Gr. C is to be made as per the



advance correction slip No. 154 and 155 (Estt. Sl.No. 145/03) i.e. 33-1/3% as per seniority and 16-2/3% as per merit. Subsequently, the DRM, ECoR,SBP also sought clarification vide letter dated 23.12.2010 and, in turn, the CPO, ECoR,BBS vide letter dated 04.01.2011 clarified that the decision communicated vide letter dated 20.12.2010, cited supra, stands good. Accordingly, the provisional panel drawn, in order of merit, vide Memo dated 30.04.2010 was cancelled and modified panel was drawn in order of seniority as per the Estt. Srl.No. 145/03 vide office letter dated 23.02.2011. It has been stated that even if the applicants were empanelled for promotion and the panel was cancelled before the same is taken effect, they cannot question the same as an employee cannot claim the promotion as a matter of right as it is purely within the domain of the administration and should be done strictly as per the rules. Accordingly, the Respondents have prayed for the dismissal of this OA.

3. The applicants have filed their rejoinder in which they have stated that the issues involved in this case have already been answered by this Tribunal in similar cases filed by other employees of the Railway. The Tribunal reached the conclusion based on the decision of the Hon'ble High Court of Punjab & Harayana in Writ Petition No. 4746/2002 dated 09.04.2008 which has been upheld by the Hon'ble Supreme Court in Special Leave Petition No. 16774/2008 dated 05.01.2009 and relying the aforesaid decision, the Respondents have also issued necessary instruction and, as such, in the light of the earlier order of this Tribunal in similar matters, this OA is liable to be allowed.

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4. Despite service of notice and due opportunities, no separate counter has been filed by the private Respondents and as such, they are set ex parte.

5. Mr. G.Rath, Learned Senior Counsel for the Applicants (assisted by Mr. D.K.Mohanty, Learned Counsel) and Mr. S.K.Ojha, Learned Counsel appearing for the official respondents have reiterated the stand taken in their respective pleadings and having heard them at length, we have perused the records including the earlier orders of this Tribunal dated 22.12.2010 and 06.01.2011 passed in OA Nos. 26/2008 and 300/2007 respectively.

6. We find that the Tribunal in earlier cases reached the conclusion after examining the decision of the Hon'ble Punjab and Harayana High Court which was up held by the Hon'ble Apex Court, cited supra and based on which the instructions were issued by the Railway and it would suffice to quote the relevant portion of the order dated 22nd December, 2010 passed by this Bench in OA No. 26 of 2008 filed by Binapani Panda vs Union of India and others which would run thus:

“6. As already held, this was a General Selection, candidates are not from the same seniority units and there is no common seniority list on the basis of which their names can be placed in the order of seniority, therefore promotion to such posts ought to have been made only on the basis of merit, uninfluenced by seniority of the candidates. Hence by applying the law laid down by the Hon'ble High Court of Punjab and Haryana which was subsequently, confirmed by the Hon'ble Apex Court based on which the Railway Board issued the RBE No. 113/2009 and the fact that the applicant stood



second in the written test, promotion made to the posts of Dresser-III is hereby quashed. Accordingly, Respondents are directed to review the matter and effect promotion to these posts in accordance with the principles laid down in RBE No. 113/2009. This exercise shall be completed within a period of 60 (sixty) days from the date of receipt of copy of this order. Concomitant pay fixation including notional fixation and release of the amount if due shall be completed within 30 days thereafter.

7. In the result, this O.A. stands allowed to the extent stated above. There shall be no order as to costs."

7. At this stage we recollect legal maxims "*Lex prospicit, non respicit*" (The law looks forward, not backward) and *In consimili casu consilile debet esse remedium*" (in similar cases the remedy should be similar). On assiduously examining the facts and issues involved in the earlier case cited supra vis-a-vis the facts and issues involved in the case in hand, we find no reason to differ with the view already taken by this Tribunal in the aforesaid case. Hence, we hold that this was a general selection and candidates were not from the same seniority units and, there was no common seniority list on the basis of which their names can be placed in order of seniority, promotion to such posts ought to have been made only on the basis of merit uninfluenced by seniority of the candidates. As such by applying the law laid down by the Hon'ble High Court of Punjab and Harayana which was upheld/confirmed by the Hon'ble Apex Court and based on which the railway board issued RBE No. 113/2009, and the fact that after the empanelment the applicants were sent for training and they have also come out ^{ful} in the training, the modified panel issued vide Memo No. Optg/15/2011 dated



24.02.2011 by the DRM (P)/SBP at Annexure-A/5 is hereby quashed and the earlier panel published on 30.04.2010 at Annexure-A/3 and based on which the applicants were sent for training is restored. The concomitant pay fixation including notional fixation and release of the amount if due shall be done by the respondents within a period of sixty days from the date of receipt of a copy of this order.

8. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.



(R.C.MISRA)
Member (Admn.)



(A.K.PATNAIK)
Member (Judl.)

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