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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00613 of 2015
Cuttack, this the 16th day of September, 2015

Y.Krishna Naidu & Ors.	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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O.A.No.260/00613 of 2015

Cuttack, this the 16th day of September, 2015

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HON'BLE SHRI A.K. PATNAIK, MEMBER (JUDL.)

HON'BLE SHRI R.C.MISRA, MEMBER (ADMN.)

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1. Y.Krishna Naidu, aged about 46 years, S/o Late Appala Swamy, At/ PO- LAXmipuram, PS- Sitanagaram, Dist- Vizayanagar, Andhra Pradesh.
2. L.Ram Mohan Rao, aged about 44 years, S/o Late L.Gopal Rao, At- Gajapati Nagar near Siridi Sai Temple, PO/PS- Jatni, Dist- Khurda, Odisha.
3. K.Palavalli, aged about 43 years, S/o K.Venkata Rao, C/o- V.Nageswar Rao of Gowri Sankar Colony, PO/PS- S. Kata (Maudal), Dist- Vizay Nagaram, Andhra Pradesh.
4. Pabitra Kumar Sahoo, aged about 47 years, S/o Kedar Sahoo of Vill/PO-Golabai, PS- Jankia, Dist- Khurda, Odisha.
5. Sanatan Das, aged about 46 years, S/o Late Bechhendra Das At/PO- Salabani, PS- Anandapur, Dist- Keonjhar, Odisha.
6. P.Bala Raju, aged about 46 years, S/o Late Parvatisham of Vill/PO- Sompeta Mogalikottur Colony), PS- Sompeta, Dist- Srikakulam, Andhra Pradesh.
7. Danda. Damodara Rao, aged about 41 years, S/o Late D.V.Ramana of Vill/PO-Chandrayya Peta, Dist- Srikakulam, Andhra Pradesh.
8. Chitta Ranjan Rath, aged about 46 years, S/o Benudhar Rath, At- Gandhi Nagar, Ramachandrapur Buzar, PO/PS- Jatni, Dist- Khurda.
9. S.Ch.Barik-2, aged about 45 years, S/o Late Dhruba Charan Barik, At- Ratanpur, PO- Batira Via-Rahama, Dist- Kendrapara, Odisha.
10. Somanath Mohanta, aged about 41 years, S/o Mukundadev Mohanta of Vill- Gishibas, PO- Pantho, Via-Tato, Dist- Mayurbhanj, Odisha.
11. M.D.V. Ramana, aged about 39 years, S/o M.Viswanadham of Vill/PO/PS-Rajam, Dist- Srikakulam, Andhra Pradesh.
12. Santosh Kumar Subudhi, aged about 42 years, S/o Late Satyabadi Subuddi, C/o Biswanath Pati, At- Jatni, Balichakka Sahi, PO- Jatni, Dist- Khurda, Odisha.
13. G.Manga Raju, aged about 43 years, S/o Late G.Pothu Naidu of Plot No. 331 Gajapati Nagar near Siridi Sai Temple PO/PS- Jatni, Dist- Khurda, Odisha.

...Applicant

(Advocates: M/s. B.Dash, C. Mohanta)



VERSUS

Union of India Represented through its

1. Secretary (Establishment),
Ministry of Railways,
Railway board, New Delhi.
2. General Manager,
East Coast Railway,
Rail Bhawan, Chandrasekharpur,
Bhubaneswar, Dist-Khurda.
3. Sr. Divisional Personnel Officer,
East Coast Railway, Khurda Road,
PO- Jatni, Dist-Khurda.
4. Sri Bidesh Kumar Bagal,
Presently working as Loco Pilot (G),
Under the DRM (P), Khurda Road,
E.Co.Railway, PS- Jatni, Dist-Khurda.
5. Sri Someswar Sethi,
Presently working as Loco Pilot (G),
Under the DRM (P), Khurda Road,
E.Co.Railway, PS- Jatni, Dist-Khurda.
6. Sri Muralidhar Nayak,
Presently working as Loco Pilot (G),
Under the DRM (P), Khurda Road,
E.Co.Railway, PS- Jatni, Dist-Khurda.

... Respondents

(Advocate: Mr. T.Rath)

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O R D E R

Mr. A.K.PATNAIK, Member (Judl.):

The precisely and compendiously facts absolutely necessary for adjudication of this Original Application are that all the applicants are working as Loco Pilot (Goods) under the Respondent-Department. The Respondent-Department issued a letter bearing No. P/Loco (Rg)/LP (P)/Eligible/ PDC / 15 dated 21.08.2015 containing the 39 names of Loco

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Pilot (Goods) (both UR and Reserved) who were found eligible and entitled to for promotion to the pot of LP (P)/Sending for DPC training. As it appears, being aggrieved by the inclusion of the names of reserved community Loco Pilot (Goods), the Applicants made a joint representation on 26.08.2015 stating inter alia as under:

“It has been seen that during promotion to selection/non-selection posts of all categories in Khurda Road Division, some posts are being reserved for SC/ST categories against the verdict of Hon’ble Supreme court, Hon’ble High Court, Hyderabad, and Hon’ble CAT/Hyderabad, Hon’ble CAT, Principal Bench, New Delhi depriving the senior employees moral in a distressed condition.

In view of the facts stated above, it is requested to take necessary action to notify various selection/non-selection posts without roster point reservation (without category-wise i.e. UR/SC/ST reservation), so that the eligible seniors can be promoted to the higher grade posts & can pay more attention to their duty in higher posts for which they are entitled to get purely on the basis of their eligibility/seniority.

Since, administration is the path finder of the employee, it is once again requested to safeguard the interest of the eligible/senior employees as per the directive of the Hon’ble court, for which act of kindness we shall ever remain grateful to you.”

2. Just after expiry of 09 (nine) days, they have filed this Original Application on 04.09.2015 praying therein as under:

- “(a) The original application may be allowed;
- (b) The impugned list under Annexure-A/2 may be quashed;
- (c) The Respondents may be directed to fill up the vacancies of Loco Pilot (P) strictly in accordance with the seniority subject to rejection of unfits without allowing any reservation;



(d) Such other order(s)/direction(s) may be given in giving complete relief to the applicant.”

3. The main contention of Mr. B.Dash, the Learned Counsel for the Applicants is that as per the law of the land, the Railway Authority did not comply with the requirement for providing reservation in promotion. It was incumbent upon the Respondents to collect data to show the reserved category was inadequately represented in service. But the Respondent authorities without following the resource in accordance with the law followed the reservation in the matter of promotion from Loco Pilot (Goods) to Loco Pilot (Passenger) albeit the same has already been held to be bad by other Benches of the Tribunal. Hence, he has prayed for the reliefs claimed in this OA.

4. On the other hand, Mr.T.Rath, the Learned Standing Counsel appearing for the Railway Respondent vehemently opposed the very maintainability of this OA on the grounds of non-joinder and mis-joinder of party, joint prosecution not maintainable as well as on merit. He has also contended that the reservation in the matter of promotion to Loco Pilot (Passenger) has been provided as per the Rules but the said rule has not been challenged in this OA. Therefore, this OA is liable to be dismissed in limine with costs.

5. On the specific query on the above aspects, Mr.Dash, the Learned Counsel appearing for the Applicants has submitted that as per the decision of the Hon'ble Apex Court in the case of GM, South Central Railway Vrs A.V.R.Siddhantti, non joinder of party in this OA, cannot be fatal when the relief is sought against the Ministry of Railways and their representatives. Accordingly he would reiterate the reliefs claimed in this OA.



6. We have given our anxious thought to the arguments advanced by the respective parties and perused the records. The trite position of law is that Courts/Tribunals should admit cases only after looking into the facts on which reliance is place. It is also the well settled position of law that the service conditions of the employees are governed by the statutory rules framed by the Govt. from time to time. An employee is therefore, entitled to enforce his statutory right recognized in the rules in relation to his service condition if it is breached due to any action on the part of the Government. After hearing the counsel appearing on behalf of the Applicants, we are also convinced that the reservation was provided as per the Rules in force but we find that the Applicants did not challenge the said rules to be declared ultra vires if at all it is so by operation of law etc. Furthermore, the Hon'ble Apex Court (Constitution Bench) in the case of Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar & Anr., AIR 1963 SC 786 have explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, the Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provides that non- joinder of necessary party will be fatal. The contention of the learned counsel for the applicant is that as the relief sought by the applicants is against the Ministry of Railway, non joinder of party cannot be a fatal, but we are not at all convinced on the aforesaid stand of Mr.Das, the learned counsel of the applicants, as the applicants have specifically prayed to quash the lists under Annexure-A/2 in which names of

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both UR and reserved candidates find place even though the applicants have no grievance against the UR candidates. In case the list under Annexure-A/2 is quashed the interest of both UR and reserved category candidates will be seriously affected whereas none of them have been made as parties in this OA. As such the stand of the learned counsel for the applicants that he has only sought relief against the Ministry of Railway is farfetched one and cannot be accepted.

7. For the discussions made above, this OA is bound to be dismissed and is accordingly dismissed. Consequently, MA also stands dismissed. No costs.



(R.C.MISRA)
MEMBER(Admn.)



(A.K.PATNAIK)
MEMBER(Judl.)

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