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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.284 OF 2012**

Cuttack this the 27<sup>th</sup> day of *October*, 2015

*Md. Mohibur Rahaman ....Applicant*

-VERSUS-

*Union of India & Ors....Respondents*

**FOR INSTRUCTIONS**

1. *Whether it be referred to reporters or not? Yes*
2. *Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? yes*

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.284 OF 2012**

Cuttack this the 27<sup>th</sup> day of *October*, 2015

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

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

Md. Mohibur Rahaman  
Aged about 22 years,  
S/o-Md. Shamsur Rahaman,  
Qr No.-NB-212  
At-Nayabazar,  
PO-Paradip Port,  
PS-Paradip  
Dist-Jagatsinghpur

....Applicant

By the Advocate(s)-M/s.B.Dash  
C.Mohanta

-VERSUS-

Union of India represented through,

1. General Manager,  
E. Co. Railway  
At/PO-Chandrasekharpur  
Rail Vihar, Bhubaneswar  
Dist-Khurda
2. The Chief Personnel Officer,  
East Coast Railway  
2<sup>nd</sup> Floor, E. Co. Railway Sadan,  
Samanta Vihar  
PO-Mancheswar,  
Bhubaneswar  
Dist-Khurda
3. The Divisional Personnel Officer,  
E. Co. Railway  
Sambalpur,  
At/PO/Dist-Sambalpur
4. The Sr.D.E.N. (w) & Sports Officer,  
E. Co. Railway  
Sambalpur,  
At/PO/Dist-Sambalpur

*R. Misra*

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5. Sri Debasis Mohanty,  
S/o-Pradipta Kumar Mohanty  
General Secretary of Ofissa  
Volley Ball Association  
Barabati Stadium,  
Cuttack
  6. Sri Ravi Kumar,  
C/o-Sri KVR Kumar  
Technical Grade-1  
Signal and Telecom Department  
E. Co. Railway,  
Vizag,  
Andhra Pradesh

...Respondents

By the Advocate(s)- Mr.S.K.Ojha  
M/s.B.S.Tripathy  
M.K.Rath  
J.Pati  
Ms.M.Bhaga

**ORDER**

**R.C.MISRA, MEMBER(A):**

Grievance of the applicant is that he was one of the contending candidates for the post of Gr.D in response to an advertisement issued by the respondent-railways calling for applications from sports personnel and in spite of the fact that he was better equipped and better qualified, his case was overlooked whereas candidates with much less qualifications have been preferred and appointed to the post in question.

2. Brief background which forms the basis of the Original Application runs thus:

3. Chief Personnel Officer, East Coast Railways published an advertisement (A/1) in the Employment News for the week



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from 19<sup>th</sup> to 25<sup>th</sup> November, 2011 inviting applications in the prescribed format from eligible sports persons for recruitment under sports quota. As per the eligibility norms, candidates seeking employment as against Pay Band-1 with Grade Pay of Rs.1800/- was required to have represented the country in any of the category 'C' Championship/Events or at least 3<sup>rd</sup> position in Federation Cup Championships (Senior Category) or represented a State of equivalent unit except in marathon and cross country, in Senior/Youth/ Junior National Championship or at least 3<sup>rd</sup> position in Senior State Championships for all units and Districts of the State. In response to this, applicant along with five others submitted their applications with all the required documents/ certificates. The applicant submitted his application for consideration of his candidature for appointment as against a Gr. 'D' post under the reserved category of posts meant for Volley Ball players. The Divisional Personnel Officer, East Coast Railways, Sambalpur, vide Letter dated 06.01.2012 (A/2) informed the applicant that the selection trials to assess the game skill and physical fitness would be held at Rail Nagar Ground, ECoR/Sambalpur on 28.01.2012 at 09.00 hours. It was further informed that the applicant should bring with him the date of birth certificate, educational qualification certificates and sports achievement certificates. However vide letter dated 19.3.2012, trial test was rescheduled to be conducted on 25.03.2012 at 09.00 Hrs. at the



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Rail Nagar playground, Railway Institute, ECoR/Sambalpur. On that date, respondents conducted the trail test in a most perfunctory manner and without any acceptable reasons preferred to select two candidates who are otherwise not better qualified nor had better achievements in the game of volley. Although applicant was the best amongst all the candidates in terms of educational <sup>achievement</sup> as well as achievements in the specified game of volley, he was overlooked. It has been submitted that applicant is a graduate and had participated in the 58<sup>th</sup> Senior National Volleyball Championship for men and women. Out of six candidates, respondents selected one Debasis Mohanty (Respondent No.5) and another Ravi Kumar (Respondent No.6), <sup>who</sup> ~~which~~ according to applicant, are less qualified than him. Sri Mohanty is only a matriculate and had participated in Junior and Youth National Championship whereas Sri Ravi Kumar is a +2 Arts and had participated in the Youth and Junior National Championship. Therefore, both of them are having less educational qualification and also achievements in volleyball game. It is the case of the applicant that this being the position, selection of the under qualified candidate, being arbitrary, does not stand to judicial scrutiny. It has been alleged that respondent No.5 is the son of the General Secretary of Volley Ball Association of Orissa whereas respondent No.6 is a close relation of the selector, who had



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been requisitioned from Andhra Pradesh so that his own candidate could be selected.

4. Being aggrieved by such illegal selection, applicant submitted a representation dated 30.3.2012(A/5) to different quarters ventilating his grievance and requesting therein to enquire into the matter, inter alia, with a request to consider his claim relating to recruitment in Gr. D Post in Sambalpur Division of East Coast Railways. In the representation so filed, applicant also submitted that in the selection trail, his performance was appreciated by one and all and as the best amongst all the six candidates. However, for the reasons best known, respondent nos.5 and 6 who were otherwise not well equipped were selected to be appointed.

5. Based on the above submissions, it has been pleaded that official-respondents could not have called respondent nos. 5 and 6 to viva voce test since applicant who also applied for the post was having the best achievements. Therefore, in terms of the notification, applicant ought to have been called for the viva voce test in place of respondent no.6. The case made out by the applicant is that a candidate with certificate of Sr. National Participation ought to have been given more credence than a candidate with certificate of participation in the State Level Championship. Respondent no.5 being the son of the General Secretary of Volley Ball Association of Orissa has been preferred to be called to the viva voce test. Likewise,



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respondent no.6, being a close relation of the selector, the selection was simply an eye-wash and that it was a pre-decisional selection which is thoroughly unlawful.

6. With the above submissions, applicant has prayed for the following relief.

- i) The Original Application may be allowed.
- ii) The impugned selection may kindly be cancelled/quashed.
- iii) The respondents may be directed to reconsider the candidature of the applicant in terms of his achievements and educational qualifications vis-à-vis others by engaging an different selector.

And such other order(s)/direction (s) may be issued in giving complete relief to the applicant.

7. In the counter filed by the official respondents, it has been submitted that in view of the settled principle of law laid down by the *Hon'ble Apex Court in Sanjaya Kumar vrs. Narinder Verma (2006 (2) SCSLJ 135)*, once the applicant had participated and failed, he has no right to challenge the selection or the selection process. It has been pointed out that as would be evident from the prayers made in the Original Application, applicant has never raised his voice till he became unsuccessful in the selection and other persons got selected and issued with the offer of appointment. Hence, at his belated stage, he has no right to challenge the selection only on the basis of bald allegation. Respondent-Department have placed



reliance on the decision of the Hon'ble Apex Court in the case of *Bimala Devi vrs State of Himachal Pradesh & Anr.* reported in (2011) 1 SCC (L&S) 795, wherein it has been held that <sup>l</sup>~~the~~ the Court has very limited scope to interfere with the matter of selection except the ground of constitution of the selection committee. In the present case, at no point of time, applicant has ever raised his voice against the constitution of the selection committee or the trail committee - rather he has approached this Tribunal directly against his non-selection and seeking relief to constitute a committee according to his sweet-will. Further, official-respondents have relied on the decision of the Hon'ble Apex Court in the case of *R.C. Das vrs Union of India & Ors.* reported in AIR 1987 SC 593 wherein the Hon'ble Apex Court has held that when the Selection Committee is constituted comprising the senior responsible officers of the Department in accordance with the rules, the question of disbelieving them or to interfere with the selection conducted by the Selection Committee does not arise.

8. It has been further submitted that as against the employment notice dated 19.11.2011, as many as 335 applications were received from the aspirants for those two posts in volley ball discipline in the office of the DPO/Sambalpur. After due scrutiny by the Asst. Sports Officer/Sambalpur and DPO/ Sambalpur jointly, only 6 persons were found to be eligible for the posts as they were fulfilling the

  
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criteria indicated in the advertisement. Accordingly, call letters were issued to them to attend the selection trail.

9. It the case of the official respondents that the Committees were constituted as per the norms and procedures circulated under the Railway rules by the competent authority. It has been made conspicuous that as per the guidelines issued by the Railway Board under R.B.E. No.189/2010, a Recruitment Committee was constituted by the DRM/Sambalpur nominating high officials, viz., S/Shri P.B.Mondal/DPO/Sambalpur, Ashok Kumar/Sr. DEN/West/Sambalpur-cum-Sports Officer/ECORSA and B.Bhoi/DEN/Central/Sambalpur as its members. For constitution of the Trail Committee, a request letter was issued on 09.12.2011, requesting the President/ECORSA/BBS to nominate the Sports Officer, Coach and National Players for formation of Trail Committee to conduct trail of the candidates. Considering the request made by the Division, HQ/BBS nominated Sri G.Balamuralidhar/Asst. Sports Officer/SCR/Secunderabad, Sri K.R.A. Kumar/Coach and Sri R.C. Ojha/Sr. Player as the members of the Trail Committee. According to official respondents, as per the schedule, the selection trail was conducted at Railway Institute ground, Sambalpur on 28.03.2012 in the presence of all Trail Committee members as well as Recruitment Committee members wherein applicant without any objection took part in the selection before the Trail Committee. After the trail test was over, the



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Committee assessed the suitability of candidates individually and allotted marks to each and every candidate independently. After such assessment, they jointly recommended the names of suitable candidates to the Selection Committee. It is the case of the official respondents that the Trail Committee found two persons viz., S/Shri Debasish Mohanty and B.Ravi Kumar **fit** for the posts and accordingly, recommended for further action by the Recruitment Committee. In the above background, after completion of other formalities, the Recruitment Committee vide their letter/proceeding dated.28.03.2012 recommended two names for approval of the Competent Authority and after such approval on 29.03.2012, necessary orders of appointment were issued to the selected candidates on 30.03.2012. To justify their stand, official respondents have furnished copies of individual assessment report of the Trail Committee and joint recommendation of Trail Committee vide R/2 and R/3 series respectively to the counter. Since, the applicant appeared in the trail test on 28.03.2012 and declared "**unfit**" by the Trail Committee, the question of recommendation of his name either by the Trail Committee or by the Recruitment Committee does not arise.

10. Further, the official respondents have mentioned that the selection of candidates is to be made by the committee on the basis of their performance as well as achievements. While making selection of candidates, committee has never taken into



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consideration as to whether any candidate is son or related to any of high dignitaries of the State or Centre; rather the selection has been made following the rules in vogue. That apart, in Railways there is no such provision or rule to accept any recommendation from the outsider except the recommendations of the Selection Committee/Recruitment Committee or Trail Committee, as the case may be, whichever and wherever it is necessary. Hence, the allegations made by the applicant are incorrect and baseless.

11. With the above submissions, official respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

Private Respondent No.6 has neither appeared nor filed any counter. However, Private Respondent No.5 (Debasis Mohanty) has filed a counter to the O.A. opposing the prayer of the applicant. According to Respondent No.5, in response to Employment Notice, he having fulfilled all the eligibility criteria for the post in question under the sports quota in volley ball discipline. <sup>applied for the same: R</sup> As per the advertisement, the discipline volley ball for Sambalpur Unit under category-14 the minimum requirement is that a candidate must be an all-rounder and the educational qualification stipulated as pass <sup>R</sup> in 10<sup>th</sup> standard or ITI or equivalent from a recognized board. Besides, the candidates should be currently an active player and should have fulfilled the sports achievements on or after 01.04.2009.

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According to Respondent No.5, he has passed HSC examination in the 2<sup>nd</sup> division during the year 2010 and has been continuously participating in different events/championships since 2009. He had represented as Captain in the 13<sup>th</sup> Youth National Volley Ball Championship held at Moradabad, U.P. from 29.01.2011 to 04.02.2011, and at Kolkata (West Bengal) held from 7<sup>th</sup> to 13<sup>th</sup> February 2012. Besides, he had also participated in the 36<sup>th</sup> Junior National Volley Ball Championship held at Bhubaneswar, Odisha from 17-24<sup>th</sup> December, 2009, 6<sup>th</sup> Senior East Zone Volley Ball Championship held at Nalco Nagar, Angul, Odisha from 9-13<sup>th</sup> March, 2011 as well as in 60<sup>th</sup> Senior National Volley Ball Championship held at Raipur, Chhatisgarh from 4-11 January, 2012. Similarly, he had also participated in 57<sup>th</sup> National School Games 2011-12 held at Burhanpur, (Madhya Pradesh) from 25<sup>th</sup> to 29<sup>th</sup> November, 2011. He has been duly selected by the Selection Committee in P.B.-1 with G.P. of Rs.1,800/- post against Sports Quota in Volley Ball discipline and accordingly, an offer of appointment vide letter dated.30.03.2012 was also sent to him. Thereafter, a medical examination was held on 12.04.2012 and 13.04.2012, in which he was declared fit in A-2(Aye Two) category. It has been submitted that that even though offer of appointment was issued to him and medical examination was conducted, but he has not yet been appointed due to the pendency of the instant O.A. It is the submission of Respondent No.5 that he has rightly

  
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been selected by the Selection Committee and the applicant being unsuccessful in the said selection has no right to challenge his selection having already participated in the said selection and was declared unfit. It is the case of Respondent No.5 that as per the settled position of law once a candidate participated and failed in the selection process, he has no right to challenge the selection or the selection process. As regards the allegations made by the applicant that Respondent No.5 being the son of the General Secretary of Volley Ball Association of Orissa was selected to the post in question has no legs to stand. To the contrary, he having been found fit and more meritorious than other candidates has been rightly selected. Accordingly, Respondent No.5 has prayed for direction to official respondents to allow him to join in his post within a stipulated period.

12. In rejoinder to counter filed by the official respondents, it has been submitted by the applicant that the selection having been conducted on 28.03.2012, it is quite impracticable to issue order of appointment after only one day i.e., on 30.03.2012 as because order of appointments can only be issued after verification of certificates and medical test. The alleged order of appointment even if issued on 30.03.2012 was not disclosed anywhere. According to applicant, Hon'ble Supreme Court has not stopped a candidate to challenge the colorable exercise of powers committed by the selection committee. There is also no



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bar to challenge a selection which is tainted with mala fide. It has been submitted that in order to hide their illegalities, the official respondents have stated that the applicant did not enjoy any right at a belated stage on the basis of bald allegations. From out of all the candidates, only the selected candidates secured 38 marks both and all the selection committee members awarded same marks to the selected candidates. It is also important to note that the applicant who participated in the Senior National Championship has been declared not fit which is a product of malice because one who is selected for Senior National Championship cannot be excepted to be awarded the lowest mark in performance assessment. The reason of such low marking is evident from the fact that the applicant is a graduate and a senior national player and therefore, is entitled to grace marks. The Hon'ble Supreme Court has never said that the Courts are not having power to interfere if the selection is a product of colorable exercise of powers and is a product of malice. It has been pointed out that when persons with sufficient credentials are available in the state to be given placement in the selection committee, requisitioning someone from a neighbouring state smacks mala fide, especially when the respondent no.6 happens to be a candidate from his state. According to applicant, the committee might have been constituted as per the norms and procedures under the Railways Rules, but it is not understood as to why a



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selection committee member was requisitioned from another state when competent hands are available in Orissa. It is pertinent to mention here that initially, a Trial Committee was constituted with Sri Padmalochan Biswal as the Coach, Sri A.Mohan as Senior Player and Sanjib Chakrabarti, as Assistant Sports Officer. But since Sri Sanjib Chakrabarti did not come, in his place another man was taken. However, without any rhyme and reason, the coach Sri Padmalochan Biswal was changed and in his place one Sri K.R.A. Kumar was taken as <sup>S. R.</sup> coach and in place of A.Mohan, Senior Player, one R.C. Ojha was taken as the members of the Trial Committee. It has been submitted that applicant being a candidate who was to face the trial and therefore, he could not have complained about the constitution of the Trial Committee. It is mentioned that without going for a full-fledged trial, the committee members took the test only for about five minutes and awarded marks to the candidates. When the trial was conducted on 28.03.2012, the recruitment committee could not have recommended two names for approval of the competent authority before verifying the documents and medical test. However, according to applicant, recommendations could have been made only after 28.03.2012. Therefore, by no stretch of imagination offer of appointment could be issued on 30.03.2012. From the individual assessment given as Annexure-R/2 series, both the selected candidates have been awarded 38 marks by all the Trial Committee



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Members which by itself would substantiate that the Trial Committee members had decided earlier to select the respondent No.5 & 6. It is mentioned that the respondent no.6 even ~~not~~ <sup>not</sup> has played Junior State Championship. Therefore, it has been submitted that in the face of applicant having represented the Senior National Championship vis a vis selection of an inter district player thereby holding the applicant unfit speaks volume for the transparency of the members selection committee. Based on the above, it has been pointed out that just to select respondent nos. 5 and 6, the Trial Committee members declared them, *as fit, and others unfit.*

13. It has been brought to the notice of the Tribunal that as would be evident from Annexure-R/4 to the counter, the committee, first of all, scrutinized the original certificates pertaining to sports achievements and educational qualification and from that stage, the committee members were in difficulty to select their own persons i.e, the son of the Secretary of the Association and a close man of the newly appointed coach. Applicant having graduation qualification and having participated in Senior National Games was in a better position than all the other candidates. Therefore, intentionally he was given the lowest mark in the assessment of performance. Had the applicant not been a fit candidate, he could not have been selected to participate in the Senior National Volleyball Championship. Having declared the applicant not fit, the

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respondents quite comfortably went ahead with the selection by taking the two candidates of their own choice. Respondent No.6 having not participated in any of the State Level Competitions was the worst candidate but for the purpose of his selection, all the other candidates were required to be declared unfit which has been done so as to select the favourable candidate. Respondent No.5 being the son of the Secretary of the Volleyball Association of Orissa has been awarded maximum marks so as to be declared fit. The selection has been actuated with mala fides since the performance of Respondent No.5 can never be better than the applicant who has been participating in Senior National Championship and the respondent No.5 has gone up to Senior East Zone Championship. The applicant having participated in Senior National Championship cannot be held unfit for selection. The action of the Trial Committee, therefore, vitiates the entire proceeding being a product of colorable exercise of power. The CD prepared in the entire selection, if called for, will speak volumes and will substantiate the mala fides of the respondents.

14. Applicant has made out a case that if medical examination was conducted on 12.04.2012 and 13.04.2014, then the order of appointment could not have been issued on 30.03.2012. Therefore, it is a case where appointment orders were issued before the medical test could be conducted. It has been



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submitted that respondent no.5 has not been issued the order of appointment on 30.03.2012 as has been claimed both by the official respondents. In Annexure-R/4 makes a mention that, only after submission of service bond, production of certificates of character, identity and attestation forms, the case of the respondent No.5 would be processed for posting which will be subject to medical fitness, satisfactory verification of testimonials/certificates and availability of vacancies.

15. With above reply to counter, applicant has reiterated the relief as sought in the O.A.

16. We have perused the pleadings of the parties and heard the learned counsel for the parties at a considerable length. We have also gone through the written notes of arguments. Applicant has mainly called in question the legality and validity of selection of private respondent nos.5 and 6 to the post in question on the following grounds.

- i) Applicant is better equipped having better educational attainments than the selected candidates.
- ii) Mala fide and bias against the members of the Selection Committee.
- iii) Issuance of offer of appointment to the selected candidates just after day of trail test.

17. Indisputably, applicant is better equipped having better educational attainments amongst all the candidates within the zone of consideration. However, it is also not disputed that respondent nos.5 and 6 were ~~not~~ eligible for being considered



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for the post in question. If at all plea of the applicant that he being better equipped and having better educational qualifications should, than the other candidates in the zone of consideration ~~should~~<sup>?</sup> have been preferred and selected is accepted, then there was no need to subject those candidates to a trail test by constituting a committee to adjudge suitability of each of the candidates and in such a situation, applicant could have been straightaway selected. For instance, if for filling up a particular post matriculation is the minimum qualification, a candidate having the qualification of graduation by no stretch of imagination stands on a better footing. But that by itself does not confer any right upon him that he being a graduate should be preferred and selected over matriculates simply because of his higher educational attainments. To that extent he must prove himself to be the one among equals in the prescribed test for the post in question. Applicant in his own assessment may be better than the others, but that may not be the conclusive assessment of the committee appointed for adjudging the suitability. Applicant has assailed that the committee awarded same marks to both the selected candidates and therefore, the selection process is vitiated. Even <sup>if</sup> for the sake of argument, plea of the applicant is accepted, then a question arises, is there any prohibition for awarding <sup>same</sup> ~~similar~~ marks? However, the fact remains that the candidates securing the highest marks are liable to be selected. Therefore, the plea

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of the applicant that he being better equipped <sup>and</sup> having better educational attainments vis a vis respondent nos. 5 and 6 should have been selected is based on conjecture and surmises. It is also the settled position of law that one cannot be the judge of his own cause.

18. As regards the point of bias and mala fide urged against the members of the committee in the matter of awarding marks this has to be proved to hilt. Mere allegation of bias or mala fide will not vitiate the selection. In so far as selection of respondent nos.5 and 6 is concerned, applicant has stated that whereas respondent no.5 is the son of the Secretary, Volley Ball Association of Orissa, respondent no.6 is a relation of one of the members of the committee. At the same time, applicant has made a mention that he being one of the contending candidates to the post in question, could not raise such an objection. This obviously, means that despite the fact that relations of the members of the committee were within the fray was within his knowledge prior to commencement of trail test, he attended the said test without any demur. This impliedly and expressly makes it very conspicuous that there was no propensity in him to call in question the constitution of the trail committee. Therefore, he having acquiesced <sup>in</sup> the constitution of committee as well as he trail test is <sup>e</sup>stopped to raise any objection to the members constituting the committee, particularly when he was not selected for the post this. It is also the settled position of



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law as enunciated by the Hon'ble Supreme Court in very many cases that having participated in the selection test, one cannot challenge the legality of the selection process simply because he was not considered fit for appointment to the post.

19. The further grievance of the applicant is that just after one day of the trail test, appointment orders were issued in favour of respondent nos. 5 and 6 without even conducting the medical test. We are of the opinion that this is no ground ~~necessitating~~ <sup>entitling</sup> the applicant to get relief. Because, in a matter of selection, the person aggrieved has to establish that his right in that behalf has been infringed and thereby he has been prejudiced. We do not find any apparent ground to have been urged by applicant establishing that his right in the matter of selection has in any manner been contravened by the official respondents.

20. Admittedly, it is not the case of the applicant that the trail committee, recruitment committee or for that matter the selection committee were constituted in infraction of any of the provisions of the rules under the railways. In the rejoinder, applicant has urged some new points that while there were many experts in sports in Odisha, there was no need to requisition from neighbouring state Andhra Pradesh. Similarly, the earlier selected coach and experts were with an ulterior motive was changed. Those being the new points beyond the

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purview of the O.A., we do not feel inclined to take <sup>these</sup> into consideration. In the absence of any apparent illegality or irregularity, the Tribunal cannot substitute its decision to that of the trial committee of the selection committee, constitution of which has not been challenged and <sup>can not</sup> ~~to~~ arrive at a decision otherwise than what has been decided by the committees.

21. For the reasons discussed above, we hold that the applicant has not been able to make out a case for any of the relief sought in this O.A. Accordingly, the O.A. being devoid of merit is dismissed. No costs.

  
**(R.C.MISRA)**  
**MEMBER(A)**

  
**(A.K.PATNAIK)**  
**MEMBER(J)**

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