

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00272 OF 2016
Cuttack, this the 21st day of June, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)
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1. Aruna Chandra Mallik, aged about 44 years son of Dhaneswar Mallik At-Srirampur, PO-Anikana, PS-Bari, Dist- Jajpur, now SSE(P-Wayh), Rambha at Soloary(Station) working as T.M.-III.
2. Devi Prasad Sarangi aged 32 years Son of Niranjan Sarangi At/Po-Kusiapal, PS/Dist-Kendrapara at present SSE(P-Way), Barang as Tm IV.
3. Binod Behari Sahoo, aged 42 years son of Kailash Chandra Sahoo At/PO-Chhanapadi, PS-Begunia, Dist-Khurda at present SSE(P-Way), Khurda-TM-IV.

...Applicants

(By the Advocate- M/s. A. K. Mohanty, R. C. Pradhan, S. K. Behera, C. Sethi)

-VERSUS-

Union of India Represented through

1. General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. R.R.C represented through Chief Personnel Officer, East Coast Railway, Bhubaneswar, Dist-Khurda.
3. Manas Pradhan Son of Bidyadhar Pradhan T.M, SSE/P.Way, Civil Engineering Department, Khurda Division, Khurda, Dist-Khurda.
4. Subrat Kumar Behura Son of Siba Prasad Behura, T.M, SSE/P.Way, Civil Engineering Department, Khurda Division, Khurda, Dist-Khurda
5. Prabir Kumar Mallik son of Prafulla Kumar Mallik, SSE(P.Way), T.M. in the Civil Engineering Department, Khurda Division, Khurda, Dist- Khurda .

...Respondents

(By the Advocate- Mr. T. Rath)

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ORDER

S. K. PATTNAIK, MEMBER (J):

In a second round litigation, the applicants challenge the speaking order dated 28.03.2016 (Annexure-8) passed by the Chief Personnel Officer, E.Co.Railways, in compliance of the order dated 16.03.2016 passed in O.A. No. 260/133/2016. Applicants also challenge the panel list prepared under Annexure-5 and selection under Annexure-4.

2. Brief facts of the case are that, admittedly, an advertisement was issued on 02.11.2015 (Annexure-1) for General Departmental Competitive Examination (in short, GDCE) for appointment to the post of Goods Guard from eligible serving regular employees except RPF personnel for filling up of 389 posts. Nearly, seven thousand employees applied and Respondent No.5 published the names of the candidates alphabetically, who had applied for the same. Eligible candidates were allowed to appear in the written examination on different dates. The grievance of the applicant is that instead of holding the examination on one day the conducting of written examination on several dates was prejudicial to the applicants. Applicants further challenge that the Respondents illegally allowed the candidates, who were not eligible to appear.

3. Respondent-Railways contested the case by filing a counter. The Respondents categorically pleaded that without infringement of any substantive right, the applicants have unnecessarily dragged the

Railways to a fruitless litigation. According to the Respondents, a candidate having participated in the process of selection is estopped to challenge the same in view of the decision of the Hon'ble Supreme Court reported *in (2010) 12 SCC 576, Manish Kumar Shahi Vs. State of Bihar & Ors. and (2009) 3 SCC 227 Amlan Jyoti Borooah Vs. State of Assam & Ors.* According to the Respondents, holding of written examination on a single day wherein five thousand, five hundred employees were involved would have seriously crippled the train operation for which written examination was held on different convenient dates giving opportunity to all the eligible candidates to appear. Further, the Respondents pleaded that the allegation of the applicants that ineligible persons were allowed to appear in the examination is not a fact and rather coupled with falsehood.

4. There is considerable force in the submission of Mr. T.Rath, Ld. Counsel for the Railways, that the applicants having participated in the selection process cannot challenge the same after being found unsuitable/unsuccessful.

In a case of this nature where an unsuccessful candidate challenges the selection process, it may be borne in mind the ratio propounded by the Hon'ble Supreme Court in the case of *Suman Verma Vs. Union of India reported in AIR 2004 SC 4800* where it has been categorically held that there is no illegality if more meritorious candidates have been appointed and failed candidates have no locus standi to challenge the selection of the persons duly selected.

5. However, in order to dispel the misapprehension of the applicants, the Chief Personnel Officer has assigned cogent reasons in paragraph 2, 3, 4 and 5 of the Speaking order how the claim of the applicant is misconceived and to demonstrate that there was fair play in holding examination on different dates. According to the Respondents, only regular employees were allowed to appear in the examination and the allegation of the applicants against some employees is unfounded as they were regular employees recruited through Railway Recruitment Board. It is a common practice that any departmental examination in Railway is held on different dates to avoid disruption in train movement and the date of examination is always notified to the employees. Even, the employees, who fall sick on a notified date or not spared by his Head of Office due to administrative exigency, are generally allowed in the subsequent dates of examination and there is nothing wrong in this practice followed throughout India in all Railway Divisions. Holding of departmental promotional examination on a single date is not practically feasible and to insist this the movement of the trains will have to be shut down for several days in a year. Hence such fanciful plea is rejected outright.

6. Ld. Counsel for the applicant has cited a plethora of decisions, *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors.* (2003) 2 SCC 111, *Jasvinder Singh & Ors. Vs. State of J&K & Ors.* (2003) 2 SCC 132, *Dr. Chanchal Goyal (Mrs.) Vs. State of Rajasthan* (2003) 3 SCC 485, *Krishan Yadav and Anr. Vs. State of*

Haryana & Ors. AIR 1994 SC 2166, Raj Kumar Vs. Shakri Raj (1997)

9 SCC 527, Kanwar Singh Vs. UOI & Ors, however, these cases are not applicable to the present case and hence not discussed.

7. We have carefully gone through the speaking order and found that it is a well reasoned order and the applicant without any substantive right has unnecessarily dragged the Railway administration to a luxurious litigation. Hence ordered.

8. The O.A. being devoid of merit is dismissed.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

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