

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 400 of 2014

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Joharilal Meena aged about 42 years, S/o; Shankar Lal Meena At/Po; Baglai Bypiloda, The, Gangapur City, Dist; Sawalmadipur, Rajasthan-322205.

.....Applicant.

VERSUS

1. Union of India, represented through its General Manager, East Coast Railway, Samant Vihar PO-Macheswar Bhubaneswar, Dist- Khurda.
2. The Chief Personnel Officer, East Coast Railway, Samant Vihar, PO Macheswar, Bhubaneswar, Dist - Khurda.
3. The Sr. Divisional Personal Officer, East Coast Railway, Khurda Road, Jatni, Khurda.
4. Dy. Chief Personal Officer, Recruitment, East Coast Railway Recruitment Cell, 2nd Floor, South Block, ECoR Sadan, Samant Vihar, PO- Mancheswar, Bhubaneswar, Dist-Khurda.

.....Respondents.

For the applicant : Mr. D. K. Mohanty, Advocate

For the respondents: Mr. D. K. Mohanty-A, Advocate

Heard & reserved on : 13.02.2020

Order on : 13.05.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *to quash order dated 05.03.2014 under Annexure-A/10 and allow the applicant to be considered and be called for document verification and medical examination.*

- (ii) *to further direct the Respondent No. 4 if otherwise the applicant is found eligible to hold the post he shall be given appointment as per advertisement under Annexure-A/1.*
- (iii) *And pass such other order as deemed fit and proper.*

2. The case of the applicant as averred in the OA in brief is that in pursuance to advertisement dated 28.10.2006 vide Annexure A/1, the applicant had submitted his application and had appeared in the written examination on 23.09.2007. Thereafter the applicant was called for Physical Examination Test on 29.03.2008. Since the result of the examination was not published, therefore, some other candidates/similarly placed with the applicants, approached this Tribunal earlier in OA No. 531/2009 which was disposed of with direction to the respondents to complete the recruitment process vide order dated 12.03.2010 at Annexure A/3. The said order was confirmed by Hon'ble High Court and by the Hon'ble Supreme Court as per orders at Annexure A/4 and A/5 respectively. Although the applicant had successfully passed the written examination and Physical Examination Test, he was not called for Medical Examination and verification of documents. On the other hand Respondents No. 4 issued letter dated 24.07.2012 i.e. show cause vide Annexure A.7 as to why his candidature should not be rejected. The applicant submitted his show cause vide Annexure A/8 dated 16.01.2013. As his said show cause and reminder to respondent No. 4 were not considered he filed OA No. 819/2013 which was disposed of by this Tribunal on 12.12.2013 as per order vide Annexure A/9. Thereafter, the respondents passed speaking order vide Annexure A/10 by which his representation was rejected. Hence he filed this case.

3. In the counter, it has been inter alia averred that although the applicant had appeared for the recruitment test for Group D, during verification of his application, defects were detected and thereafter show cause notice in question was sent to him. The applicant had submitted incomplete application as declaration, which was said to be filled up by the candidate in his own handwriting was incomplete. It was required for the candidate as per para 9 (v) of the notification that the sample declaration statement given in column no 14 of the personal data sheet should be copied out by the candidate in his own handwriting in the space provided for the purpose. Since the same was not duly filled in, therefore as para 15 of the notification the application was rejected, after giving opportunity to the applicant to submit his show cause.

4. The learned counsel for the applicant has relied upon the following decisions.

- A) AIR 1980 SC 1992 Miss KLC Reddy v/s State of Jammu & Kashmir & other.
- B) AIR 1976 SC 376 Sri Krishan v/s Kurukshetra University, Kurukshetra.
- C) AIR 1990 SC 1075 Santan Gauda Vrs Berhampur University and others.
- D) (2009) 1SCC 610 Guru Nanak Dev University V/s Sanjay Kumar Katwal and another.
- E) 2010 (II) OLR (SC) 636 Union of India & Others Vs Miss Pritilata Nanda.
- F) Copies of this Tribunal order in OA Nos. 594, 645 & 843/2016 dated 26.08.2019.

The Learned counsel for the Respondents has relied upon the following decisions:

- 1) Hon'ble Apex Court order in case of UOI vs. Sarwan Ram & Another.
- 2) This Hon'ble Tribunal order in OA No.-14/2014 in the case of Narendra Gopichand Deshbhratar vs. UOI dated 13.10.2017.
- 3) Hon'ble Supreme Court order in Bedanga Talukdar Vs. Saifudaullah Khan & Ors.

5. Heard learned counsel for the parties and went through documents and citations relied by respective parties. After carefully going through Xerox copy of the application form in question, which has been filed in this case vide R/1, it is seen that the applicant has faced difficulty in filing declaration in question in the limited space provided for that purpose. In fact he has filled up all the sentences and words as required to be filled up within the said space except the words 'being detected after appointment, my services are liable to be terminated without notice'. In this context it was submitted by learned counsel for the respondents that similarly placed candidates were able to fill up the said declaration within the space provided for in the application form and therefore there was no difficulty for the applicant to fill up in the said declaration. After going through the handwriting of the applicant and the limited space provided thereof, this Tribunal finds that, it was not easy for

the candidate to fill up entire declaration in question within the limited space provided in the application form. It would have been better for the respondents to provide more space in the application form in question, so that the candidates can copy the declaration as given in column no. 14 within the space provided below the said column. As one model employer it is expected from the respondents that they would engage talented and competent persons to fill up the post in question at all India level. Just because some of the words of the declaration as printed in column no. 14 of the application form could not be copied and written by the applicant, within the limited space in question, should not have prompted the respondents to go to the extent of rejecting the candidature of the applicant. The respondents should have taken some steps by taking necessary procedure for giving such type of candidates a scope to rectify minor mistakes in question and not to outrightly reject their candidature, simply on that ground alone. The said action of the respondents is found by this Tribunal to be arbitrary, unreasonable and without due application of mind. Besides that by the said action of the respondents they are depriving the department and organization from engaging competent eligible candidates without giving them scope to rectify such minor mistakes. It would have been better for the respondents if they could have provided in the notification in question that the said declaration already printed in column no. 14 should bear the signature of the applicant below the said declaration and that would have simplified the matter.

6. However in the circumstances, this Tribunal is satisfied taking into consideration the position of law as enunciated in the decision reported in OA No. 594, 645 & 843/2016 where in it was held that:

“29. In view of above, we are of the considered view that the judgments of Hon’ble High Court in the case of Narendra Gopichand Desharbharatar (supra) and Surendra Kumar Laxman Ghusakar (supra) are squarely applicable to the present OAs with similar facts and circumstances and the applicants in these OAs will also be entitled for a similar relief. The pleas of the respondents that the selection process is over and the vacancies were carried forward do not have any merit, since the applicant can be considered against any of the current or future vacancy, and they had qualified in the test as per the notification dated 28.1.2006 and the grounds for rejection of their candidature are not found to be sustainable. The impugned orders dated 24.07.2012 in OA No. 594/2016 and OA No. 645/2016 and order dated 18.10.2012 in OA No. 843/2016 are accordingly set aside and the respondents are directed to take action in respect of the applicants in these OAs in

accordance with the judgment dated 11.05.2018 of Hon'ble High Court in the case of Narendra Gopichand Desharbharta –vs- Union of India & Ors. in W.P. (C) 25372/2017”.

7. After carefully going through said decisions this Tribunal finds that the decisions relied by Learned counsel for the respondents are not applicable to facts and circumstance of the present case. In the circumstances this Tribunal directs that the applicant be considered by the respondents in accordance to law for the post in question to which he had applied for as against future vacancies by making necessary relaxation of age, within three months from the date of receipt of copy of this order.

8. Accordingly this OA is allowed but without any order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)