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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 246 of 1991.

Date of decision : January 22, 1993.

Bibhu Prasad Padhi ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. Deepak Misra,
R. N. Naik, A. Deo,
B. S. Tripathy,
P. Panda, Advocates.

For the respondents ...

Mr. R. C. Rath,
Standing Counsel (Railways)

C O R A M :

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. S. R. ADIGE, MEMBER (ADMINISTRATIVE)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

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J U D G M E N T

S.R. ADIGE, MEMBER (ADMN), In this application under section 19 of the Administrative Tribunals Act, 1985 the applicant prays to quash the order contained in Annexure-3 and to direct the respondents to give appointment to the applicant in a Class-III post with immediate effect.

2. Shortly stated, the case of the applicant is that his father, Nabin Chandra Padhi was serving as a Guard in the Railways and in the mass strike organised by the Railway employees in 1974, the father of the applicant had not participated and subsequently, the Railway Administration took a decision that those employees who had become loyal and did not participate in the strike would be given incentive, or in the alternative, employment assistance would be given to their sons and daughters. The father of the applicant opted for employment assistance to his son who is the present applicant. Letter bearing No. P/R/LW/C-1-111/74 dated 12.11.1974 was sent by the Respondent No. 4 i.e. the Divisional Personnel Officer, South Eastern Railway, Khurda Road calling the applicant to appear at a test and accordingly the applicant appeared and turned out successful in the written and viva-voce examination to be appointed to a Class III post. No order of appointment has been issued as yet. Several representations had been made by the applicant which did not yield any fruitful result. The applicant filed an application under section 19 of the Administrative Tribunals Act, 1985, which formed the subject matter of O.A. 377 of 1987 and vide judgment dated 12.12.1989 it was directed as follows:

" we would like to say that if the present applicant makes an application and if really he appeared at the tests as alleged by him, in 1974, his case for appointment may be considered according to the rules. "

The applicant submitted another representation to implement the judgment. Respondent No.4 communicated an order dated 14.2.1991 intimating the applicant that the competent authority did not agree to consider his appointment. It is contained in Annexure-3. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the employment assistance under the loyal quota has since been closed long back and there is no provision at present to give any such benefit to the applicant. Moreover, the present application is liable to be dismissed on the sole ground of principles of res judicata as the said issue in question has been decided by this Hon^{ble} Tribunal in O.A. 377 of 1987. In addition to the above, it is maintained that the applicant is not the son of Nabin Chandra Padhi but he is the son of Nabin Chandra Pahari who was working as a Guard and has retired from service.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. R.C. Rath, learned Standing Counsel (Railways) for the respondents.

5. We would like to first dispose of the submission made by Mr. Rath on the basis of averments finding place in the counter that the present case is barred by the principles of res judicata. Section 11 of the Code of Civil Procedure (res judicata) would operate when same issue has been decided previously in a suit between the same

parties. True it is that the present applicant was the applicant in O.A. 377 of 1987. The issue was same. Resjudicata & will operate against the opposite parties in this case because already there has been a judgment in favour of the applicant directing the respondents to consider the case of the applicant for appointment. If really the applicant had appeared at the test as alleged by him in 1974. Appearance of the applicant in the test and the fact that he had turned out successful in the year 1974 has not been disputed. In the counter filed in this case.

The present case has been filed for the sole purpose of obtaining a direction from this Tribunal to the respondents to implement the judgment passed in O.A. 377 of 1987. Therefore, by no stretch of imagination it can be said that resjudicata operates against the petitioners in this case.

6. The next contention of Mr. Rath was that the father's name of the applicant is Nabin Chandra Pahari. We can take judicial notice of the fact that there is no community in whole of Orissa, far less to speak in Puri District carrying surname 'Pahari'. The possibility of a mistake having been committed in the official records by the concerned officer in writing the surname of Nabin Chandra Padhi as 'Nabin Chandra Pahari' cannot be overruled. If Nabin Chandra Padhi is signed as Nabin Chandra Pahari then only onus will shift to the present applicant to prove that the applicant is the son of Nabin Chandra Pahari. Heavy onus lies on the departmental officials to prove this fact from the documents executed by Nabin Chandra Pahari or Nabin Chandra Padhi signing as Nabin Chandra Pahari. We would unhesitatingly hold that the respondents have failed to discharge the onus of proof that lay on them. The respondents not having discharged this onus of proof that lay on them, we cannot

but accept the case of the applicant that he is the son of the retired Guard, Nabin Chandra Padhi @ Nabin Chandra Pahari.

7. As regards the submission made by Mr. RaC. Rath, that employment to the sons or daughters of the loyal workers having been long closed the applicant cannot get the benefit at present, is devoid of merit. This prayer of the applicant or his father having been delayed at the level of the departmental authorities they are not permitted to turn back and say that the scheme has since been closed. Principle of estoppel would strictly arise against the respondents. Therefore, we would direct that an appointment especially be given to the applicant to a Class III post because the petitioner has turned out to be successful in the test held in 1974 within 90 (ninety) days from the date of receipt of a copy of this judgment.

8. Thus, this application stands allowed leaving the parties to bear their own costs.

[Signature]
22.1.93
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VICE-CHAIRMAN

[Signature] 22.1.93
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MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
January 22, 1993, Sarangi.

