

8

17

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

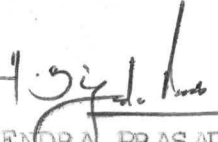
ORIGINAL APPLICATION NO: 150 OF 1993.

Date of Decision: June 25, 1993

Shri Somanath Mishra ... Applicant  
Versus  
Union of India and others ... Respondents

(For Instructions)

1. Whether it be referred to the Reporter or not? No
2. Whether it be circulated to all the Benches  
of the Central Administrative Tribunal or not? No

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)  
06 JUL 93

  
(K.P. ACHARYA) 25/6/93  
VICE-CHAIRMAN

J U D G M E N TK.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, prayer of the petitioner is to issue a direction to the Opposite Parties to allow the petitioner to join the training in Engineering Department as an Appr. Inspector of Works, Grade III and on completion of the Training to appoint him as I.O.W. Grade III.

2. Shortly stated the case of the petitioner is that, in response to an advertisement published for filling up of the post of P.W.I Grade III, the Petitioner was one of the applicants. His case was considered along with others and appointment order was issued in favour of the petitioner subject to medical fitness. The Petitioner had undergone the medical test and it was found by the Doctors that the Petitioner has some defective <sup>in</sup> vision. Therefore, the petitioner was not allowed to join the Training. Thereafter another post was offered to the petitioner namely Inspector of Works, Gr. III. This offer of appointment was also made subject to medical fitness. The Medical Officer again found that the Petitioner is suffering from defective vision. Hence this application has been filed with the aforesaid prayer.

12

3. Counter has been filed on behalf of the Opposite Parties in which it is maintained that clear vision is necessary for both the posts, mentioned above and one who has defective vision cannot be appointed because rendering of service in the said posts would not be satisfactory. Therefore, in the interest of all concerned, the Petitioner was disallowed from joining in the training. This case came up for Admission and Hearing today.

4. We have heard learned counsel for the Petitioner and Mr. D. N. Mishra learned Standing Counsel (Railway). The learned counsel for the petitioner emphatically submitted before us that even though the medical expert, Garden Reach has opined that the petitioner has a defective division but the Associate Professor of the Ophthalmology of the M. K. C. G. Medical College, Berhampur has opined that the petitioner is not suffering from any defective in vision and therefore, it was submitted by the learned counsel for the petitioner that the report of the Associate Professor should be accepted and appropriate direction should be given to the Opposite Parties to allow the petitioner to join the training

EN

in Engineering Department as an Appr. Inspector of Works, Grade II and on completion of the Training to appoint <sup>him</sup> ~~me~~ as I.O.W. Grade III.

On the other hand, Mr. D. N. Mishra learned Standing Counsel (Railway) contended that the Railway Administration has maintained ~~in~~ its own Hospital and its own Doctors, who are experts in different diseases. <sup>As</sup> Ophthalmologist in Gardenreach including the Medical Board has specifically opined that the petitioner is suffering from defective vision. Further contention of Mr. D. N. Misra learned Standing Counsel (Railway) was that ~~in~~ no circumstances, the report of the Associate Professor should get preference to the opinion of the Ophthalmologist of the Railway Administration and also the Medical Board.

5. If such a precedent is created in future, insurmountable difficulty will arise for the Administration and therefore, this contention of the learned counsel for the petitioner should be rejected.

6. After giving our anxious consideration to the argument advanced at the bar, we find there is substantial force in the contention of Mr. Misra learned standing counsel appearing for the Railway Administration.

7. We do not feel inclined to create <sup>a bad</sup> ~~that~~ precedent. Therefore, we are of opinion, rightly the petitioner was not sent for training to be appointed to the post of P.W.I or IOW Grade III, but at the same time, we would strongly recommend to the competent authority that a very sympathetic view should be taken over this young man, whose aims and ambitions have been frustrated for a reason beyond his control. This young man must have cherished the desire of having a job of this nature after successfully completing the course of Diploma in Engineering. This impediment, standing in his way, would be a death blow to him. Therefore, we very much appreciate the contention put forward by the learned counsel for the petitioner that the Railway Administration should come to the rescue of the petitioner. In a large organisation, like Railways, there cannot be any dearth of post ~~any~~ where in the India. At the cost of repetition we would say that we strongly recommend the case of the petitioner to the competent authority ~~to consider~~ <sup>to</sup> consider the case of the petitioner sympathetically for appointment to any <sup>or</sup> comparable post, including the post of Lower Division Clerk, where defective vision would not stand as a bar for selection.

KN

6. Thus, the application is accordingly disposed of. No costs.

MEMBER (ADMINISTRATIVE)

25 JUN 93

VICE CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack, K. Mohanty/  
25.6.93.

