

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 235 OF 1999
Cuttack this the 20th day of November, 2000

Pravat Bihari Mohapatra Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Soni
(SOMNATH SONI)
VICE-CHAIRMAN
20.11.2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 235 Of 1999
Cuttack, this the 20th day of November, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Pravat Bihari Mohapatra, aged about 35 years, son of Kulamant Mohapatra, resident of Tirtol, At/PO-Tirtol, Dist.Jagatsinghpur, presently working as Chief Estimator, Office of the Chief Engineer, Construction, Headquarters, South Eastern Railway, Bhubaneswar.....
.....Applicant

Advocates for applicant - M/s A.Kanungo
B.S.H.Rao
S.R.Misra
B.Ray
M.K.Biswal

Vrs.

1. Union of India, represented through General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta.
3. Chief Engineer, S.E.Railway, Garden Reach, Calcutta.....
Respondents

Advocates for respondents-M/s S.Roy
A.A.Khan

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed for a direction to the respondents to promote him to the post of AEN Group-B with consequential benefits. The respondents have filed counter opposing the prayer of the applicant, and the applicant has filed rejoinder. For the present purpose it is not necessary to refer to all the averments made by the parties in their pleadings. We have heard Shri A.Kanungo, the learned counsel for the petitioner and

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Shri S.Roy, the learned panel counsel (Railways) for the respondents and have also perused the records. The learned counsel for the petitioner has relied on the following decisions:

- (i) State of Maharashtra v. Jagannath Achyut Karandikar, 1999 SCC (L&S) 417;
and
- (ii) Dr.Mr.O.Z.Hussain v. Union of India, 1990(1) AISLJ 188.

We have taken note of these decisions.

2. The admitted position is that in letter dated 3.11.1997 at Annexure-2 applications were invited for drawing up a panel for appointment to the post of AEN, Group-B through Limited Departmental Competitive Examination (LDCE) against 70% vacancies. It is also admitted that the petitioner took the examination and in the list of candidates (annexure-3) who had qualified in the written examination and were directed to appear at the viva voce, his name appears against serial no.12. Before the interview he was medically examined and due to defective colour vision he was certified fit for statinoery job only. The medical certificate is at Annexure-4A. The applicant was not tested in the viva voce held on 25.8.1998 and 26.8.1998. Accordingly, inthe final panel which came out on 3.11.1998 (Annexure-5A) the applicant's name was not included. The applicant has stated that he has been thereby debarred from promotion. He has filed representation stating therein that in a similar situation K.Prabhakar Rao, Chief Draftsman, Waltair

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has been promoted to AEN, Group-B. The applicant has enclosed the promotion order of K.Prabhakar Rao at Annexure-6, and in the context of the above facts he has come up in this petition with the prayer referred to earlier.

3. Respondents in their counter have stated that in the letter at Annexure-3 in which persons who had qualified in the written test and were asked to appear at the viva voce and which included the applicant, the candidates were directed that they should get themselves medically checked up so as to satisfy that they are up to the prescribed medical standard to hold Group-B post. It was also mentioned that only medically fit candidates should be directed to appear at the viva voce. It is stated by the respondents that the applicant was medically examined on 20.8.1998 and he has been made fit for stationery job only due to defective colour vision and that is why he was not called for viva voce test held on 25th and 26th August, 1998. As regards K.Prabhakar Rao, the respondents have stated that Shri Rao was empanelled against 30% quota in the earlier selection but was declared medically unfit and was not allowed to join the post. Subsequently, on his representation, further medical test was conducted and he was again declared medically unfit. However, in their letter dated 7.1.1997 the Railway Board advised to conduct further medical examination. The Railway Board also indicated that the Medical

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Board should give their opinion whether Shri Rao can be considered for posting in Survey, Planning and Maintenance Department on promotion. Thereafter Sri Rao was further examined by the Medical Board and was declared permanently unfit for such of Group-B posts of AEN which are connected with train working or use of trolley on Open Line but could be considered for rest of the posts of Group-B like Survey or Planning or any other desk work not connected with train running. Accordingly, Shri Rao was promoted in order dated 10.3.1998.

4. From the above recital of facts it is clear that the scope of controversy in this case is somewhat limited. The admitted position is that the petitioner qualified in the written test and was directed through his official superior in the letter at Annexure-3 to appear at the viva voce test. It is also the admitted position that in this letter it was stated that as per instructions of the Board, the candidates were required to get themselves medically examined as to satisfy that they are up to the prescribed medical standard to hold Group-B post. It was also mentioned that only medically fit candidates should be directed to appear at the viva voce. The applicant has enclosed at Annexure-4A the report of Medical Superintendent of S.E. Railway, Khurda Road, stating that the applicant is found fit for stationery job only due to defective colour vision. It is also the admitted position that in an earlier selection one K. Prabhakar Rao who was declared medically unfit

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by Chief Medical Superintendent, Waltair, was examined once again at the instance of the Railway Board, and the Medical Board was directed to give their opinion whether Shri Rao should be considered for posting in Survey, Planning or Maintenance Department and ultimately Shri Rao was given promotion on his being found fit for rest of Group-B posts in Survey and Planning and other desk work unconnected with train running, use of trolley on Open Line. The respondents have stated that as per Railway Board's instructions Shri K.Prabhakar Rao has been promoted, but there is no ground for considering the case of the petitioner on the line adopted for Shri K.Prabhakar Rao. We are unable to accept this logic. Rule 206.2 of Indian Railways Establishment Manual deals with medical fitness of employees selected for promotion to Group-B post. This rule is quoted below:

"206.2. Medical fitness of employees selected for promotion to Group "B".-Employees selected for promotion to Group "B" serve either on a regular or on ad hoc basis should be fit in all respect including physical fitness for the duties assigned to the particular category of posts to which the promotion is made. If, however, relaxation in the medical standard is required the same should be proposed only in the cases of employees who have exceptional qualifications and whose services in Group "B" cadre will be beneficial to the Administration. Promotion with relaxed medical standard should be made only with the approval of the Board and will be purely ad hoc in nature and will not confer on the officers promoted any right to continue to claim retention in Group "B" as a regular measure. The continuance of ad hoc promotion will be subject to the availability of a

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post conforming to the suitability of the officer from the medical point of view."

From the above it is clear that persons can be appointed to Group-B post with relaxed medical standard with the approval of the Railway Board. As a similarly situated individual Shri K.Prabhakar Rao has been given the relaxation and has been actually promoted to a Group-B post in a stationery job as per his conditions of medical fitness, we see no reason why the same approach should not be adopted by the Railway Board in respect of the applicant. The respondents have stated that according to the circulars dated 31.10.1991 and 7.10.1998 of the Railway Board enclosed at Annexure R/1 candidates who do not pass the prescribed medical standard should not be included in the panel and only those who qualified in the medical examination should be called for viva voce. We note that Shri K.Prabhakar Rao was promoted in order dated 10.3.1998 much after issuing of the Board's circular dated 31.10.1991. The learned counsel for the petitioner has pointed out that when Indian Railways Establishment Manual which is statutory, provides under Rule 206.2 that persons can be promoted to Group-B in terms of above statutory rule, through executive instruction the statutory rule cannot be modified. In support of his contention he has referred to the case of J.A.Karandikar(supra). It is not necessary to refer to the facts of that case because the law is well settled that statutory rules cannot be modified through executive instructions. But the instructions issued by Railway Board are also statutory in nature.

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The point to note in this connection is that when even after issuing of circular dated 31.10.1991 Shri K.Prabhakar Rao has been promoted, there is no reason why a differential treatment should be meted out to the present applicant. The other aspect of the matter is that if the applicant is not promoted to Group-B then he will be stuck at the level of Chief Estimator for rest of his service career of about more than two decades. The instruction of the Railway Board dated 7.10.1998 does provide that such promotion of persons in Group-B posts under relaxed medical standard can be only for the purpose of Group-B and such persons cannot be promoted to Senior Scale in Group-B and to that effect, apparently undertaking is taken from them. Whatever it may be if there is some system in the Railways to consider persons for promotion to Group-B under relaxed medical standard, then the applicant's case should be considered under the same system. Learned counsel for the petitioner has relied on Dr.Mr.O.Z.Hussain's case (supra) in which the Hon'ble Supreme Court have emphasized that for efficiency of public service, avenue of promotion is necessary. But in the circumstances of the case it is not required to refer to that decision.

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5. The other aspect of the matter is that there is some controversy in this case whether the applicant did actually appear at the viva voce test. From Annexure-4 it appears that the applicant was directed in letter dated 21.8.1998 to appear at the viva voce test on 25.8.1998 and his specimen

signature was also attested. The respondents have stated that he did not actually appear at the viva voce test whereas the applicant in his rejoinder has strongly urged that he did appear at the viva voce test. The respondents have filed reply to the rejoinder in which they have again averred that the applicant was actually not allowed to take the viva voce test even though he was called to the test. In this reply the respondents have stated that another person Partha Pratim Bhattacharjee was allowed to take the test because in his case the medical report was received on 31.8.1998, i.e., after the interview. Whether the applicant did or did not actually take the viva voce, or in other words whether he appeared before the Board of Interviewers is a point which can be easily determined on the basis of records of viva voce test. In case he was not allowed to appear, then in the light of the instructions in the Indian Railways Establishment Manual as also the precedent of Shri K.Prabhakar Rao, we direct that the Viva Voce Board should consider the case of the applicant and in case he is found suitable, then his case should be considered in the light of the approach adopted by the Railway Board in the case of K.Prabhakar Rao. There is one other aspect to be noted in this connection. In all selections where medical test is involved, there is always a provision that in the event of a person failing in the medical test he has a right to appear before a second Board. In the case of K.Prabhakar Rao it appears from the counter that Shri Rao was examined thrice by the Medical Board. In the case of the applicant, the second examination of

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the applicant by the Medical Board has not taken place. This is also one ground which goes to support the case of the petitioner.

6. The petitioner has prayed in the OA for a direction to the respondents to promote him to the post of AEN, Group-B. There is some controversy whether the applicant was actually allowed to appear before the Viva voce Board. In case he was not allowed to appear, then without the marks of the viva voce test he cannot be straightaway empanelled. Therefore, his prayer for a direction to promote him straightaway to the post of AEN Group-B cannot be accepted.

7. In view of the above discussions, we dispose of this OA with a direction to respondent nos. 1 and 2 that the case of the applicant should be considered in the light of action taken in the case of K.Prabhakar Rao and our observation and direction above, and in case on the basis of his performance in the viva voce, he is required to be empanelled, then a proposal should be sent by the respondents to the Railway Board to consider the case of the applicant for empanelment and appointment to a Group-B post of AEN in keeping with his medical standard. This action should be taken by the respondents within a period of 90 (ninety) days from the date of receipt of copy of this order.

8. The Original Application is disposed of as above. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN