

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION No. 277 of 1999

CUTTACK THIS THE 11th DAY OF MAY, 2001

B.K. Routray Petitioner

- Vrs -

General Manager & others Opp. Parties

For Instructions

1. Whether it be referred to 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
11.5.2001.

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CORAM:

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

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1. Bijay Kumar Routray,
aged about 27 years,
Son of Dhruba Charan Routray,
At/Po-Kusumati,
Via-Jatni, Dist-Khurda

Petitioner

By the Advocates

M/s. B. Pr. Das,
D.K. Das,
D.N. Mohanty.

- VERSUS -

1. General Manager,
South Eastern Railway,
Garden Reach, Calcutta.

2. Senior Divisional Personnel Officer
South Eastern Railway,
Khurda Road, Jatni,
Dist- Khurda.

3. Divisional Railway Manager (Personnel),
South Eastern Railway,
Khurda Road, Jatni,
Dist- Khurda.

4. Union of India, represented by the
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi.

Respondent

By the Advocates

Mr. D.N. Mishra

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SOMNATH SOM, VICE-CHAIRMAN : In this original application the petitioner has prayed for quashing the select list dated 21.5.1999 at Annexure-5. The second prayer is for making fresh selection from the interview stage weeding out candidates who have filed fake disability certificate and who were called for interview by unfair means over and above the list at Annexure-4.

2. Respondents have filed counter opposing the prayer of the applicant and applicant has filed rejoinder. We have perused the pleadings. We have heard Shri B.P.Das, Learned Counsel for the petitioner and Shri D.N. Mishra, Learned Standing Counsel for the respondents. Shri Mishra has filed a memo indicating the present position of several writ applications which had been filed before the Hon'ble High Court on the same matter along with copy of the order of the Hon'ble High Court in two cases. He has also filed the marks obtained by the candidates coming under the Orthopaedically Handicapped category.

3. Applicant's case is that Divisional Railway Manager (Personnel), South Eastern Railway, Khurda Road, (Respondent No.3) issued a notice on 03.03.1997 (Annexure-3) calling for application for filling up of 30 posts in Group 'C' category against physically handicapped quota. Of the 30 posts 10 were for Orthopaedically Handicapped, 10 for hearing impaired and 10 for visually handicapped. The applicant is an Orthopaedically Handicapped person with 60% disability as per certificate at Annexure-2. He applied for the post; was called to the written examination result of which was published at Annexure-4. Applicant has stated that in the written examination

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result he occupied the 11th position according to merit list. He also appeared at the interview. But in the final selection list at Annexure-5 his name was not included. In the context of the above he has come up with the prayers referred to earlier. He has challenged the selection on various grounds which are discussed below.

4. The first ground urged by the applicant is that even though in the list at Annexure-4 of the persons who had come out successful in the written test, there were 93 persons actually 153 persons appeared at the interview held on 14/15.11.98. Respondents have pointed out that as per rule totally blind candidates are exempted from appearing at the written test and were to be called only for viva voce test. Accordingly, 60 persons who were totally blind were called written test directly without appearing at the written examination along with partially blind candidates who came in through the written test as per merit. This action is quite acceptable. Moreover as the quota of visually handicapped was distinct from the quota of Orthopaedically Handicapped to which category the applicant belongs no prejudice has been caused in the process to the applicant. This contention is therefore rejected.

5. The second ground of the applicant is that for the Physically Handicapped category no level of physical disability was prescribed. Because of this some apparently healthy persons managed to obtain medical certificate of orthopaedical disability and appeared at the selection and got selected. From the notice at (Annexure-1) it is seen that for orthopaedically handicapped persons it was mentioned that this category includes

those who have a physically defect or deformity which causes an interference with the normal functioning of bones, muscles and joints. The applicant has not mentioned the names of such healthy persons who obtained false certificates of being orthopaedically handicapped. In view of this contention cannot be accepted. Moreover law is well settled that after participating in the selection process a person cannot challenge the norms of selection after he has been declared unsuccessful. This contention is therefore rejected.

6. The third ground urged by the applicant is that even though he was No.11 in the merit list in the written examination he was not selected and favoured candidates were deliberately given high marks in viva voce in order to include them in the panel. He has further stated that out of the final 10 candidates in the merit list for orthopaedically handicapped quota one person did not appear at the interview. He has however not mentioned the name of this person. For considering this submission, we have gone through the marksheet filed by the Learned Standing Counsel for the respondents for the candidates coming under orthopaedically handicapped category. From this we find that in total there are 100 marks of which 85 marks were for written test and 15 marks for viva voce. Applicant has stated that he occupied 11 th position in merit list in the written examination as is seen from Annexure-4. On verification of the mark list we find that actually 10 persons in the list at Annexure-4 ^{who} are above the name of the applicant have got more marks than the applicant. But the applicant and two persons immediately below him in the list at Annexure-4 have got the same mark in the written examination. We have

also seen that in the final list of 10 selected candidates under orthopaedically handicapped quota 7 persons have got more marks than the applicant in the written test. Out of these 7, one candidates have got less marks than the applicant in the viva voce. But because of his higher mark in the written test he has been included in the panel. The applicant has no grievance so far the written examination is concerned. Out of the remaining three candidates who have been included in the select list and who have got less marks than the applicant in the written test. We find two of them have got marks in written test which is marginally less than the applicants marks and the difference between the marks obtained by these two persons in the written examination which are the same and the mark of the applicant in written test is less than 2. Therefore, by getting more marks in the viv voce they have gone above the applicant. Similarly the third candidate have got higher marks in the viva voce and has been included in the list even though this candidate has got less mark than the applicant in the written examination. On a careful scrutiny of the marksheet we find no evidence of large scale illegality and deliberate favouritism shown to the selected candidates. This contention is also held to be without any merit.

SJM

7. Applicants contention that one of the candidates included in the merit list did not appear at the examination is not correct. One of the candidates who occupied a position higher than the applicant in the written examination result did not appear at the interview and his name naturally did not come in

the select list.

8. On 10.5.2001 the learned counsel for the petitioner has filed an affidavit stating that some posts meant for orthopaedically handicapped candidates will remain vacant after appointment of candidates from the select list. As the applicant has not been included in the select list, vacancy, if any, available can have no bearing on the prayers of the applicant. Moreover, the respondents have also not got any chance to re-act to the above assertion mentioned in the affidavit filed a day before the date fixed for delivery of orders. Therefore, this affidavit cannot be taken into consideration.

9. In view of our above discussion we hold that the applicant is not entitled to the relief claimed by him in the Original Application which is accordingly rejected. No costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

(SOPNATH SORI)

VICE-CHAIRMAN

CAT/CB/11-5-2001/KB