

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 462 OF 1999
CUTTACK THIS THE 02nd DAY OF August 2001

Meena Mohanty Applicant(s)

- V e r s u s -

Union of India & Others Respondents

For Instructions

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28/8/01

28/8/01
(G. NARASIMHAM)
MEMBER (J)

9

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 462 OF 1999
CUTTACK THIS THE 02nd DAY OF August 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM,
THE HON'BLE SHRI G.NARASIMHAM,

VICE-CHAIRMAN
MEMBER (J)

....

1. Meena Mohanty, aged 33 years,
Daughter of Pravakar Mohanty,
At-Madhusudan Nagar, P.O.Jatani,
District. Khurda.

A pplicant

By the Advocates

Mr. P.Nayak

- V e r s u s -

1. Union of India, represented through
the General Manager, South Eastern
Railway, Garden Reach, Calcutta.

2. Divisional Railway Manager,
South Eastern Railway, Khurda Road,
PO.Jatani, P.S.Jatani,
District. Khurda.

3. Senior Divisional Personal Officer,
S.E.Railway, Khurda Road, P.O.Jatani,
P.S.Jatani, District. Khurda.

4. Divisional Personal Officer,
Souther Eastern Railway,
PO.Jatani,
District. Khurda.

Respondents

By the Advocates

Mr. P.K.Mishra
A.S.C.

.....

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, who was allowed to appear in the recruitment conducted by the Respondents, pursuant to the recruitment notification dtd.3.3.97(Annexure-1), on the direction issued by the High Court of Orissa in O.J.C.No.9299 of 97, prays for quashing the Annexure-2 dtd.10.9.98, the notification publishing the candidates who came out successful in the written test to appear for the interview and also prays that she should be declared as passed in the written test and allowed to appear in the viva-voce test.

2. The recruitment was for 30 posts in group 'c' for physically handicapped persons. Out of these 30 posts, 10 posts are meant for Orthopaedically handicapped, 10 for deaf and remaining 10 for visually handicapped. Applicant comes under Orthopaedically handicapped category.

3. The grievance of the applicant is that there is no guideline fixed for publishing the merit list. Though she had answered correctly all the questions in the written test and though she deserved to be called for viva-voce and final selection, the Respondents published list under Annexure-2 pertaining to Orthopaedic handicapped category in arbitrary manner, disqualifying her in the written test. Soon after the publication of Annexure-2 she represented to Respondent No.2 for verification of the result but without any response. Thereafter, she moved the High Court of Orissa in O.J.C.15564/98 who advised her to move an application before this Tribunal by order dtd.25.8.99 (Annexure-5). She therefore wants this Tribunal to call for her answer paper which

would establish that marks were awarded against her in an arbitrary and malafide manner.

4. In the counter the stand of the Department is that the applicant did not qualify in the written examination as she secured less marks and therefore could not be called for viva-voce. Allegations of arbitrariness and malafide are strictly denied. The merit list under Annexure-2 was published in the ratio of 1 : 3 for the vacancy and the candidates who secured the marks within the cut off point of marks were called for viva-voce. The applicant who secured less marks than the cut off point mark was not accordingly called for the viva-voce.

5. In the rejoinder the applicant reiterated her stand by stating that she is a meritorious candidate having passed B.A., Stenography and Typing and also having diploma in music.

6. We have heard Mr. P.Nayak, learned counsel for the applicant and Shri P.K.Mishra, learned Additional Standing Counsel for the Railways also perused the record.

7. In course of her submission, Mrs.Nayak contended that as the recruitment notification dtd.3.3.97 (Annexure-1) is silent in regard to the manner in which the recruitment would be conducted, the Department were duty bound to call all the candidates who appeared in the written test for viva-voce irrespective of the marks secured by them in the written test and after conducting the viva-voce, results should have been declared considering the total marks obtained. It is true that Annexure-1 is silent in this regard. This does not mean that the Department would not be justified in eliminating some candidates appearing in the written test by fixing a cut off mark and calling for

certain percentage of candidates for viva-voce by taking into account the number of vacancies existing. It is not as though that only with reference viva-voce marks a candidate would be selected. In fact, in course of arguments it was brought to our notice that in O.A. 277 of 99 since disposed of by this Bench, the very same recruitment was subject matter for consideration. In that case the applicant who ultimately was not selected even after appearing in the viva-voce examination challenged the selection. The record reveals that out of 100 marks 85 marks were allotted for written test and 15 marks for viva-voce test and the total marks for the written test as well as viva-voce determined the selection.

8. There is no presumption under law that a candidate having good academic record would do well in written test of a recruitment conducted for filling up certain posts. This specific case of the Department is that applicant secured less marks than the cut off point marks fixed for the written test. Mere allegation of arbitrariness and malafide would not establish that the selection has been conducted arbitrarily with a malafide intention. Law is well settled, ^{that} Plea of malice has to be established satisfactorily by citing a concrete instances. Averments in the O.A. are silent in this respect. We are therefore not inclined to accept the case of the applicant that the selection has been tainted with malice and arbitrariness.

8. We are aware that applicant has prayed that we should call for answer paper and examine for ourselves. Law is well settled that a Court/Tribunal cannot Act as an Appellate Authority in the matter of reassessment of marks. Specially, in

the absence of any specific pleading that her answer paper was interpolated. Hence we are not inclined to call for the answer paper.

10. In the result, we do not see any merit in this Original Application which is dismissed but without any costs.

Somnath Som
(SOMNATH SOM)
VICE-CHIEF JUDGE
~~20/01/2011~~

28/01
(G.NARASIMHAM)
MEMBER(J)