

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.539 OF 1999
Cuttack this the 16th day of January/2001

Mahendra Kumar Jena ... Applicant(s)

• • •

Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

• • •

Respondent(s)

(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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 539 OF 1999
Cuttack this the 16th day of January/2001

CORAM:

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

...
Mahendra Kumar Jena, aged about 37 years,
S/o. Belakrishore Jena of Nihalprasad,
PS. Gondia, District-Dhenkanal, presently
working as Junior Booking Clerk, S.E.Railway
Puri

... Applicant

By the Advocates

Mr.Susant Kr.Das

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railways, Garden Reach, Calcutta-43
2. Chief Personnel Officer (Commercial), 14, Strand Road (8th Floor), Calcutta-700001
3. Senior Divisional Officer, South Eastern Railways, Khurda Road Division, Khurda

... Respondents

By the Advocates

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

O R D E R

MR.SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to Respondents to give promotion to the applicant to the post of Enquiry-cum-Reservation Clerk Gr.III with retrospective effect.

2. The case of the applicant is that he is physically handicapped and his representation for change of option from Goods side to Coaching side having been turned down by the Respondents in order dated 29.5.1997, he approached the Tribunal in Original Application No.365/97 which is still pending. The applicant has been informed in order dated 17.12.1997 (Annexure-1) that option once exercised is final

and cannot be changed and he has been directed to carry out order of promotion/transfer dated 22.5.1997. Applicant has stated that some posts of Enquiry-cum-Reservation Clerk Gr.III in the scale of Rs.4500-7000/- in the Commercial Department were sought to be filled up by promotion. The applicant has stated that he was allowed by the Respondents to appear at the written test, but he was not called for the viva voce test. He has stated that some S.C. candidates were called to viva voce test by relaxing standards in their cases, but no such relaxation of standard was allowed in his case even though 1% post in the promotional quota is required to be kept reserved for Orthopedically handicapped persons. The applicant has also stated that he was not called to viva voce test because of improper evaluation of written test. In the context of the above he has come up in this Application with the prayers referred to earlier.

3. Respondents have filed their counter opposing the prayer of the applicant. For the present purpose it is not necessary to record all the averments made by the Respondents in their counter. The relevant portions will be referred to while considering the prayer of the applicant.

4. No rejoinder has been filed by the applicant.

5. Learned counsels have abstained from Court work since more than a month and there is no indication when they will be returning to Court work. Hon'ble Supreme Court in the case of Raymon Services (P) Ltd. vs. Subhash Kapoor reported in 2000 AIR SCW 4093 have deprecated the action of the Courts in adjourning cases on account of abstaining from Court work by the Advocates. They have even observed that by adjourning cases

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in such situation the defaulting Courts are contributory to contempt of the Hon'ble Supreme Court. In view of this it is not possible to adjourn the matter. Petitioner is also absent when called. There is no representation from the side of the respondents. As the Advocates have abstained from Court work we did not have the benefit of hearing Shri S.K.Dash, the learned counsel for the petitioner and Shri R.C.Rath, the learned Addl. Standing Counsel appearing for the Respondents.

6. The admitted position is that the applicant was initially appointed as probationary Commercial Clerk in the scale of Rs.260-430/- against physically handicapped quota, in order of appointment issued on 26.4.1985. He joined at Puri on 23.9.1985 after completion of training. He opted for goods cadre/seniority group and was accordingly promoted as Senior Goods Clerk and posted to Chhatarpur/Berhampur in orders dated 13.4.1995 and 22.5.1997. But the applicant refused to accept promotion and has been continuing as Junior Clerk at Puri.

Before proceeding further it has to be noted that in this Application the applicant has made no prayer with regard to change of his option from Goods cadre/Seniority Group to Commercial Cadre/Seniority Group. He has filed another O.A.465/97 in which he has challenged the order of the respondents in rejecting his representation for change of option for a second time and that O.A. is still pending. In view of this, for the present case it is not necessary to consider this aspect of the change of cadre by giving option for the 2nd time.

So far as promotion to the post of Enquiry-cum-Reservation Clerk is concerned, admittedly the applicant was eligible to be so promoted and was accordingly called to

J. J. Jom,

participate in the selection process by appearing at the written test where he did not qualify. The applicant has stated that he did not qualify because his papers were wrongly evaluated. Besides this bland assertion he has not mentioned anything as to how his papers were wrongly evaluated. In view of this it is not possible to accept this contention of the petitioner which is accordingly rejected.

Next
 The ~~3~~ averment of the applicant is that even though *Action*, he did not qualify in the written test 15 SC/ST candidates were declared to have been qualified in the written test in relaxation of standards in their cases. Respondents have stated that the applicant did not secure the required pass marks in the written examination and therefore, he was not called to viva voce test. They have stated that the S.C. candidates, who secured the pass marks in the written test were only called to viva voce test. In view of this it cannot be held that S.C. candidates were declared to have cleared the written test by relaxing the standards in their cases. All the S.C. candidates called to the viva voce test, according to respondents, got the ~~maximum~~ pass marks whereas the applicant failed to get the pass mark. This contention is therefore, held to be without any merit and the same is rejected.

Now
 The last contention of the applicant is that as he is a physically handicapped person relaxed standard of assessment should have been applied in his case in the written test because in the promotional cadre 1% posts were required to be kept reserved for Orthopedically handicapped quota. In support of this contention the applicant has not submitted any circular/instruction and/or authority to show that for

filling up of the physically handicapped quota in the promotional cadre relaxed standards of assessment in the selection has to be applied. This contention is also held to be without any merit and the same is, therefore, rejected. More-over, physically handicapped quota in the promotional cadre is not meant for Orthopedically handicapped persons, as alleged by the petitioner. The rules are clear that it is for the departmental authorities to decide whether in such slot the promotional vacancy will come for visually impaired, hearing impaired or orthopedically handicapped persons.

For the reasons discussed above we hold that the applicant has not been able to make out a case for any of the reliefs prayed for. The application is held to be without any merit and the same is rejected, but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
(B.K.SAHOO)