

5

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 586 OF 1999
Cuttack this the 26th day of April/2001

Soumendru Sekhar Nayak ... Applicant(s)

-VERSUS-

Union of India & Others ... 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 No. Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.4.2001

26.4.2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

6
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.586 OF 1999
Cuttack this the 26th day of April/2001

CORAM:

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

Soumendu Sekhar Nayak,
S/o. Digambar Nayak
Sector - 13, Qr.No.B 90,
Rourkela, Dist-Sundargarh

...

Applicant

By the Advocates

M/s.Sidheswar Mallik
S.K. Das
S.L. Mumar

-Vs.-

1. Union of India represented by the
General Manager, S.E.Railway,
Garden Reach, Calcutta-43
2. Sr.Divisional Personnel Officer,
South Eastern Railway,
At/PO-Chakradharpur,
Dist -Singhbhum, Bihar
3. Divisional Railway Manager (P)
South Eastern Railway,
At/PO-Chakradharpur,
Dist -Singhbhum, Bihar

...

Respondents

By the Advocates

M/s.R.Sikdar
A.Sikdar
A.Singh

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In the recruitment conducted by the Divisional Railway Manager, S.E.Railway, Chakradharpur (Respondent No.3) for filling up posts of Group 'D' (Staff pursuant to the Employment Notice dated 25.6.1997 (Annexure-R/1), applicant on receipt of call letter (Annexure-1) from the Sr.Divisional Personnel Officer, Chakradharpur (Respondent No.2), appeared in the Written Test held on 8.2.1998. On being qualified in the

Written Test, he received another call letter (Annexure-2) to attend the viva voce test on 6.5.1998. He attended this test also and came out successful. He was offered temporary appointment as Khalasi in Group 'D' in the scale of Rs.2550-3200/- in the Electrical Department of Chakradharpur Division in letter dated 4.7.1998 (Annexure-3) with instruction to fill the enclosed Attestation form and produce original certificates mentioned therein. Accordingly he duly filled in the attestation form and produced the required certificates conveying his acceptance of the orders of the appointment. As signature in the attestation form differed from his purported signature in the application form submitted in response to the employment notice under Annexure-R/1, he was asked to show cause in letter dated 17.12.1998 (Annexure-A/4). In his reply under Annexure-5, the applicant took the stand that as he was suffering from fever and was consequently feeling weak, at the time he submitted the original application, his signature therein differed. Thereafter in letter dated 1.2.1999 (Annexure-6) he was directed to appear in the office of Respondent No.2 and he accordingly appeared before Respondent No.2. Thereafter in letter dated 18.5.1999 (Annexure-7) he was asked to show cause as to why the appointment shall not be cancelled on the ground that it could be established that the original application was not signed by him, but by somebody else. He submitted show cause (Annexure-8) reiterating that he signed the original application.

2. The grievance of the applicant is that since he in person appeared in the written test and viva voce test and

came out successful and on that account he having been appointed, cancellation of appointment order cannot be sustained under law, and that too without any inquiry taking place in his presence. Hence this application with a prayer for quashing letter dated 18.5.1999 (Annexure-7) and for issue of direction to the Respondents to allow him to join in the post with consequential retrospective financial service benefits.

3. The stand of the Department in the counter is that while issuing Memo for Medical Examination it could be noticed that signature of the applicant in the application form differed from that of his signature in the attestation form accepting the offer of appointment. The applicant was then called to the office and his specimen signatures, 48 in number were taken in three sheets on 4.2.1999. The matter was referred to the Government Examiner of Questioned Documents, Central Forensic Institute, Calcutta. In report dated 16.3.1999 the Institute opined that the person who signed in the attestation form, ^{and} submitted the specimen signatures, ^{it} ~~but he~~ did not sign in the original application form. Thus, according to the Department, the applicant practised ^{fraud} ~~fraud~~ from the stage of submitting application and as such he is not fit for the Railway Service and accordingly this application has to be dismissed.

4. In the rejoinder the applicant though did not deny about the opinion of the Expert, substantiated his stand in the Original Application.

5. On the date of hearing neither the applicant nor his Advocates attended the Tribunal. There was also no

prayer for adjournment. However, we have carefully perused the records. Also heard Ms. R. Sikdar, learned Addl. Standing Counsel for the Respondents.

6. There is no dispute that the applicant himself appeared in the written test and the viva voce and because of merit in this test, he was ultimately selected, empanelled and offered appointment. After the acceptance of offer of appointment, the Department had the occasion to scrutinise his original certificates. It is not the case of the Department that the certificates are forged and/or not genuine. Thus it comes to this though the Original application form was signed by a person other than the applicant, it was complete in all other respects, i.e. the required relevant particulars, attested copies of documents and photograph of the applicant were found to be correct.

7. Signature alone in an application form will not determine the eligibility of the signatory to appear at the recruitment. Eligibility is dependent on the particulars mentioned ~~therein~~ in the application form ~~as furnished~~, besides the copies of certificate, documents and photograph attached to the form, ^{which would be} duly compared and scrutinised.

8. I am, therefore, not inclined to agree with the conclusion of the Respondents that the applicant practised fraud in securing employment. It is true that the applicant came out with a story that he himself signed the application form when he was weak on account of fever. But this cannot be accepted because of the opinion of the Expert to the contrary. Out of fear of losing the appointment, he appears to have resorted to this plea. But this by itself may not

give rise to an inference that had an intention to defraud the Railway Administration. Thus it appears to be a case where because of timely non-availability of the applicant someone else realising the urgency and to ensure the receipt of the application before the closure of the last date of receipt of applications, as mentioned in the employment notice and in order to benefit the applicant signed the application form by furnishing all the required particulars/documents correctly. It would have been an instance of fraud had the original application form applying for the post contained the particulars not genuine and/or misleading, and/or suppression of someother material information. This of course is not the case of the Department. It was satisfied that the applicant himself appeared in the test and proved himself to be meritorious and was ultimately selected for appointment.

9. For the reasons discussed above, I have no hesitation to quash the show cause letter dated 18.5.1999 vide Annexure-7 and accordingly the same is quashed. Respondents are directed to allow the applicant to join the duty subject to medical fitness, under the rules, if he has not already been subjected to medical test in the meantime. It is further clarified that if after filing of counter in this O.A. final order cancelling the offer of appointment has been issued, the same is ^{here by} quashed.

10. In the result, O.A. is allowed, but without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.4.01

26.4.01
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//