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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 03.03.2008

O.A. No .630 of 2001

Bishikeshan Mohapatra..... Applicant

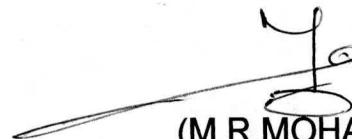
Vs.

Union of India & Others Respondents

(FOR INSTRUCTIONS)

1. ther it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of CAT or not?

(C.R.MOHAPATRA)
MEMBER(ADMN.)


(M.R.MOHANTY)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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O.A. No .630 2001

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

In the Matter of:

Bishikeshan Mohapatra Applicant
Vs.
Union of India & Others Respondents

(For Full details, see the enclosed cause title)

For Applicant : M/s. A.K. Mohapatra, R.K. Mohanty, Counsel
For Respondents : M/s. M.K. Das, B.C. Pradhan, G.Muduli, Counsel

(ORAL) O R D E R

Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

Being aggrieved by his non selection to Group-C category of post against physically handicapped "deaf quota" under the East Coast Railways the Applicant has filed this application under Section 19 of the Administrative Tribunal Act, 1985 seeking for a direction to the Respondents to appoint him in any one of the post for which recruitment was held pursuant to the notice dated 3.3.1997.

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2. Respondents have filed their counter, stating therein, that a notification bearing No. P/R/PH/GR-C/96 dated 3.3.1996 was published inviting application from physically handicapped candidates for recruitment in Group-C categories under the Khurda Road Division of South East Railways (now East Coast Railways). There were altogether 30 posts advertised; of which 10 posts were for orthopedically handicapped, 10 posts were deaf (hearing handicapped) and 10 posts were for visually handicapped. Applicant, along with those who were qualified in the written test held on 03.08.1997 was asked to face the viva-voce test scheduled to be held on 14/15.11.1998. It has been stated that since the Applicant did not obtain enough marks to be within the top 10 candidates under physically handicapped/ deaf category, he was rightly not issued the order of appointment. Therefore, the Respondents prayed dismissal of this Original Application.

3. Heard Id. Counsel for both sides and perused the material placed on record including the selection file produced by the Ld. Counsel for the Railways on the direction of the Tribunal.

4. Ld. Counsel for the Applicant has strenuously pointed out that there was no free and fair consideration in the process of selection in as much as though favour was shown to the orthopedically handicapped "blind" candidates in exempting him from appearing the written test, in the case of Applicant viva-voce test was conducted by asking questions orally. The Applicant was neither provided any hearing aid during the viva-voce test nor the members of the

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committee put the questions in signaling manner. It is the specific case of the Ld. Counsel for the Applicant that candidates who were having less than 90 ~~decimal~~ disability were taken into consideration, whereas, as per the advertisement, less than 90 ~~decimal~~ ^{disabled} disabled candidates were to be taken out of the zone of consideration. He has, therefore, argued that since there was gross miscarriage of justice in the decision making process of the authorities, the prayer sought for by the Applicant needs to be allowed.

5. Per contra, Ld.Counsel appearing for the Respondents strongly opposed the prayer of the Applicant by stating that the selection was conducted in free and fair manner, there was no violation of rules and the selected candidates were selected on the basis of their total marks obtained both in written as well as viva-voce test. He has also stated that appointment orders were issued to the selected candidates after the approval of the competent authority. In order to strengthen the case of the Respondents that there was no flaw in the process of recruitment, the Advocates for the Respondents took us through the orders of this Tribunal rendered in O.A. 462/99 disposed of on 2.08.2001. By stating ~~show~~, he has prayed for dismissal of this Original Application.

6. After hearing various submissions of the parties (with the assistance of the Divisional Personnel Officer of Khurda Road of East Coast Railways, who was present in Court) we have gone through the concerned recruitment file bearing No. P/R/PH/Gr.C/96-97. From the record, we noticed

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that the blind candidates were given concession by way of exempting them from appearing the written examination. Therefore, On a focused question, as to whether any such relaxation was given to such hearing impaired candidates, so far as viva-voce test is concerned, the Divisional Personnel Officer, on perusal of the file, made a statement that although materials available in the file show that written test was relaxed in respect of 100% blind persons, no such relaxation (so far as viva-voce was concerned) was extended to deaf candidates. No where in the record, we could trace out that the viva-voce test was conducted in a signaling manner or the authorities conducted the viva-voce test are experts in taking the viva-voce test of such Orthopedically handicapped/deaf candidates. Therefore, there has not only been gross discrimination between the blind and deaf categories of candidates, but mis-carriage of justice appears to have been committed in course of recruitment process.

7. In the aforesaid circumstances, we find substantial force in the contention of the Ld. Counsel appearing for the Applicant and, in ordinary parlance, the entire selection would have been annulled so far as the selection of orthopedically handicapped/deaf candidates are concerned. But taking a lenient view in the matter, we remit the matter back to the General Manager of East Coast Railways at Bhubaneswar; who should consider the matter by taking out less deficiency (below 90^{decimal} ^{disables}) from out of the zone of consideration and redraw the merit list on the basis of the performance of the written test only and grant consequential benefits to the candidates out of the

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revised merit list and, while doing so, the General Manager should give reasonable opportunity to the candidates (who are likely to be affected by virtue of the fresh merit list) before taking away their employment and/or taking into consideration their length of service, the General Manager shall ^{remain} ~~free to adjust~~ the new entrant of the revised ^{list} ~~to be drawn in any other existing vacancy/by~~ creating supernumerary post for this purpose.

8. With the aforesaid observation and direction, this Original application is disposed of. No costs.

Mohanty
C.R.MOHAPATRA)
MEMBER(ADMN.)

Mo
(M.R.MOHANTY)
VICE-CHAIRMAN

KNM/PS