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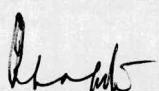
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 1426, 1511 and 1512 of 2003
Cuttack, this the 25th day of February, 2008

Shri Abhiram Jaisingh & Others ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

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


(C.R. MOHAPATRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application Nos. 1426, 1511 and 1512 of 2003
Cuttack, this the 05th day of February, 2008

C O R A M:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

1. Shri Abhiram Jaisingh,
Aged about 35 years,
S/o.Birohar Jainsingh,
At/Po. Kudiary, Via-Jatani,
Dist. Khurda.
2. Shri Sukant Mishra,
Aged about 38 years,
S/o.Late Laxman Mishra,
At-Dimir, Po-Kanas, Dist.Khurda.
3. Shri NirmalChandra Mishra,
Aged about 31 years,
S/o.Gopiniath Mishra,
At-Indipur, Po-Beroboi,
Dist. Puri. Applicants.

By legal practitioner: M/s. J.M.Patnaik, S.Misra,
A.P.Misra,P.K.Rout,
Advocates.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, At/Po.Chandrasekhpur, Bhubaneswar, Dist. Khurda.
2. The Chief Personnel Officer, At-Garden Reach, S.E. Railway, Kolkata.
3. The Chief Personnel Officer, East Coast Railway, At-Chandrasekhpur, Bhubaneswar, Dist. Khurda.



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4. The Divisional Railway Manager, East Coast Railway, At-Khurda Road, Po- Jatni, Dist. Khurda.
5. The Senior Divisional Personnel Officer, East Coast Railway, At-Khurda Road, Po. Jatani, Dist.Khurda.

... Respondents.

By legal practitioner: Mr. Ashok Mohanty, Sr. Counsel

And

Mr. T.Rath, Counsel

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O R D E R

MR.C.R.MOHAPATRA, MEMBER(A):

The case of the Applicants, in nut shell, is that there was a Notification dated 28.05.1996 by the Divisional Railway Manager, South Eastern Railway (Now East Coast Railway- hereinafter called as 'Railway') for engagement of '907' Casual Labourers for a period of 119 days or up-to 31.10.1996 whichever is earlier and retrenchment would be without any further notice. This engagement of Casual Labourers was for Track maintenance during Mansoon Patrolling. Requirement of the number of Casual Labourers was subsequently reduced to '812' by the Chief Personnel Officer of the Railway vide letter dated 21.06.1996 (Annexure-2). Thereafter, Applicants, along with others were noticed to appear at a test on 20.08.1996 (Annexure-3 series). On 10.10.1996, the Railway Authorities published a panel of only '609' candidates as against

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‘812’ sanctioned strength of casual labourers as communicated under Annexure-2. The contention of the Applicants is that the panel containing all successful candidates ought to have been published for ‘812’ casual labourers. But for the reasons best known to the Authorities only a part panel of ‘609’ candidates was published. Their contention is that they have made representation on 14.06.1999 to the DRM and subsequently on 11.08.2003 to the General Manager of the Railway for publication of withheld panel. But the same did not yield any result. Applicants got apprehensive due to Notification dated 05.11.1998 inviting applications for filling up of 787 of Gangman/Group ‘D’ posts in Railway on regular basis particularly when the earlier panel for the balance ‘203’ candidates had not been published and acted upon. Hence this Original Application filed U/s. 19 of the Administrative Tribunals Act, 1985 is for a direction to the Respondents to publish the panel of ‘203’ candidates which have not been done for last seven years and act upon the same within a stipulated period.

2. The factual position stated above is not in dispute. But the Respondents have objected the very maintainability of this Original Application on the ground of limitation. They have maintained that due to

the letter dated 31st October, 1996 (Annexure-4) of the Chief Personnel Officer, engagement of casual labourers beyond 31st October, 1996 was frozen. In the counter, the position regarding joining of '609' candidates as casual labourers, has been clarified. It is the case of the Respondents that while in the first spell '450' candidates were immediately engaged, subsequently, '159' candidates were allowed to join under special dispensation accorded by the General Manager, S.E. Railway as communicated by the Chief Personnel Officer vide letter dated 19.02.1998 (Annexure-R/2). It has been stated that this relaxation was given as one time measure, on the recommendation of the concerned Division Officer, for the reason that these candidates could not receive the intimation, in time, due to Postal strike. The letter dated 31st October, 1996 (Annexure-4) reads as under:

"The cut-off date for engagement of casual labour which was given up-to 31.10.1996 vide this office letter dated 16.5.1996 is hereby relaxed. The period of 119 days will be counted from the date of engagement which means the date on which a casual labour started work and not the date of issue of the engagement letter for all casual labourers who have joined up-to and on 31.10.1996.

Further engagement of casual labour beyond 31.10.1996 is hereby frozen. Those casual labourers who have been engaged up-to and on 31.10.1996 would be discharged on completion of 119 days from the date of engagement as defined above.



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The process of screening of candidates for casual labour which has already been begun should continue and be completed in all respects latest by 21.11.1996. However, no engagement order for any fresh casual labour may be issued until further orders from this office."

3. Heard Mr. Pattnaik, Learned Counsel appearing for the Applicants and Mr. T.Rath, Learned Counsel appearing for the Respondents-Railway and perused the materials placed on record.

4. During the course of argument, Learned Counsel for Applicants submitted that they have got authentic information from the Senior Divisional Personnel Officer, E. Co. Railway, Khurda Road (Annexure-A series dated 14.11.2006 at page 7) to the effect that the **second list of candidates was prepared and kept in sealed cover and could not be published due to the reasons that there were certain Court cases pending before this Tribunal.** Hence it was decided to publish provisional part panel of '611' candidates for their engagement during monsoon patrolling in the year 1996. Learned Counsel for the Applicants revealed that the Court cases pending before the Hon'ble High Court of Orissa have already been disposed of on 26.04.2006 so also the cases pending before this Tribunal. Hence the ground on which the part select list was not published is no longer existing. His contention is that had the Respondents-Railway published the panel of names of rest '203'

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candidates and had they been engaged along with those '609' candidates, their cases could have been taken up for regularization, along with those '609' candidates, as per the relevant Instructions/Rules of the Railways, against the posts, advertised under Annexure-8. But due to the wrong committed in the decision making process of the Respondents-Railways, the Applicants, for no fault of theirs, have been made to suffer.

5. Mr. T.Rath, Learned Counsel appearing for the Respondents-Railway submitted that it is a misconception to say that there was something wrong in the decision making process of the authorities. Rest of the names could not be published due to the order of the competent authority freezing the engagement as also the pendency of court cases before the Hon'ble High Court as also before this Hon'ble Tribunal and, that as casual engagement is no more prevailing in the Railway, this OA needs to be dismissed.

6. In the above conspectus of facts and circumstances, two issues need to be settled viz; (a) whether the part select list be published at this stage; (b) whether limitation would stand in the way of dispensation of justice. It would appear that the requirement which was to be met in 1996 for a specific purpose of monsoon patrolling for track

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maintenance has ceased to exist. At the same time, the fact that there was a conscious decision to give relaxation and offer appointment even in 1998 out of the published panel even after two years cannot be brushed aside. As a matter of fact 159 persons were allowed to join by a special dispensation given by the General Manager of S.E. Railway under Annexure-R/2. Subsequently a few persons have also been given appointment out of the same old published panel as late as 02.11.2005 and 28.12.2005 albeit, in compliance of the Tribunal's orders which were upheld by the Hon'ble High Court of Orissa. Reportedly, those persons appointed on casual basis have eventually been regularized and not retrenched as indicated in the advertisement of 1996.

It is an undisputed fact that there was a panel prepared for '812' which was not published in toto. Available records as also the submissions made by the Respondents do not show that the sanctioned strength of '812' got reduced to '609'. The background to the freezing of the posts vide Annexure-4 is also not forthcoming. Therefore, the only plausible inference that can be drawn from the submissions made by the Learned Counsel for the Applicant during hearing that the panel was prepared but it was kept in sealed cover due to pendency of Court cases.

The only ground that has been placed on record by the Respondents is that the engagement of casual labour beyond 31st October, 1996 was frozen because of the communication received under Annexure-4. This communication indicates that the process of screening of the candidates for casual labour which has already begun should continue and be completed in all respects latest by 21.11.1996. However, no engagement order for any fresh casual labour may be issued until further orders from the office of the DRM. This implies that the engagement was not frozen on 31st October, 1996 as subsequent events show that special relaxation was given in 1998 for engagement of about 159 casual labourers. Hence the argument that requirement was reduced does not sound convincing.

It is absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. Discretion cannot be used in-discriminatorily. Any decision of the administrative authority dehors the above principles is liable to be set aside.

By relying on the decisions of the Hon'ble Apex Court, Learned Counsel for the Respondents has submitted that this OA is liable to be dismissed on the law of limitation and even if it is held that this OA

is maintainable, the Applicants can have hardly any claim for engagement as the life of the panel has expired in the meantime.

In this connection, it is noted that according to the Respondents the part of the select list was withheld due to pendency of the court cases before the Hon'ble High Court and before this Tribunal. Representations of the applicants have not been disposed of so far even after the finalization of the Court cases on 26.4.2006. It appears from the record that there was no such direction to keep part of the select list in sealed cover. This was purely an administrative decision putting the applicants in a disadvantageous position. I have gone through the decisions relied on by the Learned Counsel for the Respondents and the facts of those cases are different from the present case. These have no application for deciding this case on merit. Rather law of limitation is based on public policy. As observed above, since non-publication of part panel was an administrative decision and thereby putting the applicant to suffer limitless harassment, hyper technicality law of limitation as raised by Respondents should not stand on the way of dispensation of justice otherwise an action which is bad in law from beginning get the life for all through. Similarly, in regard to expiry of the period of list, it is noted that

since the panel has not seen the light of the day, question of expiry of the validity of the panel does not arise. Hence both the pleas of the Respondents have no substance.

7. Taking a holistic view of the matter, it is concluded that the ground on which the part select list was not published is no longer a constraint for the administration. Similar dispensation/relaxation which was made in 1998 can be repeated even at this point of time by publishing the part select list and taking further action thereon in respect of the Applicants, if they are otherwise suitable and medically fit for the job. Ordered accordingly. These exercises shall be completed within a period of six months from the date of receipt of a copy of this order.

8. In the result, these OAs stand disposed of with the observations and directions made above. There shall be no order as to costs.


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