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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO. 66 OF 2004

Cuttack, this the 26th day of July, 2005

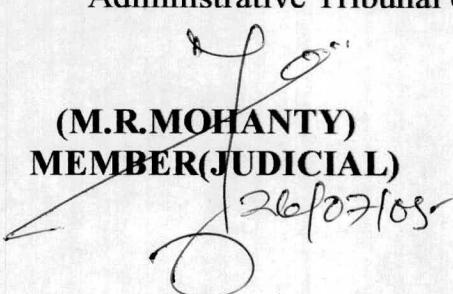
SWAPNENDU DASH Applicant(s)

-VERSUS-

Union of India & Ors. 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 ? *yes*


(M.R.MOHANTY)
MEMBER(JUDICIAL)
26/07/05


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

ORIGINAL APPLICATION NO.66 OF 2004

Cuttack this the 26th day of July, 2005

CORAM:

**THE HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

...

Sri Swapnendu Dash aged about 30 years, Son of Sri Purna Chandra Dash working for gains as Electrical Signal Maintainer under Senior Divisional Signal & Telecom Engineer, E.Co.Rly., Khurda Road, permanent resident of Kalikadevi Sahi, Puri (near Rani Math) PIN – 752 001

... Applicant

By the Advocates

Mr. Achintya Das

-VERSUS-

1. Union of India service through General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN 751023
2. Member Staff, Railway Board, Rail Bhavan, New Delhi, PIN 110 001
3. Chief Personnel Officer, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN 751 023

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4. Divisional Railway Manager, E.Co.Railway, Khurda
Road, PO: Jatni, Dist-Khurda, PIN 72 050

Respondents

By the Advocates

Mr.C.R.Mishra,ASC

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN:

Shri Swapnendu Das (applicant) has filed this Original Application praying for quashing the order dated 21.6.2002(Annexure-A/4) passed by the Divisional Railway Manager (Respondent No.4) appointing him as Apprentices ESM-III in the scale of Rs.3050-4590/- against the direct recruitment quota. He has also assailed the order dated 1.8.2002 passed by the Sr. Divisional Personnel Officer, Khurda vide Annexure-5, appointing him as Apprentice ESM-III with stipend and usual allowance admissible under Estt. Srl. No.125/98 and also to direct the Respondents to consider his case for appointment "in the same grade post in alternative category" as per the Railway Board's order dated 20.8.1999 (Annexure-8).

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2. The case of the applicant in a nut shell is that by order dated 20.11.2000, the Respondent-Railways had offered him appointment as Trainee Assistant Station Master in the scale of Rs.4500-7000/- subject to fitness in the medical examination by the authorized medical officer in the Railways. The applicant, by his letter dated 11.12.2000 offered himself for medical examination by the Railways Medical Officer. Thereafter, he was informed by the Assistant Personnel Officer, Khurda Road vide his letter dated 14.5.2002 to undergo training in Zonal Training Centre, Sini (Annexure-3). However, on 21.06.02, the Respondents informed him that he was declared medically unfit for the ~~post~~ of Assistant Station Manager (ASM in short) and hence he was ~~appointed~~ as Apprentice Electrical Signal Man (ESM), Gr.III in the scale of Rs.3050-4590/. The applicant accepted the appointment and thereafter, on 27.12.2002, submitted a representation to the General Manager, S.E. Railways for posting to a post equivalent to the post of A.S.M. for which he was initially selected/recommended by the Railway Recruitment Board. But his application was rejected.

3. The Respondents have filed a detailed counter. They have not disputed the facts of the case, ~~are not disputed~~. It is the case of the Respondents that as per the policy of the Railways, the candidates who were found unfit in the medical examination for the post of A.S.M. were offered

alternative jobs in the Artisan category in Signal and Telecom Department, in terms of the guidelines issued by the Railways under Railway Board letter No.E(NG) 62/RC-1/95 dated 26.10.1962, copy of which was circulated under RBE 211/99. In terms of the said guidelines, the candidates who failed in the prescribed medical examination after empanelment by Railway Recruitment Board, they could be given appointment in alternative category subject to fulfillment of the prescribed medical standard, educational requirement and other eligibility criteria for the same grade post in alternative category. Such consideration shall be on the same lines as hitherto done for technical category. The decision of the General Manager regarding availability of identification of vacancy in alternative grade including other relevant factors required to be considered shall be final. Accordingly, the Respondents had prepared a list of 15 candidates, who were offered appointment as ESM, Gr. III, as they possessed due educational qualifications and declared medically fit with the approval of General Manager. The plea of the Respondents is that the applicant having accepted the offer of appointment without demur it is not now open to him to assail the same.

4. Heard the learned counsel of both the parties and perused the materials placed before us.

5. The case of the applicant is that he having been selected for the post of A.S.M. (Rs.4500-7000/-) to which post he could not be appointed due to lack of medical fitness, alternative appointment should have been given to him in the equivalent grade whereas he has been appointed to a lower grade. The applicant has taken this position in his representation submitted to the General Manager vide Annexure-6, but the Respondents have not given any direct rebuttal to his contention. The learned counsel for the applicant has repeatedly drawn our attention to the Railway Board's letter No.99/E(RBE)25/12 dated 20.8.1999, wherein it has been stated that appointment in alternative category is permissible subject to fulfillment of the following conditions:

- a) Prescribed medical standard
- b) Educational requirement; and
- c) other eligibility criteria for the same grade post in alternative category

and as the grade the ESM Gr. III is lower than that of ASM, the learned counsel pleaded that the Respondents should review the matter.

6. In opposing this view point, the learned counsel for the Railways drew our notice to Railway Board's letter dated 7.8.2000(RBE NO.150/00), by virtue of which an alternative appointment was extended to the candidates of technical categories. In that letter it was clarified that General Managers' power of offering alternative appointment will cover Group D

categories also, subject to the restriction that the General Managers may offer at their discretion alternative appointment in another equivalent category for which the medically unfit candidate is fit. He further submitted that whereas in respect of Group D category, the General Managers have been given the power to give appointment "in another equivalent category", for Group - C employees, no such specific rule has been prescribed.

7. Having heard the rival contentions, we have carefully gone through the Railway Board's letters as well as the notes made in the relevant file of the Personnel Department of S.E. Railways, in which the decision of the General Manager was obtained. In the relevant file, it was proposed by the Chief Personnel Officer for giving alternative appointment to the medically unfit candidates in A.S.M. category. From a perusal of Railway Board's letter No.19-E(RBE)/25/12 dated 7.8.2000, relying on which the learned counsel for the applicant persuaded us to believe that the alternative appointment has to be made in another equivalent category for which the medically failed candidate is fit, we find that stipulation has been made therein only to cover Group D categories. The intention of the rule maker is more conspicuous from a perusal of Para 2 of the said letter, wherein it is reiterated that these instructions will apply to all candidates both from reserved as well as non reserved communities and for all

categories of recruitment to Group C and D posts, subject to the restrictions for Group D categories mentioned in Para 1. In respect of Group D categories, it has been mentioned in Para 1 that "subject to a restriction that the General Managers may offer, at their discretion, alternative appointment in another equivalent category for which the medically failed candidate is fit, only if the alternative category being offered is one for which Board's approval has been obtained already for filling up vacancies". In other words, the alternative appointment in another equivalent category is prescribed only for Group D categories and not for Group C. We are unable to persuade ourselves to take any other meaning of the provisions made in Para 1 of the Railway Board's letter referred to above. We are further embolden to take this view because of the fact that offering alternative appointment to medically failed candidate is derived from the concession provided in the scheme which was made available only to technical category candidates by virtue of Railway Board's letter No.E(NG)/62/RC-195 dated 26.10.1962. In that scheme, if a candidate selected for technical category had failed in the prescribed medical examination, he was to be considered "for an alternative technical category". The said scheme benefit was extended to the non technical category by their letter dated 7.8.2000 obviously in extending the scheme benefit of 1962 to the non technical categories, the Board could not

have given them more than that they had given to the technical categories and the special provision was made for Category D subject to a restriction "because the rule makers did not want a category D candidate to be offered a Group C category appointment". In the conspectus of the case, we hold that the Respondents have not committed any error in application of the scheme for the purpose of offering alternative appointment to the failed medical candidates, like the applicant herein and, therefore, the relief sought by the applicant in this O.A. being devoid of merit, the same is dismissed.

No costs.

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26/07/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)

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(B.N.SOM)
VICE-CHAIRMAN