

15
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOs. 636 OF 2004

Cuttack this the 11th day of September, 2008

K.Appala Swamy
Vrs.

...
.....

Applicant

Union of India and others


.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the Principal Bench of CAT or not?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(K.THANKAPPAN)
JUDICIAL MEMBER

16

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NOS. 636 OF 2004

Cuttack this the 11th day of September, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

K.Appala Swamy aged about 56 years, Son of late K.Rajulu, working as Bridge Erector Gr.I under Sr.Divisional Engineer (Central), E.Co.Railway, Khurda Road at present residing at Quarter No.419/C, Retang Colony, PO-Jatni, Dist-Khurda, PIN - 752 050

...Applicant

By the Advocates: Mr.Achintya Das

-VERSUS-

1. Union of India service through General Manager, E.Co. Railway, Chandrasekharpur, Bhubaneswar
2. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050
3. Additional Divisional Railway Manager, E.Co.Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050
4. Sr.Divisional Engineer (Central), E.Co.Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-7520

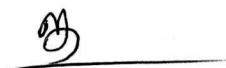
...Respondents

By the Advocates: Mr.P.C.Panda

ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant, while working as Bridge Erector, Gr.II, appeared at the trade test for the post of Bridge Erector, Gr.I, conducted on 20.5.1997. According to him, he had every belief that he succeeded in the trade test, but as the result of the said test was not published, the applicant could not know about his performance and in the event of his coming out successful, he could have been promoted Bridge Erector, Gr.I, with effect



from 20.5.1997. The background leading to the non-publication of the result of the trade test is that three Bridge Erectors, Gr.II, who were not intimated to appear at the said trade test, alleging the present applicant their junior, had approached this Tribunal by filing O.A.No.283/97. As per interim order dated 12.5.1997 of this Tribunal, the three applicants therein were permitted to appear at the trade test along with the present applicant. It is the case of the applicant that despite the interim order, the three applicants in O.A.283/97 did not appear at the trade test. However, the Tribunal modified the earlier interim order as per order dated 26.5.1997 with direction to official respondents not to publish the result of the trade test held on 20.5.1997 for the post of Bridge Erector, Gr.I. It was further directed that in case the result of the trade test had already been published, no promotion order should be issued to the selected candidate. While the matter stood thus, the Respondent-Department issued a Memorandum dated 15.10.1999 for conducting a trade test for promotion to the post of Bridge Erector, Gr.I and accordingly, the applicant herein as well as the applicants of O.A.No.283/97 and six others were advised to appear at the trade test. Although the applicant made representation for publication of the result of the trade test conducted on 20.5.1997, the respondents having not responded, the applicant appeared at the 2nd trade test. It is the case of the applicant that during pendency of O.A.No.283/97, he was promoted Bridge Erector, Gr.I along with the applicants in O.A.283/97 and ultimately, O.A.No.283/97 was dismissed



by this Tribunal as per order dated 22.4.2003. After dismissal of the O.A.No.283/97, the applicant submitted representation to the official respondents to ante-date his promotion to 20.5.1997, which having been rejected as per Annexure-A/13 order, the applicant submitted an appeal dated 27.4.2004 (Annexure-A/14). Aggrieved by the attitude of the official respondents, the applicant has filed this O.A. praying to direct the Respondents to publish the result of the trade test conducted on 20.5.1997 and if the applicant is declared passed he should be promoted to the post of Bridge Erector, Gr.I from 20.5.1997, with all consequential benefits.

2. This Tribunal heard the learned counsel on either side and perused the documents produced in the O.A.

3. The learned counsel for the applicant has taken mainly two contentions, before this Tribunal. Firstly, the learned counsel submitted that since the applicant had already appeared at the trade test conducted by the Department on 20.5.1997 and expected to come out successful in that trade test, he is entitled to the result thereof and in case of his coming out successful, he should be promoted with effect from 20.5.1997. It was only because of the filing of O.A.No.283/97 and the interim order issued by this Tribunal staying the publication of the result of the test on 20.5.1997, the result of the test was not published by the Respondents and thereby, the applicant actually lost his chance of promotion. Secondly, the counsel submitted that even if it is a belated matter, the delay is not



attributable to him and since the Department was contesting O.A.No.283/97, duty is cast on them to ensure that the stay order issued by this Tribunal is vacated and the result of the test of the applicant published. The advice tendered by the Respondents to appear at the subsequent trade test and the promotion given to the applicant ipso facto cannot make him disentitle to know the result of the earlier trade test and the consequential benefits in case of his succeeding the said test. The rejection of his representation, according to the learned counsel, on the ground that the result of the test could not be published due to interim order issued by this Tribunal and/or pendency of the O.A. No.283/97 is not a legal answer.

4. To the above contention, the learned counsel appearing for the Respondents, contended that since the applicant was the 7th respondent in O.A.No.283/97, it was his duty to see that the stay order issued by this Tribunal is vacated. Since the applicant did not take any step to contest O.A.No.283/97, and he had voluntarily appeared at the 2nd trade test conducted by the Department, according to learned counsel for the Respondents, the applicant is only entitled for the result of the 2nd trade test conducted by the Department. The counsel further submitted that at this belated state the Tribunal should not entertain and consider the matter.

4A. From the above, the question that emerges for consideration in this O.A. is whether the points raised by the Respondents are correct or not.



5. Admittedly, the applicant, being the only candidate, appeared at the trade test conducted on 20.5.1997 as per Annexure-A/1. If it be considered that the interim stay and/or pendency of O.A.No.283/97 before this Tribunal is not a good reason for publishing result of that test conducted by the Department in which the applicant had only appeared, there is a legal point on the contentions raised by the learned counsel for the applicant that once a candidate appeared at the test conducted by the Department he is entitled to know the result or the outcome of the test. At the same time, the facts of the case would show that while O.A.No.283/97 was pending the applicant was advised to appear at the 2nd trade test and he came successful in that test, the question that he was promoted based on the result of the 2nd test is not a reason to reject the prayer of the applicant to publish the result of the 1st trade test conducted on 20.5.1997. In this context, the stand taken by the Respondents in their counter that being 7th respondent in O.A.No.283/97, it was the duty of the applicant to take step to vacate the interim stay order issued by this Tribunal is unfounded. Admittedly, the applicants in the O.A.283/97 and the 7th Respondent (the present applicant herein) became successful in the 2nd trade test. That by itself should not be considered as a reason not to publish the result of the test undertaken by the applicant on 20.5.1997. In the above circumstances, the delay that is caused for approaching this Tribunal is condoned and the applicant is entitled for the relief which he has sought in this O.A.

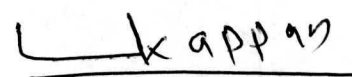
21
6

6. Accordingly, Respondent Nos. 2 to 5 are directed to publish the result of the trade test conducted on 20.5.1997 and in case the applicant is found successful in that trade test, his promotion now ordered as per Annexure-A/10 dated 17.2.2000 shall be altered or ante-dated to 20.5.1997, making him entitle to all financial benefits on that score.

Ordered accordingly.

No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER