

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.1093 of 2004
Cuttack, this the 26th day of June, 2007.

Tapan Kumar Muduli ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

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

(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.1093 of 2004
Cuttack, this the 26th day of June, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Shri Tapan Kumar Muduli, aged about 28 years, son of Shri Gopal Muduli, permanent resident of Odasamal, PO-Balildokan, Via-Konark, Dist. Puri-752d 111.

..... Applicant.

By legal practitioner: M/s. B.S.Tripathy, M.K.Rath, J.Pati,
Advocates..

-Versus-

1. The Chairman, Railway Recruitment Board, D-79/80, Rail Vihar, BDA Rental Colony, At/Po-Chandrasekharpur, Bhubaneswar (Orissa)-751 023.
2. The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43.
3. The Chief Personnel Officer, East Coast Railway, Khurda Road, Bhubaneswar. Dist. Khurda.

...Respondents.

By legal practitioner: Mr.Ashok Mohanty, Sr. Counsel
and Mr. T.Rath, Advocate.

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ORDER

MR.B.B.MISHRA, MEMBER(A):

MR.B.B.MISHRA, MEMBER(A):

The grievance of the Applicant is that in order to fill-up different categories of vacancies including 14 vacancies of Traffic Apprentice available under the East Coast Railways, Chandrasekharpur, Bhubaneswar, applications were invited from the general public under Annexure-2 by the Respondents. Out of 14 vacancies of Traffic Apprentice, eight posts advertised to be filled up by SC-2, ST-1, OBC-3 and Ex-Servicemen-2. As against the three vacancies of Traffic Apprentice, meant to be filled up by OBC community, Applicant having applied and appeared in the tests, was selected to be appointed against one of the vacancies of Traffic Apprentice. His grievance is that though he was selected against one of the vacancies of OBC category of Traffic Apprentice, under the East Coast Railways, without giving any opportunity, his candidature was placed at the disposal of South Eastern Railways. Therefore, by filing this Original Application under section 19 of the Administrative Tribunals Act, 1985 he has prayed to direct the Respondents to consider his case for appointment as against one of the OBC category of vacancies of Traffic Apprentice under East Coast Railway.

2. In the counter, the Respondents have admitted that the Applicant belongs to OBC community and was selected through the process of recruitment to the post of Traffic Apprentice. But the reason of allotting him to the South Eastern Railway is that initially the administrative office of the East Coast Railways placed requisition for filling up of 14 posts of Traffic Apprentice by different categories of candidates. But after the advertisement under Annexure-A/2 was issued, the Chief Personnel Officer of East Coast Railways, Bhubaneswar, placed an additional indent of 8 vacancies out of which one was reserved for OBC, two was for SC and five posts were for UR candidates. Therefore, for the East Coast Railways, the RRB, Bhubaneswar was required to select candidates against 22 (14 + 8) vacancies of Traffic Apprentice of the following categories :

UR-12,
SC-4,
ST-1
OBC-5

(including the vacancies of Ex-Serviceman)

In addition to the above, the Chief Personnel Officer of South Eastern Railways placed an additional indent of 14 vacancies (8 for UR, 2 for SC and 4 for OBC) of Traffic Apprentice. As a result of the above, the combined vacancies of E. Co. Railways and S.E. Railways becomes 36 (UR-20, SC-6, ST-1, OBC-9 including 5 vacancies of Ex-Servicemen). Their further case is that as per sub rule (1) of Rule 315 of RRB Manual,

the recruitment comprises two written examinations and no interview and as per sub rule (2) of Rule 315 of the aforesaid manual all eligible candidates are to be called for a preliminary examination and based on the result of such examination, candidates ten times the number of vacancies shall be called upon to appear at the final examination and candidates are selected based upon their merit position of the final examination. According to Respondents, based on the performance in the final examination, a merit list containing 36 names including the name of Applicant was drawn and all of them were asked to be present for verification of their certificates. Since the selection was made for the combined vacancies both for E.Co. Railways and S. E. Railways, all the candidates were asked to exercise their preference of posting/placement. They have stated that there were 20 UR vacancies both for E Co. Railways as also S.E. Railways combined together out of which 4 vacancies were meant for Ex-Servicemen belonging to UR community. As such, 16 candidates who were at the top of the merit list were selected for empanelment against UR vacancies of which 12 were from UR community and 4 were from OBC community. The merit position of applicant was at Sl. No. 16 from among the 16 candidates. Since the Applicant was selected on merit under UR category, he was appointed against one of the UR vacancies though he is an OBC candidate and this was done as per sub rule (2) of Rule 316 of RRB Manual (Annexure-



R/4). They have therefore, stated that since the placement was made on the basis of the option exercised by the Applicant and he has joined the post, he is estopped under law to challenge it now.

3. Heard Mr. M.K.Rath, Learned Counsel for the Applicant and Mr. T. Rath Learned Counsel for the Respondents-Railways.

4. Learned Counsel for the Applicant has submitted that there was no power available with the RRB, Bhubaneswar to combine the vacancies available under the E. Co. Railways and S.E Railways and select the candidates according to its sweet will. The applicant has applied to be selected and posted under the E. Co. Railways as a OBC category candidate. Therefore, the RRB/Respondents ought not to have taken the decision unilaterally and placed his candidate at the disposal of the S.E. Railways. His submission is that OBC candidates who were selected and posted under E. Co. Railways, had secured less mark than the applicant. He has argued that the RRB should not have taken the subsequent vacancies of S.E. Railways and combined it to the vacancies of E. Co. Railways without inviting fresh applications. By virtue of such action, the chances of applicant to be posted under the E. Co. Railways as an OBC candidate was blocked and for the mistake committed by the RRB the Applicant should not be made to suffer. His contention is that the Applicant submitted his option giving preference of posting under

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15 -5-

compulsion as directed by the Respondents. Law as on date is that document obtained by coercion cannot have any legal force. Therefore, on the same analogy, the option exercised by the Applicant should not stand on his way of getting justice. He has argued that even if it is accepted that the option exercised by him is binding then also the same cannot act adversely against relief claimed in this OA; because the applicant was illegally denied to have got his legitimate right of posting under the E.CO. Railway as an OBC candidate. Therefore, he has prayed for direction to the Respondents to post him under the E.CO. Railways with all consequential service benefits.

5. On the other hand, Learned Counsel for the Respondents has submitted that the Respondents have acted not beyond what has been given to understand to candidates through advertisement under Annexure-A/2. It was made known to the candidates that after selection they can be allotted either to E. Co. Railways or S.E. Railways. They cannot claim as a matter of right to be posted in any particular Railways. It has been argued by him that after being selected, he has joined the post under the S.E. Railways. Therefore, after joining, he has no right to challenge the same stating that his posting to S.E. Railways was in any way illegal. While refuting the contention of the Learned Counsel for the Applicant that option was obtained on coercion, it has been argued by him that he has furnished the option pursuant to clause 7 (iii) of the advertisement. It

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cannot be said that he has exercised his option under coercion. Once he has exercised his option and it was not possible to adjust him in E. Co. Railways, he was rightly allotted to S.E. Railways. Next contention advanced by the Learned Counsel for the Respondents is that if the Applicant was aggrieved for his allotment to S.E. Railways, instead of rushing to this Tribunal, he should have taken up the matter with the appropriate authority. He has also pointed out that in case the prayer of applicant is accepted and the applicant is ordered to be brought back to E. Co. Railways, necessarily one of the selected OBC candidates has to lose his job. But the Applicant has filed this OA without impleading any of the selected OBC candidates who have been allotted to E.CO. Railways as parties to this case. By taking us through the Rules, it has been argued by him that the action of the Respondents was within the frame work of the Rules and they did nothing beyond the Rules. By stating so, he has prayed for dismissal of this OA.

6. Going by the arguments advanced by the parties and materials placed on record, we find no irregularity in the matter of posting of the applicant to S.E. Railways; because even if the vacancies are not clubbed, then also the applicant could have no claim to insist on his posting under E.C. Railways; because it was specifically made known to the candidates through advertisement at Clause 7(iii) that selected candidates are likely to be posted anywhere on the concerned Zonal



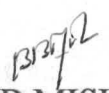
17 -7-

Railways (i.e. ECOR or SER) after successful completion of training wherever prescribed. Applicant had given in writing that he should be appointed either in E. Co. Railways or S.E. Railways. Now after joining there, he cannot reprobate and retreat from the option exercised by him. He has also not pleaded as to how he has been prejudiced by his posting to S.E.Railways.

7. Merit apart, we also find that the applicant has approached this Tribunal without trying to redress his grievance departmentally. Also he has not made the other OBC candidates who were selected and posted under E.Co. Railways as parties to this lis. If it is held that the allotment of applicant to S.E. Railways was illegal and the applicant should be posted under E.Co. Railway, then one of the selected OBC candidates will have to be dislodged from his post which cannot be done without giving him any opportunity.

8. In any view of the matter, we find no justifiable reason to grant any of the relief(s) claimed by the Applicant in this Original Application. Hence this OA stands dismissed by leaving the parties to ^ebar their own costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)