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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 1120 of 2004
Cuttack, this the 22nd day of September, 2008

K.Prabhakar Rao Applicant
Versus
Union of India & Ors. 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?

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A.No.1120 of 2004

Cuttack, this the 22nd day of September, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Mr. K. Prabhakar Rao, 41 years, Son of K.Narayan Rao a permanent resident of 4 D Srbeder Residency Allipuram, Visakhapatnam-4 at present serving as Asst. Divisional Engineer (General), Waltier Division, East Coast Railway, Vishakhapatnam.

.....Applicant

Legal practitioner :M/s. A.K.Mishra, J.Sengupta, D.K.Panda, G.Sinha, A.Mishra, Counsel, Counsel.

- Versus -

1. Union of India represented through Chairman, Ministry of Railway, Railway Board, Rail Bhaban, New Delhi.
2. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar.
3. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar.

....Respondents

Legal Practitioner :Mr. Ashok Mohanty, Sr. Counsel.

O R D E R

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

The case in nutshell is that the Applicant having been empanelled through Limited Departmental Competitive Examination conducted by the Respondents for filling up of 25% vacancies of AEN (Group B)) in Civil Engineering Department was promoted and posted as AE/Drawing/GRC vide order under Annexure-A/8 dated 20.06.1997. While continuing as such, he received show cause notice under Annexure-10 dated 02.09.2004 calling upon him to show cause as to why his promotion to the post of AEN (Gr.B) should not be cancelled and as to why

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he should not be reverted to his substantive post of Group C. In response to which the Applicant furnished his reply dated 23.09.2004 and apprehending coercive action, he has approached this Tribunal in the present Original Application seeking the following relief(s):

"Under the facts and circumstances it is humbly prayed that the Hon'ble Court may be pleased to quash the letter as issued by Opposite Parties in Annexure-A/10 dated 02.09.2004 and further to direct the Opposite Parties to allow the Petitioner in the post of Assistant Engineer, Group B in which post he is continuing on being duly selected and appointed by the Opposite Parties."

2. The matter was listed on 25.11.2004 when prima facie case having been found in favour of the Applicant, this Tribunal while ordering notice to the Respondents, as an ad interim measure, directed the Respondents not to revert him to Group C post without leave of this Tribunal. The stay order date 4d 25.11.2004 has been extended from time to time and is still in force.

3. The stand of the Respondents is that as the Applicant did not satisfy/fulfill the pre-requisite condition of being declared medically fit to hold the Group B post, before being reverted to his substantive post of Group C, he was issued with the show cause notice under Annexure-A/10 dated 2nd September, 2004 in compliance with the principles of natural justice. Accordingly, it has been averred by Respondents that there having no flaw in issuing the show-cause notice giving him an opportunity to the Applicant to have his say, interference in the matter, at this stage is unwarranted. The reasons of issuing such show cause notice as adduced by the Respondents in their counter are that the LDCE consists of qualifying test (Written), Main examination (written) and viva-voce. Candidates qualified in both the written examination must satisfy that they are up to medical standard as provided in the Rules, and the same is a pre-condition before being asked to face the Viva-voce test. However, in the instant case before being examined and obtaining such

certificate from the appropriate medical authority, the qualified candidates were asked to face the viva-voce test. On the basis of the result secured by the candidates, 13 (UR) candidates including the present applicant were recommended by the Committee for empanelment for being promoted to the post of Group B. The recommendation of the committee was duly approved by the GM, S.E. Railway on 18.07.1994 after which panel was published under Annexure-A/4 dated 21ST July, 1994 with condition that appointment will be made to Gr. B service according to availability of vacancies and subject to passing requisite medical examination as per extant rules. Subject to finding fit by the medical authority, posting orders were issued to all the 13 candidates promoting them to Gr.B posts. But on medical examination the Applicant was declared unfit for promotion to the post of AEN as intimated by the Chief Medical Superintendent WAT in its letter dated 29.06.1994. In view of the above, promotion and posting order issued, so far as Applicant is concerned, was not given effect to. However, on the direction of the Railway Board, the case of the Applicant was re-examined by constituting fresh Medical Board. Accordingly, the Medical Board re-examined the applicant on 01.05.1997 and declared him permanently unfit for Group B post which are connected with Train working or use of trolley on open line due to defective colour perception but declared the applicant fit for the rest of the posts of Group B like Survey or Planning or any other desk work not connected with train working or use of trolley or work in open line. Thereafter, on the approval of the GM, order under Annexure-A/8 dated 20.06.1997 was issued posting the Applicant as AEN/Drawing/GRC. It has been averred that many such other cases cropped up quoting the case of the Applicant as a precedent and Shri P.B. Mohapatra, Chief Estimator is one such similarly placed person. While dealing with the case of Shri P.B. Mohapatra, Chief Estimator, it was pointed out by the Railway Board under Annexure-R/3 that the promotion accorded

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to the Applicant was not in conformity with the Railway Rules. Thereafter under Annexure-R/4 the Railway Board while refusing to grant post-facto approval for ad-hoc promotion of applicant to Gr. B directed necessary action to be taken immediately for canceling the ad-hoc promotion of the Applicant after serving show cause notice to him. Accordingly the impugned notice under Annexure-A/10 dated 02.09.2004 was issued to the Applicant.

Further stand of the Respondents that the very promotion of the applicant was not in accordance with the provisions of IREM Vol.(I) 1989 Edition at para 206.2 and the instructions issued by Railway Board in letter No. E (GP)80/2/8 dated 31.10.1991 and as per Railway Board Letter No. 81-E (SCT) 15/26 dated 23.03.1981 since the post in question comes under 'safety category', the Applicant is not entitled to get the benefit of medical relaxed standard save and except provided in the Disability Act, 1985. Further it has been averred that as per provision 532 vision test is mandatory requirement be it medical, Civil, Electrical and S&T Engg. Traffic Transportation and Commercial Departments.

4. It has been argued by Learned Counsel for the Applicant that the notice under Annexure-A/10 is not sustainable in the judicial scrutiny for the same having been issued on the dictation of the higher authority that too on the pretext that the Applicant has been continuing on ad-hoc basis. The promotion of the Applicant was by way of positive act of selection and after he was found medically fit for the other nature of work, the applicant was given promotion by the competent authority on regular basis. In case the promotion of applicant is cancelled he has to face reversion. Reversion is one of the major punishments which cannot be imposed without following due procedure of rules. He has argued that it is a completely ^a myth to state that the promotion of the Applicant was not in accordance with Rules; because the promotion of applicant was effected only after he was declared fit by the

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Medical Board and on the basis of the recommendation of the Medical Board and its acceptance by the competent authority the applicant was posted as AEN, Drawing/GRC the work of which post is not connected with Train working or use of trolley on open line. It was further argued by Learned Counsel for the Applicant that the post to which the Applicant was promoted and posted is very much coming within the purview of Disability Act, 1985. By drawing our attention to the provisions of 304(1) and 304(2) of the Indian Railway Establishment Code it has been argued by Learned Counsel for the Applicant that for visual disability, Applicant cannot be reduced in rank. In view of the above, learned Counsel for the Applicant fervently prays for quashing of the impugned notice under Annexure-A/10.

5. Besides reiterating the stand taken in the counter, Learned Counsel for the Respondents has vehemently opposed the prayer of the Applicant by stating that medical fitness is a precondition for appearing at the viva-voce test. However, the applicant was allowed to face the viva voce pending production of such certificate before being promoted, if at all he is selected. As the applicant was found to have visual disability, his retention in promotional post would tantamount to perpetuating the wrong at the cost of exchequer. As such, there is nothing wrong in issuing the show cause notice to the Applicant.

6. After giving in-depth consideration to the arguments advanced by the parties, perused the materials vis-à-vis the Rules relied on/placed on record.

7. It is not in dispute that on being qualified by the positive act of selection, applicant along with others were empanelled under Annexure-A/4 for promotion to Gr. B post in Railway. Also it is not in dispute that the Applicant was found medically fit for rest of Group B posts like Survey or Planning or any other desk work not connected with Train working or use of trolley or work in open line. According to Respondents, show cause notice under Annexure-A/10 was the out

come of the letter of the Railway Board under Annexure-A/4 dated 07.06.2004 in which Railway Board while declining to grant post-facto approval to the ad-hoc promotion of the Applicant, directed cancellation of the order of ad-hoc promotion of applicant after serving a show cause notice on him. Annexure-A/1 dated 07.12.1992 is the notification calling upon the willingness of the employees for appearing at the examination for formation of panel for promotion to AEN (Group B). Annexure-A/4 dated 21st July, 1994 is the panel containing the names of the qualified candidates for promotion and Annexure-A/8 dated 20.06.1997 is the promotion/posting order of the Applicant. In none of the orders it is disclosed that the said promotion was ad-hoc or on officiating basis. It has not been brought to our notice by the Respondents that others were also given such ad-hoc promotion and in their cases the approval was sought for and accorded by the Railway Board.

8. It is the contention of the Respondents that the post of AEN Group B essentially was covered under para 531 (a) of the IRMM 1981 Edition as AENs are connected with the train working and they have to frequently use trolleys on the open line and therefore, the decision of the medical board that the applicant was declared fit in terms of para 531 (b) of the IRMM was not tenable at all. In this connection, 531 of IRMM, 1981 is reproduced below:

“ Classification of gazetted posts for the purpose –For the purpose of examining the visual acuity of the Railway employees promoted from non-gazetted to gazetted posts, the gazetted posts should be divided into two categories a follows:-

- (a) posts connected with train working or use of trolley on open line; and
- (b) the rest of the posts”

9. Respondents contend that the promotion of the Applicant was not in accordance with Rule 206.2 of IREM Vol.(I), 1989. For clarity the aforesaid Rule 206.2 of IREM Vol. (I) 1989 quoted here-in-below:

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"Medical fitness of employees selected for promotion to Group 'B'-Employees selected for promotion to Group B service should be fit in all respects, including physical fitness, for the duties assigned to the particular category of posts to which the promotion is made. The Group C employees qualifying in the selections for promotion to Group B posts but not passing the prescribed medical standard should not be promoted to Group B, even on ad-hoc basis.

10. As observed above, the applicant was given promotion after being declared medically fit for indoor job not requiring use of motor/ push trolley or foot patrolling by any train/engine. No rule has been produced by the Respondents expressly covering the post of AEN Drawing within the 'safety' category of post in the railway. It is also not the case of the Respondents that the post in which the petitioner was promoted under Annexure-A/8 in any way deals with any such work for which the Applicant has been declared medically unfit and that the post of AEN, Drawing is not in existence in the Department. No material has been produced by the Respondents showing the exclusion of the post or Department from the provision of Section 47 of the Disabilities Act, 1995.

11. During hearing, Learned Counsel for the Applicant has brought to our notice copy of the order dated 26th June, 2007 in OA No. 167 of 2006 (Somnath Mishra v Union of India and others) of this Tribunal on perusal of which it is seen that on the ground of being medically unfit, the Applicant therein was not allowed to appear at the test for promotion to AEN Group B. This Tribunal after taking into consideration the provisions of Rules and various decisions of the Hon'ble Apex Court as also the Tribunal allowed the prayer of the Applicant therein by quashing the order debarring the Applicant to face the test. It is also seen that issues so also the stand of the Respondents taken in that case are exactly the same in the present case. In view of this, we do not feel it necessary to deal with the rest of the points advanced by the Respondents. We do not also see any reason to differ from the view already taken by this Tribunal in the aforesaid case.

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12. Ordinarily we would not have interfered in the matter at this stage but as the basis or the ground based on which such show cause notice was issued is not sustainable, allowing the matter to proceed would amount to unnecessarily keeping the Applicant in mental agony which is not at all congenial for smooth discharging of his day to day duty.

13. In the light of the discussions and applying ratio of the decision rendered by this Tribunal in the case of Somanath Mishra (Supra) it is held that ~~that~~ the prayer made in this OA deserves to be allowed. Accordingly, the show cause notice under Annexure-A/10 is hereby quashed.

14. In the result, this OA stands allowed. There shall be no order as to costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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