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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No. 945 of 2005
Cuttack, this the 4th day of December, 2008

Bisweswar Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

13. Whether it be referred to the reporters or not?
14. 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.)

ADMN

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O.A.No.945 of 2005
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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)

Bisweswasr Behera, Aged about 28 years, Son of Late Keshinath Behera, C/o.Sidheswar Behera, At-Chandan Bagicha, Po. Sunhat, Dist. Balasore.

.....Applicant

Legal practitioner :M/s.B.K.Mohanty,R.Mohanty,
P.K.Bhuyan, P.K.Sahoo,
C.R.Mallick, Counsel.

- Versus -

1. Union of India represented through its Secretary to Government of India, Ministry of Urban & Housing Development Department, Nirman Bhawan, New Delhi.
2. Director General of Works, C.P.W.D,Nirman Bhawan, New Delhi-110 011.
3. Superintending Engineer, C.P.W.D, Co-ordination Circle (Elect.), East Block-1, Level-7, R.K.Puram, New Delhi-110 066.
4. The Medical Superintendent General Hospital, Sector-16, Chandigarh.
5. Staff Selection Commission, represented through its Regional Director (ER), 5 Esplanade Row (West), Kolkata-700 001.

....Respondents

Legal Practitioner :Mr. S.B.Jena, ASC
Mr.A.N.Routray, Counsel (for
Respondent No.4).

O R D E R

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

In this Original Application filed U/s.19 of the A.T.Act, 1985 the prayer of the applicant is to direct the Respondents to allow him to continue as Jr. Engineer (Elect) pursuant to the offer of appointment and joining report dated 09.11.2005 and to direct the Respondents to pay him all his service and financial benefits retrospectively.

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(2)

2. The factual background of this case is that pursuant to the advertisement issued by the Staff Selection Commission under Annexure-A/4 for holding Junior Engineers (Civil and Electrical) Examination, 2004, Applicant got selected and, accordingly, under Annexure-A/8 dated 14th December, 2004 his name was nominated to the office of the Directorate General of Works, CPWD for issue of offer of appointment to the applicant after verification of eligibility criteria. Thereafter, vide letter under Annexure-A/10 dated 11-10-2005, Applicant was intimated that in case he is willing to join he should furnish an unconditional acceptance for joining duty along with other documents mentioned and required in the said letter. On acceptance of the offer and furnishing the documents, vide letter under Annexure-A/11 dated 21.10.2005 the applicant was directed to report for duty to Superintending Engineer (Elect.) MAP Elect. Circle, Chandigarh, CPWD, Sector-7, Chandigarh along with medical certificate issued by Civil Surgeon or superior officer on or before 15th November, 2005 with a further stipulation that the offer is provisional and subject to cancellation if the conditions of eligibility are not satisfied. According to Applicant he reported for duty on 09.11.2005 along with certificate from the Chief District Medical Officer, Balasore (Annexure-A/12). But instead of allowing him to assume his duty he was asked to report before the Medical Supdt. General Hospital, Sector-16, Chandigarh for medical checkup once again and the applicant reported before the concerned Medical authority whereupon there was no communication to him. However, in letter dated 21.11.2005 the Medical Supdt. Of Chandigarh intimated to the CPWD authority that there is deficit in the colour vision of the Applicant. By submitting representation applicant persuaded the Respondents that deficit colour vision should not be treated as deficiency so as to deprive him of his

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right to employment. As there was no response to the said request of the Applicant, he approached this Tribunal in the present Original Application with the aforesaid prayer. The stand of the Respondents is that submission of medical certificate was a precondition as stipulated in the advertisement and the offer of appointment issued to the Applicant. Since the applicant was adjudged unfit due to defective colour vision by the competent medical authority, the offer of appointment was cancelled as intimated to him under Annexure-R/5 dated 18.01.2006.

3. Learned Counsel for the Applicant submits that the action of the Respondents is highly illegal, arbitrary and mala fide; for the reason that on the face of the certificate issued by the Chief District Medical Officer certifying him to be fit in all respects including colour vision, he ought not to have been sent for second medical test and even if he was sent he should not have been found deficit in colour vision. Further it has been argued by the Learned Counsel for the Applicant that if at all there was any ambiguity between the certificate produced by applicant and the certificate issued by Medical Authority Chandigarh instead of denying him the post, the Respondents ought to have sent him for examination to Medical Board. He has argued that as per the settled law before cancelling the offer of appointment the applicant should have been given opportunity of being heard in compliance of the principles of natural justice and having not done so, the applicant is entitled to the relief claimed in this OA. This was strongly opposed by the learned counsel for the Respondents by stating that medical examination is a precondition made known to the candidates through advertisement as also through offer of appointment. Since the applicant failed in vision test the offer of appointment issued to the applicant was rightly cancelled. He has also strongly refuted the

allegation of *mala fide* urged by the Applicant in the matter of sending him for medical test and cancellation of the offer of appointment.

4. We have carefully considered the arguments advanced with reference to the pleadings of the respective parties. But we find no force in any of the arguments advanced on behalf of the Learned Counsel for the Applicant so as to interfere in the matter; especially because passing of medical test was one of the conditions stipulated in the advertisement as also in the offer of appointment. Instruction under Annexure-R/4 clearly debars appointment to the post of Junior Engineer (Elect) unless one is found fit in colour vision. That-apart, in this case no opportunity was required to be given before cancellation of the offer of appointment; because natural justice would have been insisted upon had he been allowed to assume duty. Since his joining was subject to declaring him fit and in fact he was declared unfit, no notice was required to be given which was rightly not given by the Respondents. It is trite law that merely because one is selected he gets no vested right to claim appointment and his appointment is subject to other relevant conditions. This Tribunal is neither the appellate authority nor subject expert over the decision of the medical authority to substitute the decision taken by them. Judicial review is available only to the extent of decision making process not the decision itself.

5. In view of the above, we find hardly any case in favour of the Applicant to interfere in the matter. Accordingly, this OA stands dismissed by leaving the parties to bear their own costs.

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

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