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O.A.NO. 78 OF 2006.

ORDR DATD 27-02-2006.

In this Original Application filed under section 19 of the Administrative Tribunals Act, 1985, the Applicant has prayed for the following relief:-


“...to direct the Respondents to confine the selection to the post of Group D in Khurda Division to the candidates those who have registered their names and/or the resident of any area under Khurda Road Division.

And to direct the Respondents not to issue any appointment orders in favour of any candidates who are not the residents of the jurisdiction of Khurda Road Division”.

The Applicant also prayed the following interim relief:-

“Pending disposal of the Original Application, the respondents may be directed to keep one post vacant or any other order and/or orders as this Hon’ble Court deems just and proper in the interest of justice”.

2. It is the case of the Applicant that in order to fill up 787 posts of Group D/Gangman in Civil Engineering Department and 225 Group D posts in Operation Department of the Railways, the Authorities/Respondents floated an advertisement under Annexure-A/1



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dated 05-11-1998 inviting applications for the above posts, fixing the last date of receipt of Applications to 30-11-1998 .

In Col. (I) (ii) of the aid Advertisement, it was provided as under:-

“(ii) Applications from eligible candidates (except wards of serving/ex-railway employees under pass rules or casual labours/ex-casual labours/substitutes) will be accepted only through employment exchanges situated within the geographical jurisdiction of Khurda Road Division. The list of such employment exchanges have been given below:-

Director of Employment Officer, Bhubaneswar, District Employment Exchanges Officer, Khurda, Pur, BBSR, Special Employment Exchnage for SC/ST, Bhubaneswr, Cuttack, Jagatsinghpur, Kenddrapara, Jajpur, Bhadrak, Keonjhar, Dhenkanal, Angul, Berhampur, Parlakhemundi, Srikakulam”.

Col No.2 of the said Advertisement deals with regard to selection procedure which interalia provides as under:-

“(2) Selection Procedure:- Common selection will be conducted for Gangmen and Group D in Operating Department comprising of physical test, written test and viva voce test, candidates who qualify in the physical test will be eligible to appear in the written test. Those who qualify in the written test will be called for viva voce in the order of merit.”

[Signature]

(3)

Subsequently, in notice under Annexure-A/2 dated 26-11-1998, the Advertisement under Annexure-A/1 was modified to the following extent:-

“In terms of the Ruling received under Estt. Sl. No. 244/98, it has been decided by the competent authority to extend the last date of receipt of the application was 31-12-1998 in place of 30-11-1998. Further, all concerned are hereby informed that those who will apply directly in response to the employment notice their applications will be considered along with those who are sponsored by the employment exchanges on equal footing”.

Under Annexure-A/3 dated 01-11-2003 it was notified as under:-

“ In partial modification to the selection procedure notified vide DRM (P)/S.E.Railway/Khurda Road Division's Employment Notification No.1/98 dated 05-11-1998 and published in Employment News dated 12-12-1998 the competent authority has decided that the selection procedure will be restricted to physical test and written test only. The viva voce test has been dispensed with and the final result of the selection shall be on the basis of written marks only”.

It is the case of the Applicant that he was a candidate for the post in question and, that he faced the recruitment process (physical test and written test) being duly admitted. It is also the case of the Applicant that he has not been called upon by the Respondents for verification of

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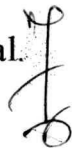
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documents; whereas similarly situated persons have been asked to appear for verification of documents; which is the final round of selection process.

3. Heard the learned Counsel appearing for the Applicant and Mr. R.C.Rath, learned Standing Counsel for the Railways (on whom a copy of this Original Application has already been served) and perused the materials placed on record on the question of admission and grant of interim prayer.

4. In course of submission, learned counsel appearing for the Applicant disclosed that by virtue of notification under Annexure A/2 the scope and ambit of the zone of consideration got enlarged and that had the scope of zone of consideration not been enlarged (beyond the Khurda Road Railway Division), the candidates who are on the roll of the local employment exchange could have only been considered and appointed against the posts/vacancies notified. It is the further case of the Applicant that although the Applicant has qualified in both the tests, he has not been called to face viva voce in gross disregard to the selection mode notified under Annexure-A/1.

5. Having considered the various submissions made at the bar, and having perused the materials placed on record, prima facie it is found that no case has been made out by the Applicant seeking intervention of this Tribunal.



(5) X

6. In this connection it is relevant to note Article 16 of the Constitution of India; which provides **"EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT"**. The relevant provisions outlined therein are as under:-

“(1) There shall be equality of opportunity of all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State”.

Thus, the Advertisement under Annexure-A/1 was de hors the Constitutional provisions. By issuance of Annexure-A/2, the vice in Annexure-A/1 was removed and, therefore issuance of Annexure-A/2 cannot be said to be bad.

7. Apart from this, it is seen that the Applicant had appeared the physical test and written examination, without any protest, knowing fully well that the selection process has been confined to only the physical and written tests and that there shall be no viva voce test. Having appeared the test and examination and apparently, having failed in the examination, he has traveled to this Tribunal in the present O.A by raising grievances that the procedure was improper. In the case of **Om Prakash Shukla vs. Akhilesh**

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Kumar Shukla reported in (AIR 1986 SC 1043) the Hon'ble Supreme Court has held as under :

"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed I the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination".

Thus, the Applicant, by his conduct, having accepted the position is estopped to challenge the recruitment process.

8. Under the Administrative Tribunals Act, 1985, before one could approach the Tribunal, he/she has to exhaust the alternative remedy. No material has been placed to show that the Applicant had ever approached the departmental authorities ventilating his grievance and/or his representation made in that behalf has been lying indisposed. Thus, this case is not maintainable on that count.

9. Virtually the Applicant seeks to annul the selection in so far as it enlarges the jurisdiction beyond the Khurda Division is concerned; but without making the persons (those who would be affected in case the entire

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selection process is annulled) as parties to the lis. This Original Application, thus, is bad for that reason.

10. As discussed above, the main claim of the Applicant being violative of the provisions of Article 16 of the Constitution of India (*place of birth, residence*) it would be irrational on the part of the Tribunal to admit this O.A. and, in the circumstances, the O.A. is dismissed in limine at the stage of admission.

11. It may, however, be noted here that except the bald assertion that he did well in the examination, no convincing material has been placed before the Tribunal making out a prima facie case in favour of the Applicant. It is to be mentioned here that if a candidate qualifies in the selection test, there is every reason for the authorities conducting the selection to take follow up action thereon. Since the Applicant has asserted that he has been declared successful in the physical test and written examination, the dismissal of this O.A. would not stand in the way of the Respondents/Railways to take such further action as a consequence of applicant's passing the selection tests and in the aptness of things, the Respondents are hereby directed to communicate the result of the selection tests in question (to the Applicant) within a period of thirty days from the date of receipt of this order.

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12. Send copies of this order to the Applicant and to the Respondents along with copies of this Original Application and free copies of this order be given to learned counsel for both sides.

[Signature]
27/02/06
(M.R. MOHANTY)
MEMBER(JUDICIAL)