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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.135 of 2006
Cuttack, this the 19th day of March, 2007.

Surya Prakash Mahapatra ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

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


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

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C O R A M:

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

Surya Prakash Mahapatra aged about 38 years, son of Sarat Chandra Mahapatra, At-back side of Mini Stadium, Bargarh, Po/Ps/Dist.Bargarh.

..... Applicant.

By legal practitioner: In person.

-Versus-

1. Union of India represented through General Manager, E. Co. Railways, Chandrasekharapur, Bhubaneswar-751 023.
2. The Chairman, Railway Recruitment Board, Bhubaneswar, Rail Vihar, B.D.A, Rental Colony, Chandrasekharapur, Bhubaneswar-751 023.
3. Secretary, Railway Recruitment Board, Bhubaneswar, Rail Vihar, B.D.A. Rental Colony, Chandrasekharapur, Bhubaneswar-751 023.

.... Respondents

By legal practitioner: Mr. Ashok Mohanty, Sr. Counsel and
Mr. R.C.Rath, Counsel.

ORDER

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

Applicant is a 100% visually impaired unemployed graduate. Pursuant to an advertisement issued by Railway Recruitment Board, Bhubaneswar (Annexure-A/2) for filling up of different categories of posts (mentioned at Sl. No.1 to 41 in the advertisement) lying vacant under administrative control of East Coast Railways, applicant having fulfilled the conditions for the post (at Sl.No.27 of the advertisement) of Ticket Collector/Enquiry Clerk Cum Announcer applied (with all documents) within the stipulated time mentioned in the advertisement. But while calling upon others to appear in the written test scheduled to be held on 05.02.2006, in letter dated 02.01.2006 (Annexure-A/4) the Applicant was intimated as under:

“Sub: Application for CAT. No. 27-Ticket Collector/Enquiry Clerk cum Announcer under employment Notice No. EN/2/2004-scheduled date of written Exam: 05.02.2006.

It is hereby intimated that your application for the above mentioned post and category has been rejected on the ground mentioned below.

Over age (including age-relaxation, where applicable).”

2. His grievance is that his date of birth being ‘7th December, 1967, he is more than 38 years but below the outer age limit of 40 years. It is his case that he being a visually impaired candidate is entitled to age concession and without application of mind, and in supersession of the Government of India’s instructions

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18 applicable to the Railways, the Respondents have rejected his candidature. In support of his grievance he has submitted that though one visually impaired candidate has been allowed to appear in the test for the post, in question, on some pretext or the other, the applicant was illegally denied the opportunity to compete for the post along with others. He has taken the stand that on one hand age relaxation has been given to the physically handicapped candidates relating to other categories of post but with some ulterior motive he was debarred from the opportunity of appearing for the post of Ticket Clerk/Enquiry Clerk cum Announcer. His case is that Government of India has been undertaking various welfare measures to utilize the potentials of the visually handicapped persons. The Central as well as the State Governments have launched several schemes to educate, train and provide useful employment to the handicapped. Accordingly, the

Central Government has provided reservations to the extent of 3% vacancies in Group C and D posts for the physically handicapped including blind and partially blind by enacting Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Respondents in the present case have made a departure from the Act, 1995 by not providing age relaxation to the Applicant which disabled him from coming within the age limit to compete for the post applied for by him. He has submitted that visually handicapped ones constitute a significant segment of our society but instead of encouraging their participation in every walk of life, the Respondents have acted contrary to the interest

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of the Applicant. Hence by filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, he has prayed for a direction to the Respondents to allow him to participate in the process of selection to the post along with others by granting necessary age relaxation.

3. The Respondents oppose the claim of the Applicant stating that he was a candidate for the post belong to category No.27 (Ticket Collector/Enquiry Clerk-Cum-Announcer). In this category, there were five vacancies out of which four posts were meant to be filled up by UR community and one was reserved for Ex-Serviceman. In the advertisement it was made clear that the candidates applying for the post must be within 18 to 30 years as on 01.01.2005 relaxable so far as SC/ST/OB candidates are concerned as per Rules. Chief Personnel Officer (CPO)/East Coast Railway, Bhubaneswar while placing indent for the aforesaid 5 (five) vacancies had indicated that this category is identified as suitable for persons with disabilities and 3% quota reserved for physically disabled persons would be filled directly by the Railways i.e. by CPO/East Coast Railway for which separate advertisement would be released. Following this stipulation of the indenter Zonal Railway, RRB/BBS had categorically mentioned in column 9 of the instructions in Employment Notice that there is no vacancy separately reserved for physically handicapped candidates. However, as this post is not unsuitable for all kinds of disabilities, persons with disabilities also might apply as normal candidates against the vacancies of unreserved community. It was also clarified

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therein that the statutory 3% reservation for persons with disabilities wherever applicable shall be filled up by East Coast Railways only. It has been maintained that pursuant to the judgment dated 13.10.2003 of the Chief Commissioner for Persons with Disabilities, the policy of conducting recruitment of persons with disabilities by Zonal Railways (not by RRB) has been prescribed by the Railway Board under Annexure-R/1 dated 25.02.2004. It has been averred that physically handicapped persons have been divided into three categories viz; (i) Orthopedically Handicapped (OH); (ii) Visually Handicapped (VH) and (iii) Hearing Handicapped (HH). In this connection, Ministry of Railways (Railway Board) vide letter dated 15.09.2000 circulated by Eastern Railways vide Circular dated 29.11.2000 (Annexure-R/2) have identified posts in the Railways suitable for recruitment of physically handicapped persons. In the above mentioned circular there are three PH categories and from this it would be evident that the post of Ticket Collector or Enquiry clerk cum Announcer (of Commercial department of Railways) is suitable only for orthopedically handicapped persons but not suitable for visually handicapped persons. Besides there was no post advertised to be filled up by handicapped candidates. Hence question of age relaxation to visually handicapped candidate does not arise as the post of Ticket Collector/Enquiry clerk cum Announcer are not identified as suitable for visually handicapped candidates. It has been stated that as the E Co Railways, Bhubaneswar issued notification dated 13.04.05 (Annexure-A/6) inviting applications for different posts prescribing

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age limit for blind persons up to 40 years the applicant can avail of opportunity for one of those posts. In the light of the above facts, the Respondents have opposed the contentions of the Applicant.

4. Applicant has filed rejoinder questioning the stand taken by the Respondents in their counter.

5. It is seen that on 01.03.2006 as an interim measure, this Tribunal directed the RRB/Respondents not to proceed further in the matter of recruitment to Ticket Collector/Enquiry Clerk-Cum/Announcer (notified under their Employment Notice No. EN/2/2004) without leave of this Tribunal. This order was allowed to continue till 12.04.2006 when the order dated 01.03.2006 was modified giving liberty to the Respondents to fill up the posts by keeping one post reserved.

6. During hearing, it has been submitted by the Applicant that the averments made in the counter are not sustainable being contrary to the reasons adduced in the order of rejection. He has submitted that though his candidature was rejected on the ground of overage, the Respondents are taking the stand in the counter that the VH persons are not eligible for the post of Ticket Collector/Enquiry Clerk cum Announcer. By drawing our attention to sub para (i) of paragraph 2 of the counter it has been argued by him that though it has been admitted by the Respondents that he is eligible to be considered against the said post but in the subsequent paragraph it has been stated that the Applicant being visually handicapped is not eligible to be considered against the said post. It has been stated that it is wrong to

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say that visually handicapped persons are not eligible to be appointed against the post of Ticket Collector/Enquiry Clerk-Cum-Announcer. By drawing our attention to the call letter issued to one Ashis Kumar Ratha (Annexure-10 series) who is visually handicapped to appear in the test for the post in question, the Applicant has stated that only to frustrate his claim, such a wrong stand is being taken by the Respondents.

7. Per contra Learned Counsel for the Respondents has submitted that it is not for the RRB to decide which post should be filled by which category of candidates. When Railway Board has decided that only the posts of Clerk, Typist, Steno, Peon Cleaner and Waterman should be filled up by Visually Handicapped candidates, the Applicant can have no claim to be appointed in the post in question. Applicant's claim could have been substantiated had there been any post advertised to be filled up under VH category. Since there was no post available to be filled up under VH category, his candidature was rightly rejected requiring no interference.

8. We have given careful thought to the rival submissions made by the parties and gone through the materials placed on record. The Applicant has challenged the order of rejection of his candidature dated 02.01.2006 (Annexure-A/4). On perusal of the order of rejection it is evident that the candidature of the Applicant has been rejected on the plea of over age. Applicant's claim is that he being a PH candidate, is entitled to age relaxation as has been given in Annexure-A/6. It is not in dispute that PH candidates are entitled to age

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concession in the matter of recruitment. When the matter came for judicial scrutiny, the Respondents have taken a new plea in the counter that VH candidates are not entitled to be considered against the post at category No.27. We would therefore, like to first examine as to whether to substantiate the impugned order, the parties are permitted to take the stand other than the ground taken in the order under judicial scrutiny. In order to set the matter at rest, we rely on the decision of the Hon'ble Apex Court made in the case of **Commissioner of Police, Bombay v. Gordhandas Bhanji**, AIR (39) 1952 SC 16. While interfering in the order impugned in the said case, Their Lordships of the Hon'ble Apex Court held as under:

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

9. Subsequently, in the case of **Mohinder Singh Gill v. Chief Election Commissioner**, AIR 1978 SC 851 their Lordships of the Hon'ble Apex Court held as under:

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated in additional grounds."

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10. In view of the rulings of the Hon'ble Apex Court, the grounds taken in the counter being other than the ground of rejection of the candidature of Applicant are not acceptable.

11. However, in order to examine as to whether the Applicant is entitled to be considered for the post at category No. 27 / Ticket Clerk/Enquiry Clerk cum Announcer, we look to the RB guidelines No.178/87/No.E(NG)II/86/RC-2/18/Policy, dated 10.07.1987. From the above RBE No. 178/87, it is clear that the duties of the Enquiry Clerk cum Announcer is basically to deal on Telephones, Telegraphs and related Telecommunication operation. This work is to be performed by sitting (on bench or chair) and by hearing/speaking. A VH candidate can also perform the work of Ticket Clerk. For this, presumably Shri Shri Ashis Kumar Ratha a VH candidate has been called to appear in the test for the post, in question. When asked as to how they have called a VH candidate (namely Asish Kumar Rath, under Annexure-10 series) to appear in the test for the post of Ticket Clerk/Enquiry Clerk cum Announcer despite maintaining in their counter that VH candidates are not eligible to hold the post, there was no satisfactory answer from the Learned Counsel for the Respondents. For recruitment to public employment, there should be free and fair selection in accordance with Rules. If Rules provide a particular manner of selection, the Authorities conducting it, should not deviate from this. If rule provides something but does not appear in the advertisement, the authorities are obliged to follow the Rules [Ref:M.V.Bijlani v. Union of India & Ors, 2006

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(3) SLJ 184 (SC), **State of Punjab v. Jagdip Singh & Ors**, 1964 (4) SCR 964, **Municipal Council, Sujampur v. Surinder Kumar**, 2007 (1) AISLJ 6 and **Indian Institute of Technology and Another v. Paras Nath Tiwari and Others**, 2006 SCC (L&S) 1977]. We would also like to rely on the relevant portion of the observations of the Hon'ble Supreme Court made in the case of **Scheduled Castes and Scheduled Tribes Officers Welfare Council v. State of Uttar Pradesh and Another**, AIR 1997 SC 1451 are extracted below:

“These circumstances clearly would indicate that persons manning the Department are using a policy of pick and choose to suit their convenience in abuse of colourable exercise of power creating disharmony in policy and resorting to victimization of the eligible officers.”

12. From assertions as well as materials produced by both the parties, it is manifest that there is an inbuilt provision for granting age relaxation to PH candidates in the matter of recruitment to public employment. On thorough scrutiny, we do not find an iota of evidence that this age relaxation can be given to reserved candidates only against the reserved vacancies. Therefore, in our opinion the reserved candidates, as a matter of right, are entitled to age relaxation irrespective of the categories of vacancies but they certainly cannot claim any preference over more deserving candidate belonging to UR category.

13. In the view of the discussions made above, the irresistible conclusion is that refusal of age relaxation in respect of the applicant who applied to appear in the test is against the

Rules/Policy/Act of the Government of India adopted by the Railways. It is also not in dispute that if age relaxation is given to the Applicant, he will be within the zone of consideration. Therefore, the communication under Annexure-A/4 rejecting the candidature of the Applicant is quashed. As a consequence, the Respondents are hereby directed to take the test of the Applicant for the post applied for by him within a period of 60 days of receipt of this order and fill up the post kept vacant, by considering the performance of the Applicant vis-à-vis other candidates who had appeared for the post. Since the Applicant is a VH, Respondents should take sufficient care in ensuring reaching of intimation to him and thereafter minimum 15 days time be allowed to him to appear in the test mentioned above.


14. In the result, this OA is allowed to the extent stated above.

15. Before parting with this case, we would like to observe, rather sadly, that Government who have been taking various social welfare measures and have been making special provisions of reservation for PH persons including VH, have in this case failed to discharge their duties in respect of a reserved candidate. Applicant being visually challenged is more handicapped than the ordinarily handicapped persons and instead of lending him a helping hand, the Respondents did not even give him an opportunity for consideration for appointment. This has caused him not only agony but also financial loss in rushing to this Tribunal several times. The very fact that he had earlier engaged a lawyer and had to withdraw the

Vakalatanama shows his adverse financial condition. Taking into consideration the penury of the Applicant, we consider it just, proper and equitable to award cost of Rs.2,500/- to be paid to the Applicant by Respondents since he has borne the expenses of journey for traveling, board and lodging of not only for himself but for his attendant too!.

We would also like to record our appreciation for the tenacity, perseverance, relentless confidence and trust in judiciary by the applicant who despite being visually challenged successfully met each and every question put to him by this Bench clearly, pointedly and that too making reference to points of law and also by citing page numbers. This was a pleasant experience, we at times miss in our sittings!


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

KNM,PS.