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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 161 OF 2006
Cuttack, this the 13th day of April, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
&
Hon'ble Mr. C.R. Mohapatra, Administrative Member

Rabi Kumar Padhy, aged about 412 years, S/o Shri Narasingh Padhy, First Badriraj Nagar, P.O. Gosaninuagam, Dist. Berhampur, Dist. Ganjam..... Applicant

By the Advocate(s) M/s. Mira Das,
M. Mohanty,
A.B. Panda,
S. Ratha.

Vs.

1. Govt. of India, Represented by the Secretary, SSC, Having its Office at Lodhi Road, Head Post Office, New Delhi.
2. Assistant Director, Govt. of India, SSC, Department of Personnel & Training, 5, splanade Row West, Kolkata.
3. Regional Director (E.R.), Govt. of India, SSC, , 5, splanade Row West, Old Assembly Building, Ground Floor, Kolkata.

..... Respondent(s)

By the Advocate(s)..... Mr. U.B. Mohapatra, S.S.C.G

O R D E R

HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

Heard Mrs. Mira Das, Ld. Counsel for the applicant and Mr. U.B. Mohapatra, Ld. Sr. Standing Counsel for the Respondents.

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2. The applicant, a visually handicapped person, being aggrieved by Annexure-A/7 order, dated 31.01.03, of Respondent No.3, the Regional Director (ER), Staff Selection Commission, 5th Esplanade Row West, Kolkata, has filed this O.A. with the following prayers:-

“(i) The impugned Annexure-7 dated 31.01.2003 passed by Respondent No.3 may kindly be declared illegal and the same may be quashed;

(ii) Necessary direction/orders may kindly be issued to the Respondents to grant the benefit to the applicant under Annexure-6, dated 26th April, 2002 and to implement the same.

(iii) Any other appropriate order may kindly be passed which would be deemed fit and proper in the facts and circumstances of the case;”

3. The brief facts leading to filing of this O.A. are as follows:-

The applicant, in pursuance to Annexure-A/1 notification dated 06.01.2001 for special Recruitment of Stenographers Grade 'D' and Lower Division Clerks for visually handicapped in Central Government Offices, Public Sector Undertakings and Autonomous Bodies of the Central Government, 2000, had applied for the same, along with necessary certificates showing his educational qualification, technical qualification and also the certificate showing his visually handicapped-ness etc. On scrutiny of the application and other documents of the applicant, the Assistant Director,

Staff Selection Commission, 5th Esplanade Row West, Kolkata (Respondent No.2) further asked a medical certificate in the prescribed format from the competent medical authority as per Annexure-A/4 dated 13.08.2001. Accordingly, the applicant had also submitted the medical certificate. As per Annexure-A/6 dated 26.04.2002 of Respondent No.2, the applicant was intimated that in the recruitment of LDC and Stenographer Grade 'D' for Visually Handicapped in Central Government Offices etc., 2000, he had been recommended provisionally for appointment as LDC on the basis of the above mentioned recruitment and at the same time he was asked to indicate the preference for final allocation in a proforma. Subsequent to the above Annexure-A/6 dated 26.04.02, a Memorandum dated 31.01.2003 (Annexure-A/7) was issued to the applicant in which he was informed that in the fresh visually handicapped certificate dated 16.11.2002 issued by the Chief Medical Officer, Berhampur, Ganjam and District Ophthalmic Surgeon, Berhampur, Ganjam, the degree of his visual disability was mentioned as 35% only. In terms of Ministry of Social Justice & Empowerment, New Delhi, Notification dated the 1st June, 2001 candidates having 40% or more disability are eligible for concessions/benefits in services under Govt. of India. The extent of visual disability of the applicant being only 35%, he did not fulfill the eligibility criteria for consideration for appointment to the posts reserved for candidates belonging to visually handicapped category. In the above background the candidature of the applicant having been cancelled in the

subject recruitment, the present O.A. has been filed with the prayers as aforesaid.

4. In response to the notices issued by this Tribunal a counter affidavit has been filed for and on behalf of the Respondents. In the counter affidavit the stand taken by the Respondents is that the selection to the post in question having been reserved for visually handicapped [visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses] and the applicant having the visually handicap-ness of 35% , which is less than the prescribed ratio of 40%, i.e., equal to 6/60 or 20/200, the applicant was found ineligible and accordingly, his candidature was cancelled. Hence, the O.A. being devoid of merit is liable to be rejected

5. We heard the Ld. Counsel for the parties in detail and also perused all the documents.

6. When the matter came up for hearing, this Tribunal as per order dated 26.02.09, directed the Respondents to clarify as to whether visually handicap-ness of 40% is equal to that of 6/60 or 20/200 in the light of the stand taken by the Respondents in the counter affidavit. There being no response from the Respondents on time this Tribunal, as per order dated 18.03.09, referred the matter to the Professor and H.O.D., Ophthalmology, S.C.B. Medical College and Hospital, Cuttack to give a clarification regarding the moot question.

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In pursuance to the above direction issued by this Tribunal, Professor Madhumati Misra, H.O.D. Ophthalmology Dept. & Chief of State Referral Eye Hospital, S.C.B. Medical College and Hospital, Cuttack, (Orissa) had submitted a report as per letter dated 31.03.2009.

7. The main contention of the Ld. Counsel appearing for the applicant is that as per the written examination conducted by the SSC, the applicant was selected against the visually handicapped quota and on the basis of the said selection, he was issued with offer of appointment provisionally. The rejection of his candidature and as a consequence the cancellation of selection are irregular and illegal. The second point emphasized by the applicant before us is that as per the advertisement, it is only stated that to get the benefit of selection in the reserved quota for visually handicapped a person may be having visually handicap-ness of 6/60 or 20/200 and as per the medical certificates given by the different Doctors and also the Medical Board, the applicant is having 35% of visually handicap-ness and if so, the certificate produced by the applicant ought to have been considered on the basis of his selection and appointment and therefore, the stand taken in the counter affidavit that as per the notification dated 06.01.2001, candidates having 40 % or more disability are only eligible for concessions or benefits in the service of Govt. of India is not sustainable, especially when this condition is not mentioned in Annexure-A/1 which only states that "visual

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acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses". If so, according to the Ld. Counsel for the applicant, the averment of the Respondents that had the applicant come within 40% visually handicap-ness he could have availed of the benefit of reserved quota is not correct. Now the applicant has also produced another medical certificate 02.03.2007 from District Medical Board (Disability) Ganjam, Orissa, the relevant portion of which is quoted hereunder:-

"This is to certify that Shri/Smt/Kum Rabi Kumar Padhy son/wife/daughter of Sri Narasing Padhy Age 41 (M/F) Registration No.A/2 At/Po. Badri Raj Nagar-1 Gosinuagaon Berhampur is a case of Visual Handicap. He/she is physically disabled/visual disabled/speech & hearing disabled and has (75%). Seventy five percentage of permanent/temporary (Physical impairment/visual impairment/speech & hearing impairment) in relation to his/her RE FL+ (Corneal Opach) LE 6/60 E Pui hole no impairment)"

The Ld. Counsel for the applicant also drew our attention to the judgement of the Hon'ble High Court of Orissa reported in 2008 (2) OLR 648, Ms. Pritilata Nanda Vs. Union of India and Others, in which the Hon'ble High Court of Orissa had set aside the cancellation of the selection of a person selected on merit but rejected the claim the prayer on the reason that his name was not sponsored by the Employment Exchange as stipulated in the notification. Lastly, Ld. Counsel for the applicant submitted that once the selection has been completed, the Respondents are not justified in saying that the selection is

bad and it is anstoppel against them, apart from the fact that the applicant having been asked to indicate his final preference in pursuance of his selection the cancellation of selection and/or his candidature at this stage is not legally sustainable.

8. To the above contentions relying on the counter affidavit filed for and on behalf of the Respondents it is contended that as per Annexure-A/1 notification, to have the benefit of reservation in appointment under the visually handicapped quota, the visual acuity one should have visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses. But as per the certificate given by the applicant, i.e., the certificate given in pursuance to Annexure-A/4 direction would show that the applicant is having only 35% of visually handicap-ness. According to the Ld. Counsel for the Respondents, visually handicap-ness can be corrected by using lenses or rather he cannot be considered as permanent so as to enable him to get a benefit of reservation in that category. According to the Ld. Counsel for the Respondents, although in Annexure-A/1 it is not correctly stated that the degree of visual handicap-ness should be 40% or above, shall be the visually handicap-ness of a candidate which qualifies him to get the benefit. A notification issued by the Govt. would show that the applicant is only having 35% of visually handicap-ness. It is also contended by the Respondents that as per the certificate given by Professor Madhumati Misra, H.O.D. Ophthalmology Dept. & Chief of State Referral Eye Hospital, S.C.B. Medical

College and Hospital, Cuttack, (Orissa), it shows that the applicant is having only 30% of visually handicap-ness. That apart, Annexure-R/1 recorded that the applicant is having 35% of visually handicap-ness does not tally with the certificate now presented by the applicant as well as the endorsement given in Annexure-R/1 vide Sl. No.5. Whether the applicant falls under the definition of VH as given above against which it is written as 'Yes'. In the above circumstances, the stand now taken by the applicant's Counsel is not correct and that apart the judgement of the Hon'ble Orissa High Court relied on by the applicant is not applicable to the facts of the present case.

9. Having considered all the contentions raised by the parties and on perusing the records, the question to be decided is, whether the applicant is justified in praying for quashing Annexure-A/7 or not. A person who is eligible to be considered as VH should have more than 40% VH and as per the notification Annexure-A/1 it is specifically stated that the candidates applying for the post of LDC or Steno Grade'D' should have visually acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses. Further, it is stated that if any candidate claiming that he is having the VH of less than 40% can be corrected by using lens, and the benefit of reservation for that category will not be applicable to such candidate. It means to get the benefit of reservation in the VH a candidate should have more than 40%, i.e., equal to not

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exceeding 6/60 or 20/200. Admittedly, the applicant had sent the application along with medical certificate which would show that he is having 30% of VH and the subsequent certificate given by him in pursuance to Annexure-A/4 would also show that he is having 35 % of VH which means, he is not having 40% or above 40% VH. Hence, the rejection of candidature of the applicant is correct. As we had entertained a doubt regarding the equal point of 6/60 or 20/200, we had referred the matter to the Professor & H.O.D., Ophthalmology Dept. & Chief of State Referral Eye Hospital, S.C.B. Medical College and Hospital, Cuttack, (Orissa). The report submitted by the said Professor shows that the applicant is having a disability of 30% which is below 40% as prescribed by the notification issued by the Govt. of India for getting a benefit of VH. Further the Ld. Professor has stated that "the visual status in both eyes at the time of evaluation on 16.11.02 has not been mentioned in Annexure-A/7. If the vision in both the eyes is the same as on 17.08.2001 (i.e. normal vision in better eye and blindness in worse eye), his visual disability (or percentage of visual impairment) is 30%". It would mean that the applicant is not having the required minimum percentage of VH as per the Govt. orders and the stipulation contained in Annexure-A/1. Hence we also accept the certificate given by Professor Madhumati Misra, H.O.D. Ophthalmology, Dept. & Chief of State Referral Eye Hospital, S.C.B. Medical College and Hospital, Cuttack, (Orissa) as wholesome. Moreover, we find from the conclusion arrived at

the Hon'ble High Court of Orissa in the judgement cited (supra), that the applicant therein had applied for the post of Class-III in the Indian Railways. The employment notice had contained a stipulation that the name should be sponsored by the Employment Exchange. However, though the applicant was selected on merit and not against a quota meant for V.H., but his selection was cancelled on the ground that his name had not been sponsored by the Employment Exchange. Even though the applicant in that case was a VH candidate, the facts of that case are entirely different from the facts in hand. In this case, it is specifically mentioned in Annexure-A/1 that those who want to be appointed in the reserved quota of VH they should not exceed in their visual acuity of 6/60 or 20/200, i.e., equal to 40% of V.H..

10. Apart from the above, it is to be noted that against the cause of action that arose on 31.01.2003 when the impugned Annexure-A/7 came to be issued, the applicant has approached this Tribunal on 06.02.2006, which is time-barred by two years without explaining the delay as to why he could not approach the Tribunal within the period of limitation as prescribed under Section 21 of the AT Act, 1985. Even though on the ground of laches and limitation we are not rejecting the O.A., but we are satisfied that Annexure-A/7 suffers from no legal infirmity. Accordingly, the O.A is dismissed. No order for costs.

Chakrabarty
(C.R. MOHAPATRA)
MEMBER (A)

Thankappan
(K. THANKAPPAN)
MEMBER (J)