

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.230 of 2006

S.S.Barik Applicant

-vrs-

Union of India & Ors. Respondents

Original Application No.256 of 2006

Guru Prasad Jena Applicant


-vrs-


Union of India & Ors. Respondents

Cuttack, this the day of September, 2009

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?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

12-2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application Nos.230 & 256 of 2006
Cuttack, this the 14th day of September, 2009

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)

OA No. 230 of 2006

S.S.Barik aged about 33 years son of Sri Ghanashyam Dakua, working as Air Condition Coach Attendant in E.Co.Railway at Bhubaneswar under Sr. Section Engineer (Air Conditoni, Train-Lighting), E.Co.Railway, residing at Balichak Sahi, PO. Jatni, Dist. Khurda, PIN- 752 050.

....Applicant

By Advocate :Mr. Achintya Das
-Vs.-

1. Union of India, represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752 050.
3. Sr. Divisional Personnel Officer, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN-752 050.
4. Sri A.Gangadhar, Air Conditioned Coast Attendant, E.Co.Railway, C/o.Sr. Section Engineer (A/C, Pump & T/L), PO. Jatni, Dist. Khurda, PIN 752 050.
5. Sri P.K.Sahoo, Air Conditioned Coast Attendant, E.Co.Railway, C/o.Sr. Section Engineer (Air Condition & Train-Lighting), Bhubaneswar.

....Respondents

By Advocate :Ms.S.L.Patnaik
(for Resopndent Nos.1 to 3)
M/s.R.K.Samantsinghar,
A.K.Mallick and S.Das
(For Respondent No.4).

OA No. 256 of 2006

G.P.Jena, aged about 36 years, son of Sri Dinabandhu Jena, working as Khalasi Helper in E.Co.Railway at Bhubaneswar under Senior Section Engineer (Air Condition, Train - Lighting) E.Co.Railway, residing at Pamasara, PO. Kairee (Pipli), Dist. Puri, PIN 752 104.

....Applicant

By Advocate :Mr.Achintya Das
-Vs.-

1. Union of India, represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.



2. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752 050.
3. Sr. Divisional Personnel Officer, E.Co.Railway, Khurda Road, PO. Jatni, Dist. Khurda, PIN-752 050.
4. Sri A.Gangadhar, Air Conditioned Coast Attendant, E.Co.Railway, C/o.Sr. Section Engineer (A/C, Pump & T/L), PO. Jatni, Dist. Khurda, PIN 752 050.
5. Sri P.K.Sahoo, Air Conditioned Coast Attendant, E.Co.Railway, C/o.Sr. Section Engineer Electrical (Air Condition & Train-Lighting), Bhubaneswar.

....Respondents

By Advocate :Mr.S.K.Ojha, Standing Counsel
Mr.G.Singh
(For Respondent Nos.1 to 3)
M/s.R.K.Samantsinghar,
D.Sanjit, A.K.Mallilck
(For Respondent No.4).

.....

ORDER

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

Although these two Original Applications were heard one after the other, this common order is passed which will govern both the cases.

2. The short facts, in both the cases, are that Respondents issued circular inviting applications to fill up 6 (six) posts (UR-5 & SC-1) of Technician Gr.III (AC) in East Coast Railway falling under 25% quota meant to be filled up through Limited Departmental Competitive Examination (in short 'LDCE'). According to Rules and the conditions laid down in the said circular, all regular Group D Semiskilled & Unskilled employees possessing the minimum qualification of (a) Course completed Act Apprentice; (b) ITI Trained and (c) Matriculation are eligible to face the selection. A written test was

L

conducted and the applicants were declared passed. The concerned subordinate authority was advised to send the service records, confidential report and performance report for last three years of the applicants which were also accordingly sent. After opening the confidential and performance reports of the applicant, performance report of one year of the Applicants were sought. Thereafter a panel was published showing the names of five candidates including M/s. A.Gangadhar and P.K.Sahoo but the name of the applicants did not appear in the said list. Being aggrieved, both of them preferred representations praying for removal of the injustice caused to them in the decision making process of not including their names in the panel published for promotion. Since nothing was heard by them on their representations, they have approached this Tribunal in the present Original Applications seeking direction to the Respondents to consider empanelment of the applicants as Technician Gr.III (A/C) in scale of Rs.3050-4590/- and draw a fresh panel by declaring S/Shri A.Gangadhar and P.K.Sahoo as disqualified.

According to the Applicants both S/Shri A.Gangadhar and P.K.Sahoo were not qualified as per

the conditions stipulated in the advertisement to participate in the selection. Though both of them are senior to the Applicants as they are not Matriculate Course completed Act Apprentice with ITI they ought not to have even been allowed to participate in the selection. Allowing them to participate in the selection being senior to the Applicants they have usurped the vacancies which ought to have been held by the applicants being qualified candidates having all requisite conditions stipulated in the Rules as well as advertisement.

3. Respondents filed their counter objecting to the stand of the Applicants and praying that the Applicants have no case at all. According to the Respondents, placement of the qualified candidates in the panel was made according to the seniority position in the cadre maintained by the Respondents. Though the applicants secured the required number of marks but while preparing the panel based on the seniority they did not come within the zone of consideration within the vacancies notified to be filled up. As per the Rules a regular Group D employee is eligible if he has any one of the conditions such as (a) Course completed Act Apprentice OR (b) ITI Trained OR (c) Matriculation. But

according to the Respondents, the word 'OR' was inadvertently omitted in then circular issued by them inviting applications from amongst the serving eligible employees. All the employees including S/Shri A.Gangadhar and P.K.Sahoo are having the qualifications provided in the rules, they have come out successful in the test and they are above the applicants in the seniority list maintained by the Respondents. As such, according to the Respondents there was no wrong committed either in selecting the private Respondents named above or publishing the panel excluding the names of the Applicants.

4. By filing rejoinder, the Applicants also contested the stand taken by the Respondents in their counter. It has been stated that assessment of the marks was not in accordance with the rules in force. Circular was issued under Annexure-A/1 dated 04.07.2005 whereas the order under Annexure-R/2, based on which the selection was conducted according to the Respondents was issued on 7.11.2005 which stipulated that principles decided therein will have effect henceforth. As such the vacancies ought to have been filled up as per the rules prevailing then i.e. at the time

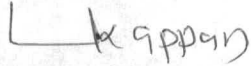
when vacancies arose but not certainly as per the instruction dated 7.11.2005 which came into effect thereafter. Since the selection, according to the Respondents was finalized as per the instruction dated 7.11.2005 the same was void as per the law laid down by the Hon'ble Apex Court in the cases of **Y.V.Rangaiah and others v J.Sreenivasa Rao and others**, AIR 1983 SC 852 and **P.Mahendran and others v State of Karnataka and others**, AIR 1990 SC 405. It has further been stated that the word 'OR' is an interpretation given by the Respondents. It was neither provided in the rules relied on by the Respondents nor put in the circular. Had it been there more number of candidates would have opted for the post. Accordingly, Learned Counsel for the Applicants reiterated the prayer made in the Original Applications.

5. Heard the reiteration made by the Learned Counsel appearing for both sides and perused the materials placed on record.


6. Neither the Tribunal has the power and competence to supplement anything provided in the rules nor is judicial review possible over the decision of the authority in regard to the qualification which is

required to be possessed for selection to any of the post in the Government. It is purely an administrative decision and no court can interfere in the said decision of the authorities. The underlying provision of doctrine of occupied field clearly envisages that if one thing is available in the rules but has not been stated while issuing notification, the public officers are duty bound to give effect to the provisions embodied in the rules. Merely because it was not provided in the circular or advertisement cannot be a ground to give go bye to the provisions of the Rules. According to the Respondents while issuing circular the word 'OR' provided in the rules has been omitted inadvertently. Therefore, in view of the principle of doctrine of occupied field the Respondents cannot be estopped from invoking the provision of the rules while selecting the candidates for the post in question. Similarly, the Annexure-R/2 is a clarification issued by the Railway Board. It is seen that such clarification was issued while the selection process was on. As such the decisions relied on by the Applicants are hardly of any help to them. It is also not the case of the Applicants that they are senior to the persons whose selection has been assailed in these two OAs.

7. In view of the above, we find no justifiable reason to interfere in the matter. Hence, both the OAs stand dismissed. There shall be no order as to costs.



(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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

K.m.p.