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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.636 of 2006
Cuttack, this the 3rd day of May, 2009
August,

R.Bhaskar Rao Applicant
Versus
Union of India & Ors. Respondents

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.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No. 636 of 2006

Cuttack, this the 3rd day of August , 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)

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R.Bhaskar Rao, aged about 48 years, S/o. Late R.K.Murty, presently working as Adhoc Law Assistant, C/o.Estate Officer Cum Assistant Law Officer, East Coast Railway, Waltair, Visakhapatnam.

.....Applicant

Advocate for Applicant: M/s. R.Mohapatra, A.Kanungo,
S.K.Kar, C.Nayak.

-Versus-

1. Union of India represented through General Manager, South Eastern Railway, Garden Reach, Kolkata.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43.
3. Chief Personnel Officer, E.Co.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Sr. Deputy General Manager, S.E.Railway, Garden Reach, Kolkata-43.
5. Subhasis Sarkar, Law Assistant, Office of the Law Officer, S.E.Railway, Garden Reach, Kolkata-43.
6. V.V.Raju, Law Assistant, Office of the Law Officer, E.C.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
7. B.J.Rao, Law Assistant, Office of E.O cum Assistant Law Officer, S.E.Railway, Khargpur, West Bengal.
8. Sri D.K.Chakraborty, Law Assistant, Office of CCM (Law), S.E.Railway, 14 Strand Road, Kolkata-1.

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9. Sri R.S.Gajbhiya, Law Assistant, Office of DRM, Nagpur, S.E.Central Railway, Nagpur.
10. P.S.P.Meher, Law Assistant, Office of CPM, Railway, Electrical E.C.Railwaya, Bhubaneswar.
11. S.K.Sahoo, Law Assistant, Office of DRM, E.Co.Railway, Khurda Road, Orissa.
12. Sri Chaturbhija Jena, Law Assistant , Office of DRM, S.E.Railway, Chakradharpur.
13. S.N.Sukul, Law Assistant, Office of CCM (Law), S.E.Railway, 14 Strand Road, Kolkata-1.
14. V.Rambabu, Law Assistant, Office of the Law Officer, Chandrasekharpur, Bhubaneswar.
15. K.Pradhan, Law Assistant, Office of DRM, East Coast Railway, Khurda Road, Orissa.
16. Haradhan Ghosh, Law Assistant, Office of CCM (Law), S.E.Railway, 14 Strand Road, Kolkata-1.
17. S.r.k.Rao, Law Assistant, Office of Law Officr, E.CO.Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
18. Arun Kuamr Mukherjee, Law Assistant, Office of CCM (Law), S.E.Railway, 14 Strand Road, Kolkata-1.
19. A.V.S.Nehru, Law Assistant, Office of Law Officer, S.E.Central Railway, Bilashpur.
20. C.R.Mishra, Law Assistant, Office of the DRM, S.E.Railway, Chakradharpur.
21. Uday Dey, Law Assistant, Office of CCM (Law), S.E.Railway, 14 Strand Road, Kolkata-1.
22. Miss. K.Lilly, Law Assistant, Office of Law Officer, S.E.Railway, Garden Reach, Kolkata-43.

....Respondents

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Advocate for Respondents: Mr.Ashok Mohanty with
Mr.S.K.Ojha and Mr.
R.C.Rath.

O R D E R

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

Applicant is at present working as Law Assistant on adhoc basis in the East Coast Railway, Waltair, Visakhapatnam. By filing this OA, he challenges the Office Memorandum No.P/H-5/8/9/Pt.VIII dated 10-08-2006 under Annexure-12 issued by the CPO Garden Reach the Respondent No.3, declaring 19 candidates successful in the test and empanelling them for promotion to the post of Law Assistant. The grounds of his challenge are that the panel of successful candidates published under Annexure-12 was not in accordance with the order passed by the Calcutta Bench of the Tribunal dated 18.11.2005 in OA Nos. 1984 & 1489 of 1999 and 172 of 2000 holding that additional marks is allowable only towards record of service and not for seniority as laid down by the Hon'ble Apex Court pursuant to the circular of the Railway Board in Estt. Sl. No.268/98. Accordingly, in this OA he has sought the following directions:

“A) Direction and/or directions be issued quashing the Memorandum No.P/H-5/8/9/Pt-VIII dated 10.8.2006 under Annexure-12, declaring the same as illegal, arbitrary and contrary to order and

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 directions issued by the Hon'ble CAT, Calcutta on 18.11.2005 in the common order passed in OA No. 1984/99, 1989/99 and 172/99;

- B) Direction and/or directions be issued to the Respondents to regularize the applicant in the post of Law Assistant with effect from 27.09.1999 with all consequential benefits;
- C) Direction and/or directions be issued to the Respondent No.3 to allow the applicant in the present post on the basis of the directions/order of CAT, Calcutta till final adjudication of this case."

2. According to the Respondents there was no violation of the order of the Calcutta Bench of the Tribunal referred to above as awarding of marks on seniority was not contrary to the judgment of the Calcutta Bench of the Tribunal and was also in consonance with the Rule 219(g)& (i) of the Indian Railway Establishment Manual. Their contention is that notification dated 6th May, 1994 for recruitment of Law Assistant was cancelled and fresh selection was conducted in which applicant and many other candidates appeared at the selection. Selection was conducted for the vacancies of the year 1994 when the Estt. Sl.No.268/98 was not in force and only procedure prescribed in para 219 of IREM was in vogue. Procedure in para 219 IREM deals with regard to marks to be awarded out of 100 in different heads viz (i) professional ability maximum marks 50 and qualifying marks 30; (ii)

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Personality, address, leader and Academic qualification 20, (iii) Record of Service 15 and (iv) Seniority 15. The Calcutta Bench of the Tribunal directed to complete the selection process afresh by awarding additional marks on record of service taking into account the marks obtained by 23 candidates in the manner provided in the Rules and declare the final result. Further stand of the Respondents is that the order of the Calcutta Bench cannot be read in isolation. It should be read as a whole and on going through paragraph 19 and 21 of the order, by no stretch of imagination, it can be said that there has been direction to ignore the mandate provided in para 219(g) of the IREM which specifically states that total 15 marks has to be awarded on the head of seniority. The selection committee, accordingly awarded marks to the candidates as per the rules and keeping in view the directive of the Calcutta Bench of the Tribunal. Accordingly, by opposing the contention of the Applicant, Respondents prayed for dismissal of the OA both on merit as also on the point of limitation and jurisdiction. Applicant has also filed rejoinder more or less reiterating the stand taken in his Original Application which has been taken note of.

3. During hearing Learned Counsel for both sides reiterated their stand taken in the pleadings with reference to the materials placed on record. Having heard them at length we have gone through the records of this case.

4. From the pleadings as also from the argument, it is evident that the Applicant based his case on the decision of the Calcutta Bench of the Tribunal dasted 18.11.2005 in OA Nos. 1984 of 1999 & Ors (Subhasis Sarkar and Ors v Union of India and others) copy of which is filed along with OA as Annexure-10. . Procedure in para 219 IREM deals in regard to marks to be awarded out of 100 in different heads viz (i) professional ability maximum marks 50 and qualifying marks 30; (ii) Personality, address, leader and Academic qualification 20, (iii) Record of Service 15 and (iv) Seniority 15 based on which the present selection was conducted and appointment was made. It is the specific contention of the Applicant in this case that additional marks in the 'Record of Service' ought to have been counted for declaration of the final result and not on the 'Seniority' pursuant to the Calcutta Bench of the Tribunal. As such the present selection awarding the additional marks on the seniority being bad in law the panel published under Annexure-12 is liable to be quashed. In this connection, it is worthwhile to

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quote what the Calcutta Bench of the Tribunal held in the aforesaid order:

“19. In the peculiar facts and circumstances of the case we are of the considered opinion that the suggestion of the Sr. DGM at para 8 of his note extracted above, may be the best possible and practicable solution. It is also to be noted that the Sr. DGM is the panel approving authority. Since there is not much dispute regarding the existence of 24 vacancies at the relevant point of time for the ends of justice it will be appropriate to follow the suggestion of the Sr. DGM which is once again quoted below:

The 3rd alternative appears to be that we proceed with the selection and proceedings as left out by the earlier Selection Committee in respect of record of service and seniority and compile a consolidated result and declare the panel after approval of the Competent Authority. This would mean that marks already obtained for oral and personality is to be taken as such and only additional marks based on record of service and seniority is to be allotted by the new Committee.”

Based on the Sr DGM suggestion, the Calcutta Bench of the Tribunal proceeded to hold as under:

“21. According, we dispose of these three applications with the following direction -

- (i) The panel dt.27.09.1999 is hereby quashed;
- (ii) The respondent shall complete the selection process afresh by awarding only the additional marks based on Record of Service taking into the marks obtained by the 23 candidates (including those who are not parties) as noted in Table-B above and to declare the final result accordingly after re-assessing the vacancy position as

indicated earlier. It is observed that the selected candidates will be regularly appointed as Law Assistant with effect from the original date i.e. 27.9.1999 and the inter se seniority amongst the regular appointees will be determined as per rules;

- (iii) This exercise be completed within 4 months from the date of communication of this order;
- (iv) Statusquo as on date shall be maintained till then."

5. From the above, it is clear that the Calcutta Bench of the Tribunal came to such finding based on the suggestion furnished by the Sr DGM taking into consideration the facts and circumstances of that case. There was no direction of the Tribunal that this should be the principle applicable whenever there is any selection taking place in the Railway ignoring the Rules available in the field on the subject. In other words, the decision reached by the Tribunal cannot be said to be a judgment in *rem*. As such, we are of the considered view that the said decision is hardly of any help to the present case. Rather it is noticed that the Respondents have conducted and selected the candidates in term of the rules in force at the time when vacancies arose. Thus, there is no need of interference by this Tribunal. It is, therefore, held that there has been no miscarriage of justice caused to the Applicant

in the decision taking process of the matter of selection and appointment to the post in question. Accordingly, this OA is held to be without any merit and is hereby dismissed. No costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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