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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 739 of 2006
Cuttack, this the 16th day of February, 2009

Pratap Rudra Dash 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.)

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CUTTACK BENCH: CUTTACK

O.A.No 739 of 2006
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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)

Pratap Rudra Dash, aged about 30 years, S/o. Anirudha Dash
of Village-Ghantial, PO. Baniapal, Via-Arei, Dist. Jajpur, Orissa.
.....Applicant.

Legal practitioner:M/s.R.N.Misra-II,B.N.Sarangi, A.K.Sahoo.
- Versus -

1. Union of India represented through the General Manager, North Western Railway, At/PO/Dist.Jajpur, Rajasthan.
2. Divisional Personnel Officer, North Western Railway, Bikaner, At/PO/Dist.Bikaner, Rajasthan.

....Respondents

Legal Practitioner : Mr. S.K.Ojha, Counsel.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):-

By way of a positive act of selection conducted by the Respondents pursuant to the notification No.2/03 (Annexure-1) issued by the North Western Railway, the applicant on being declared selected for the post of Apprentice Permanent Way Service; was subjected to medical test. The medical certificate produced under Annexure-12 to the OA reveals that he was declared medically unfit for the post for which selection was conducted but declared fit in Bee two. Accordingly by filing representation he requested for providing him alternative appointment in terms of Establishment Sl. No. 232/2000 dated 19.12.2000. There being no answer from the Respondents, he approached this Tribunal in OA No.26 of 2005. The said OA was disposed of by this Tribunal on 14.11.2005 with direction to Respondent Nos.1 & 3 to consider sympathetically the case of the

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applicant for providing him an alternative employment in terms of Establishment Srl. No. 232/2000 dated 19.12.2000 and communicate their decision to the applicant by 31.10.2006. Liberty was also granted to the applicant to move the Tribunal in case he does not get an alternative employment within the stipulated time. There being no response in spite of the above direction of this Tribunal and various representations, he has approached this Tribunal in the present Original Application seeking direction to the Respondents to provide him an alternative appointment in compliance of the order of this Tribunal dated 14.11.2005 in OA No. 26 of 2005 and to pay him all financial benefits from 3.3.2006 i.e. from the date he was declared medically fit to get an alternative appointment.

2. It is the contention of the Respondents that the case of the applicant was duly considered by the Respondent No.1 in compliance of the direction of this Tribunal in OA No. 26 of 2005 but he could not be provided any alternative appointment due to non-availability of any vacant post in the same grade against direct recruitment quota either in the Bikaner Division or in the Division of Jaipur and Jodhpur also. The said decision of the General Manager was communicated to the applicant vide letter dated 22.6.2007. However, the life of the panel is no more in existence after one year of its publication. They have also stated that merely because of his selection he cannot claim any right to be appointed. Accordingly, the Respondents objected to issuance of any direction as prayed for by the applicant.

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3. Applicant by filing rejoinder has contradicted the stand of the Respondents made in the counter by stating that as the Respondents failed to carry out their own rules providing alternative appointment, on being found medically unfit for the particular category of post after being selected the Respondents are estopped to say that the applicant is not entitled to claim any relief as the life of the panel already expired. Further it has been stated by the applicant that in the absence of any such condition in the advertisement that the life of the panel was for one year, the Respondents are bound to provide the Applicant appointment in any alternative category of post.

4. Heard the rival submissions of the parties and perused the materials placed on record. It is revealed from the record that the Respondents objected the prayer of the Applicant on two grounds viz; expiry of the panel and non availability of vacancy in the equivalent category in any of the three Divisions of the Railway. In order to examine the right of the applicant it is worthwhile to place reliance on the provisions available under Establishment Srl. No. 232/2000 dated 19.12.2000 it provides as under:

1. "General Managers were authorized vide Board's letter referred to above to consider requests from candidates of non-technical categories also, who fail in prescribed medical examination after empanelment by RRB, for their posting in alternative categories subject to certain conditions mentioned in the letter under reference. It is further clarified that General Managers' powers of offering alternative appointment to such candidates will cover Group D categories also, subject to a restriction that the General Managers may offer, at their discretion, alternative appointment in another equivalent category for which the medically failed candidate is fit only if the alternative category being offered is one for which Board's approval has been obtained already for

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filling up vacancies. Board's permission for filling up vacancies in any particular category should not be sought merely for accommodating such candidates.

2. It is reiterated that these instructions will apply to all candidates both from reserved as well as non-reserved communities and for all categories of recruitment to Group C & D posts subject to restrictions for Group D categories mentioned in para 1 above and other conditions mentioned in Board's letter of even number dated 20.8.1999 and the following earlier instructions."

5. Considering the above provisions, this Bench of the Tribunal disposed of the earlier OA filed by the Applicant with direction to provide alternative appointment to the applicant in terms of the aforesaid provisions issued by the Railway Board. But as disclosed in the counter, no alternative appointment was provided to the applicant on the ground of non-availability of vacancy in direct recruitment quota. The said decision is now supported by the Respondents by providing another ground that the panel is already exhausted. In this connection, we may state that in the instant case it is not in dispute that the applicant was duly selected and was entitled to be appointed to the post from the dates when other successful candidates were appointed but for his medical unsuitability for the particular post though fit for other category of post, he was not appointed. Therefore, in terms of the Railway Board instructions he is entitled to be appointed in alternative equivalent post, available instantly or in future. The RB instruction does not stipulate any such time limit within which such alternative appointment could be provided or else the candidate has to forfeit his right to be appointed. Therefore, denial of the alternative appointment to the applicant cannot be said to be justified. In the circumstances it can safely be said that denial of appointment to the applicant by way of

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misinterpretation of the provisions can entitle the respondents to take the stand that as the validity of the panel has already been exhausted the applicant cannot be appointed. This question came up for consideration before the Hon'ble Rajasthan High Court in the case of Hanuman Ram v State of Rajasthan, reported in 2004 (1) ATJ 244 wherein it was held that expiry of the select list cannot be a ground to deny appointment to the selected candidate for no fault of his. Besides the above, it is seen that it was the specific direction of the Tribunal in earlier OA for consideration of the case for providing an alternative appointment to the applicant in terms of the aforesaid instructions of the Railway Board. This order still holds good in absence of the challenge before any higher forum or by way of filing RA.

6. In view of the discussions made above, this OA is disposed of with direction to the Respondent No.1 to consider/reconsider the case of applicant for providing him an alternative appointment in terms of the Establishment Sl. No. 232/2000 dated 19.12.2000 within a period of 30 (thirty) days from the date of receipt of this order. No costs.

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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