

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
CUTTACK

O.A. 777/2002

Date of order: 26.05.2004

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. H.P. Das, Administrative Member.

Manoranjan Nayak

-versus-

Union of India and Ors.

For the applicants : Mr. B.C. Patray, counsel.

For the respondents : Mr. R.C. Rath, counsel.

O R D E R

Per Justice B. Panigrahi, VC

Upon hearing Mr. B.C. Patray, ld. counsel appearing for the applicant and Mr. R.C. Rath, ld. counsel appearing for the respondents and on perusal of the grounds stated in the application, it has transpired that pursuant to notice of S.E. Railway Khurda Road, dated 3.3.1997 inviting applications from the Physically Handicapped candidates in Group-C categories vide Annexure-1, the applicant submitted his application along with Medical Certificate having been obtained from Prof. ENT, SCB Medical College, Cuttack and thereafter he was permitted to participate in the written test and viva-voce test. Finally, he was selected. After his selection, a temporary appointment order to the post of Apprenticeship Artisan, Grade-III was issued to him vide Annexure-6. But before joining the post, he was sent for medical examination by Sr. Divisional Medical Officer (ENT), S.E. Railway Garden Reach. Upon further examination by the Sr. Divisional Medical Officer (ENT) it transpires that the applicant could not qualify for consideration to be appointed under handicapped quota as per IRMM para 511(7)(b). Therefore, being

aggrieved by such action of the respondent authorities the applicant has filed this case.

2. Mr. Patra¹, ld. counsel appearing for the applicant has submitted that once the authorities were satisfied with regard to the extent of disability and permitted the applicant to appear in the written test and viva-voce test, there has been no necessity to direct the applicant for re-examination by Sr. Divisional Medical Officer. Therefore, the second examination by Sr. Divisional Medical Officer appears to be illegal. It is the case of the ld. counsel for the applicant that the respondents with a view to eliminate the applicant from the field has directed him to appear before the second medical test.

3. Mr. Rath, ld. counsel appearing for the respondents while repelling the contention, has invited our attention that the rule prescribed that to be regarded as Physically handicapped (Deaf) person, one should have a hearing loss of 90 decibels in the better ear. But in this case, since the applicant on his own showing had suffered 45% disability, therefore, he was not to be regarded as Physically handicapped (Hearing Impaired) candidate as required by the respondents. We find much force in the aforesaid submission. Patently, the applicant has only 45% disability (hearing impairment) in both ears as certified by the doctor. Therefore, he could not be regarded as Physically handicapped (deaf) person so as to be selected in Gr. C categories against PH quota.

4. It is, however, contended by the ld. counsel that the applicant suffered 45% disability (Hearing impairment) in each ear. If the disability of both the ears is taken together, it comes to 90% hearing impairment. However, we find from the advertisement that it is clearly mentioned therein that for being considered as deaf candidate, the hearing loss should be 90 decibels in the better ear or total hearing loss in both ears.

5. In the above situation, it is for the authorities to consider whether the extent of disability as claimed by the applicant is justified or not and whether on that basis the applicant deserves to be appointed against PH quota or not. We find that the Medical Superintendent, Garden Reach is the only competent authority to get the matter examined by constituting a Medical Board and to decide as to whether ~~each ear~~ 45% disability in each ear can be taken together as 90% so as to justify the claim of the applicant as per rules. A decision in this regard be taken within 4 months from the date of communication of this order.

6. With the above observation/direction the application is disposed of. No costs.

K. B. 26

Member (A)

Bengaluru

Vice-Chairman.