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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

Original Application No.1152 OF 2002
Cuttack, this the 28th day of December, 2005.

BIJAY KUMAR MISHRA

APPLICANT

Versus

UNION OF INDIA & Ors.

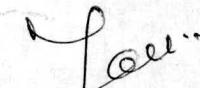
RESPONDENTS

FOR INSTRUCTIONS

p. Whether it be referred to the reporters or not? No
2. Whether it be circulated to all the Benches of CAT or not? No


(B.N. SOM)

VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER(JUDICIAL)



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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

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Cuttack, this the 28th day of December,2005.

CORAM:

**THE HON'BLE MR.B.N.SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)**

BIJAY KUMAR BISWAL,
Son of Padman Biswal,
At/PO/Via:- Jujumura,
Dist.Sambalpur,
Appointed as Gangman under Sambalpur
Division of South Eastern Railway.

..... APPLICANT.

For the Applicant : M/s. B.K.Patnaik, Advocates.

VERSUS

1. Union of India, represented through its General Manager, East Coast Railways, Bhubaneswar, Chandrasekharpur,Khurda.
2. Divisional Railway Manager, East Coast Railway, Sambalpur.
3. Divisional Personnel Officer, East Coast Railway,Sambalpur.
4. Chief Medical Director, South Eastern Railway, Garden Reach, Calcutta.

..... RESPONDENTS.

For the Respondents: Mr. T.Rath, Advocate.

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ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Basing on the result of the recruitment conducted by the Railways, the Applicant was issued with the offer of appointment as Gangman in Engineering Department/Khalasi in Signal and Telecom Department of the Railways on 28.11.2000 and, pursuant to the said offer of appointment, the Applicant reported to duty; when he was sent for medical examination (on 20.12.2000) and, on his medical examination, he was declared unfit for B-1 medical category. On appeal of the Applicant, he was sent for re-examination by the Chief Medical Director at Central Hospital of S.E. Railway at Garden Reach Calcutta and, ultimately, he was declared fit in B-1 category vide letter dated 1103-2002. When claimed to join his duty, on the basis of the fresh medical certificate, he was prevented to discharge duties on the ground that currency of the select panel (in which he was recruited) having been elapsed (after completion of one year on 27.11.2001) the Applicant has no substantive right to continue. The said factum was communicated to the Applicant, under Annexure A 10 dated 29-04-2002. Appeal filed by the Applicant, against the said order, having not been attended to, the Applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayer

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to quash the said order (under Annexure-10 dated 29.4.2002) and to direct the Respondents to allow him to join/continue in the post of Gangman with all consequential service and financial benefits.

2. Respondents, by filing their counter, have disclosed that according to the Railway Esstt. Sl. No.227/84, panel (of successful candidates) having been published on 28.11.2000, it expired on 27-11-2001 i.e. after completion of one year. Further it has been disclosed by the Respondents that in view of the order dated 20-02-2002 of this Tribunal passed in O.A. No. 74 of 2001 (in quashing the entire process of selection, basing on which the Applicant and others were selected and appointed) the Applicant has no right to be appointed and, therefore, his prayer was rightly rejected under intimation to him.

3. Heard learned counsel for the parties and perused the materials placed on record. During hearing, learned counsel appearing for the Applicant has submitted that Applicant was sent for medical test soon after his joining in the Railways and that, when the matter was in process, it can not be said that he will be deprived of his continuance due to lapse of the panel. It has been submitted by him that others, those who were appointed are still continuing and they have not been thrown out of job (even after the judgment pronounced by this Tribunal) and, therefore, there is no reason or ground to deprive of the Applicant his legitimate right to be appointed;

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especially when he was duly selected and found to be medically fit. Having heard learned counsel for both parties we are of the opinion that the plea of the Respondents that the life span of the panel having been expired, the Applicant is not entitled to join, is not a sustainable ground; as the Applicant has already been given the offer of appointment pursuant to which he had reported to duty and sent for medical test. Merely because his medical examination was delayed, it can not be said that he is to face denial on the ground of delay; especially when the delay is attributable to the Railways.

4. learned Standing Counsel appearing for the Respondents have submitted that persons those who were selected and appointed are continuing in the Railways; as the judgment rendered by this Tribunal (in the aforesaid case) has been stayed by the Hon'ble High Court of Orissa in OJC No. 6154 of 2002. A copy of the order of stay of the Hon'ble High Court of Orissa has also been produced on 7.12.2005. In view of the order of this Tribunal (rendered in OA Nos. 74 of 2001 quashing the entire selection and appointment of Gangmen conducted by the Railways) there is no doubt that the Applicant (who was also selected in the said selection) is bound to suffer the vice. The Applicant seeks direction of this Tribunal to the Respondents to issue appointment letter to the Applicant after quashing the letter under Annexure-A/10. We, however, find that Annexure-A/10 was issued

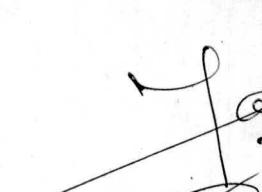
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prior to passing of the order dated 19-08-2002 by the Hon'ble High Court in Misc. Case No. 6452 of 2002 (arising out of OJC No. 6154 of 2002). It is apparent that Annexure-A/10 was not before the Hon'ble High Court for passing any order and in the circumstances, it is not for this Tribunal to pass any further order in that regard. However, it is for the Applicant to seek further remedy/appropriate orders from the higher legal forum ventilating his grievance as he has made out in this Original Application.

5. Having regard to the above facts and circumstances of this case, we dispose of this O.A. with the above observations and directions. No costs.


(B.N. SOM)
VICE-CHAIRMAN


J Mohanty
28/12/2005
(M.R. MOHANTY)
MEMBER(JUDICIAL)