

45

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 446 of 2007

Cuttack, this the 08th day of March, 2011

Abhiram Dhan Applicant

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes*

Ale
(A.K.PATNAIK)
Member(Judl)

R
(C. R. MOHAPATRA)
Member (Admn.)

b
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 446 of 2007

Cuttack, this the ~~08th~~ day of March, 2011

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Shri Abhiram Dhan, Aged about 33 years, Son of Shri Hiralal Dhan, working as Diesel Loco Pilot, Gr.I (Goods Driver) under Chief Crew Controller (Loco), Jharsuguda, PIN-768 201, residing at Quarter No.D/47/4, Railway Colony, Jharsuguda, PIN 768 201.

.....Applicant

By legal practitioner: M/s.AchintyaDas, D.K.Mohanty, Counsel,

-Versus-

1. Union of India represented through General Manager, S.E.Railway, Garden Reach, Kolkata-43.
2. The Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur Division, Jharkhand.
3. The Divisional Railway Manager, S.E.Railway, Chakradharpur Division, Chakradharpur, Jharkhand.

....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

ORDER

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

Briefly stated the case of the Applicant is that the Assistant Personnel Officer, Chakradharpur issued Circular under Annexure-A/1 dated 23-08-2006, inviting option from the Mail/Express Drivers (Diesel), Sr.Passenger/Passenger Drivers (Diesel) and Sr.Goods/Goods Drivers (Diesel) with at least three years regular service as Goods Driver for filling up of 05 (five) posts (UR-3, SC-1 & ST-1) of Loco Inspector (Diesel) in the scale of Rs.65,000-10,500/- (RSRP in terms of Estt. Srl.Nos.22/94, 100/96 and 38/98.

L

(a) Consequent upon selection, a panel was published for promotion to the posts of Loco Inspector in scale of Rs.6500-10500/-. Four persons (UR-3 & ST-1) were empanelled in Annexure-A/2 dated 03-04-2007. The Applicant belongs to ST community.

(b) Vide Annexure-A/3 dated 12-04-2007, in trms of the Office Order dated 03-04-2007, three UR candidates empanelled for promotion were posted at Bondamunda and Dongaposi respectively. Applicant belongs to ST community was proposed to be posted after release of Shri P.K.Singh, Sr.Loco Inspector, Dongaposi.

(c) Being aggrieved by the order at Annexure-A/3, Applicant submitted representations under Annexure-A/4 (dated 24.5.2007), A/5(dated 21.7.2007), and A/6 (dated 29.8.2007) respectively. Thereafter, with reference to the representation under Annexure-A/4, dated 24.5.2007, the Senior DPO/CKP in letter Annexure-A/7 dated 05.09.2007 informed the Applicant as under:

“You may note that while processing any selection vacancy assessment is done only after taking the anticipated vacancies into account. You shall be promoted only after a vacancy of LI arises, provided your panel remains current at the material time. It is informed that the currency of a selection panel is for 02 years from the date of approval by the competent authority. In your case, the panel shall remain current till 7.4.2009.”

(d) Hence by filing this Original Application under section 19 of the A.T. Act, 12985 on 5th November,2007 the Applicant seeks to quash the order under Annexure-A/7 dated 05.09.2007 and consequently direct the Respondents to promote the applicant to the post of LI when

8
others were promoted with all consequential service and financial benefits retrospectively.

2. In the counter, the Respondents' have taken the stand that the applicant will be posted immediately after release of Shri S.Nag (LI/JSG) and Shri P.K.Singh (LI/DPS) who have already been transferred and posted as LI (Simulator) and (DDI) respectively under PSTC/KGP. It is expected that the applicant will get the opportunity of promotion before expiry of 2 years currency of the panel w.e.f. 3.4.2007 as the applicant was selected through due process of selection conducted by the Respondents pursuant to the notification under Annexure-A/1 along with three other UR candidates and as the UR candidates placed above the applicant in the select list, they were promoted as against the available vacancies immediately. But when the aforesaid two persons were not released due to some administrative reason such as Shri P.K.Singh was reverted to a lower post consequent upon imposition of a major penalty, ~~charge sheet~~, the applicant could not be accommodated in the promotional post.


3. Applicant filed his rejoinder and the Respondents have also filed reply to the rejoinder. In the reply to the rejoinder, the Respondents have categorically stated that the administration is taking all possible steps to accommodate the applicant in the promotional post during the currency of the panel.

4. It is contended by Learned Counsel for the Applicant that in absence of any such remark in the notification in Annexure-A/1 that out of five two are anticipated vacancies, the Respondents are estopped under law to deprive the applicant of his legitimate right for promotion when he was selected along with others and the other three UR candidates have already been promoted. It is also contended that in absence of any specification in the advertisement or even in the counter that which of the vacancy belongs to ST category, appointment of the general candidate and at the same time denial of the appointment to the applicant is not sustainable. Further it was contended by him that after the reversion of Shri P.K.Singh, the applicant could have been promoted to the said post. In order to establish that the selection of the applicant was not against the anticipated vacancy, Learned Counsel for the Applicant placed reliance on various instructions of the Railway.

On the other hand, it was contended by learned counsel for the Respondents that conducting the selection both for the existing and anticipated vacancies is within the Rules of the Railway. Accordingly selection was conducted for five posts out of which two were anticipated vacancies. But for the reason of non-availability of the anticipated vacancy, the applicant though empanelled through positive act of selection could not be promoted while other UR candidates were promoted against the existing clear cut vacancies and that the three UR candidates stood above the applicant in the merit list prepared by the

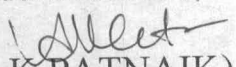
Respondents. It was contended that since the posts were meant to be filled up on the basis of merit cum seniority the three UR candidates were selected and appointed first. Further it was contended by Respondents' counsel that the selection of the applicant cannot give him absolute right to claim appointment when admittedly there was no vacancy. Accordingly, Respondents' counsel has prayed for dismissal of this OA.


5. We have given our thoughtful consideration to various points raised by both sides and perused the materials placed on record including the instructions in regard to assessment of the vacancies in various categories. In the circular under Annexure-A/1 there was no mention that the notification was for five posts including two anticipated vacancy. The Respondents have not also clarified in the counter or even in the advertisement which vacancy is meant for which category whether UR or ST. Fact remains that the applicant came out successful in the positive act of selection conducted by the Respondents. That the applicant was selected as against the vacancy of Shri Singh is not forthcoming either in the counter or in the circular/letter of rejection. It is the case of the Respondents that Shri S.Nag (LI/JSG) and Shri P.K.Singh (LI/DPS) have been transferred and meanwhile Shri Singh has been reverted to a lower post but nothing has been stated with regard to Shri Nag. Admittedly, one vacancy belongs to SC community which remained unfilled even till date. When the applicant was selected through a positive act of selection he could have been appointed against one of the vacant



posts in absence of any earmarked vacancy belongs to any particular category. The Respondents in their counter and in the reply to the rejoinder have candidly admitted that the administration is taking all possible steps to accommodate the applicant in the promotional post during the currency of the panel, development, if any, which took place meanwhile has not been brought to the notice of this Tribunal by any of the parties. In the above circumstances, when Shri Singh was reverted, as a measure of punishment, against the said consequential vacancy, the applicant could have been promoted. Having not done so, we are constrained to hold that keeping the applicant away from the promotional post of Loco Inspector (Diesel) is a miscarriage of justice caused to the Applicant. Therefore, the Respondents are hereby directed to appoint the applicant, if he is otherwise eligible as per Rules, in the promotional post of Loco Inspector (Diesel) against the vacancy caused due to reversion of Shri Singh and on his promotion his pay should notionally be fixed by the Respondents, as he has not practically discharged any duty in the higher post and he would be entitled to actual pay in the promotional post from *the date* he assumed the charge of the post and Respondents are directed to pass order promoting the applicant to the said post forthwith at any rate within a period of 45 days from the date of receipt of copy of this order. In the result, this OA stands allowed to the extent stated above. There shall be

no order as to costs.


(A.K. PATNAIK)
MEMBER (JUDL.)


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