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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK


O.A. No.489 of 2007
Cuttack, this the 7th day of March, 2011

A.V.K.Swamy Applicant
-v-
Union of India & Others Respondents

FOR INSTRUCTIONS

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


(A.K. PATNAIK)
Member (Judl)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No.489 of 2007

Cuttack, this the 7th day of March, 2011

CORAM:

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

A N D

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

A.V.K.Swamy, aged about 41 years, son of Late A.N.Murty, working as Junior Booking Clerk under Senior Divisional Commercial Manager, ECoRailway, Khurda Road at present residing at C/o.D.Suri, At/Po.Chatrapur Railway Colony, Dist. Ganjam, PIN-761 020.

.....Applicant

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

-Versus-

1. Union of India service through General Manager, ECoRailway, Chandrasekharpur, Bhubaneswar, PIN 751 023.
2. Chief Personnel Officer, ECoRailway, Chandrasekharpur, Bhubaneswar, PIN 751 023.
3. Divisional Railway Manager, ECoRailway, Khurda Road, PO. Jatni, Dist.Khurda, PIN 752 050.
4. Divisional Railway Manager (Personnel), ECoRailway, Khurda Road, PO. Jatni, Dist. Khurda, PIN 752 050.
5. Sr. Divisional Personnel Officer, ECoRailway, Khurda Road, PO. Jatni, Dist.Khurda, PIN 752 050.

....Respondents

By legal practitioner: Mr.P.C.Panda, Counsel

ORDER


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

Heard Mr.Achintya Das, Learned Counsel for the Applicant

and Mr. P.C.Panda, Learned Counsel appearing for the Railway/Respondents and perused materials placed on record. Fact of the matter is that as ^apre-condition laid down in the offer of appointment on compassionate ground, under Annexure-A/2, applicant came out unsuccessful in the training for which instead of in any Gr.C post he was


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provided appointment against a Gr. D post in the Railway. It is the contention of the Applicant that this action of the Respondents amounts to reversion and reversion is one of the major punishments provided under the RS (D&A) Rules, 1968. As such, the Respondents ought not to have reverted the applicant without following the rigors of the Rules and giving opportunity to the Applicant. Mr.Panda, relying on the statements made in the counter has stoutly opposed this contention of the Applicant that his appointment in Gr.D post amounts to reversion which could not have been resorted to without following due procedure of RS (D&A) Rules and principles of natural justice as the applicant was very much aware of the consequence of his failure in the training. Mr.Panda, Learned Counsel appearing for the Respondents has also pointed out that not only the applicant; all others who did not come out successful in the training like the applicant have been appointed in Gr.D post. Therefore, the applicant having accepted the terms and conditions of appointment, joined the post and after becoming unsuccessful he is estopped to challenge his reversion branding the same to be illegal for not following the rules or natural justice. Accordingly, Respondents' Counsel prayed for dismissal of this OA. This argument of Mr.Panda, Learned Counsel for the Respondents was rebutted by Applicant's Counsel. It was stated that there could be instances where even failed candidates have been appointed in some other Gr. C post but the applicant has been discriminated by way of being offered a Group D post. On being asked,




Mr. Panda, Learned Counsel for the Respondents expressed his inability to state anything on the above particular submission being beyond the pleading and in absence of instruction from Respondents.

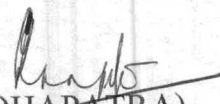
2. Considering the rival submission of the parties, perused the offer of appointment under Annexure-A/2. We do not find any irregularity or illegality in appointing the applicant on compassionate ground against Gr. D post due to his failure in the training. He having accepted the offer and becoming unsuccessful in the training is estopped to challenge his absorption in Gr. D post. In the circumstances question of following the rigors of the rules does not arise. In so far as natural justice is concerned, we may state that it is well settled law that "the principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance with the principles of natural justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising there under is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice" [**Punjab National Bank v. Manjeet Singh** [2007] 1 SCC (L&S) 16]. Hence the ground of not following natural justice cannot validate interference of this Tribunal in the decision of the Respondents in this case. We hold that none of the



grounds stated by the Applicant in support of the relief claimed in this OA is of any help to nullify the action of the Respondents.

3. However, there being no denial to the submission of the Applicant's counsel that there could be instances of similarly failed candidates being appointed against Gr. C posts but a step motherly attitude has been shown to the applicant, as agreed to by Learned Counsel for both sides, this OA is disposed of with direction to the Respondents to verify this particular aspect of the matter and if the submission of the Learned Counsel for the Applicant is found true, then the case of the applicant should also be considered in the light of the consideration given in other cases. In any event, the Respondents shall intimate the Applicant ~~of~~ the result of the verification as directed above, within a period of ninety days from the date of receipt of copy of this order. There shall be no order as to costs.


(A.K. PATNAIK)
Member (Judl)


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