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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.148 OF 2008

Cuttack this the 30th day of March, 2011

Kumari Lala Arnapurna...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T., PB or not ?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Kumari Lala Arnapurna Ray, aged about 33 years/DOB-01.06.1975, D/o. late Lata Ramanath Ray, a permanent resident of Balichack Sahi, PO-Jatni, Dist-Khurda, Orissa, PIN-752 050

...Applicant

By the Advocates:M/s.A.Das & D.K.Mohanty

-VERSUS-

1. Union of India service through General Manager, East Coast Railway, Bhubaneswar, PIN-751023
2. Chief Personnel Officer, East Coast Railway, Bhubaneswar, PIN-751023
3. Divisional Railway Manager (P), East Coast Railway, Khurda Road, PO-Jatni, Dist-Khurda, PIN-752 050
4. Assistant Personnel Officer-II, Office of the DRM(P), E.Co.Railway, PO-Jatni, Dist-Khurda, PIN-752 050

...Respondents

By the Advocates:Mr.B.B.Patnaik

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for the following relief.
 - i) To quash the advertisement under Annexure-A/5 so far as last date of age limit is concerned as also the order of rejection of representation dated A/8;
 - ii) To declare that any further action taken and selection made pursuant to such defective advertisement under Annexure-A/5 is null and void;
 - iii) To declare that the applicant is eligible and within the age group of 33 years to face the test and accordingly, direct the Respondents to conduct test afresh;
 - iv) To pass any other order/orders as would be deemed fit and proper for the ends of justice".
2. The brief facts leading to filing this O.A., according applicant are that she is a Rastrapati Guide and an active Guide Captain of Khurda Road District working since last 22 years. In pursuance of Employment Notification dated 31.1.2008

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(Annexure-A/5) inviting applications for recruitment to Group C and D categories against Scouts & Guides quota in East Coast Railway for the year 2007-2008, the applicant was a candidate for the post of Group-D. Having not received the call letter for appearing at the interview and having come to know from other aspirants that the interview was scheduled to be held on 29.3.2008, she made a representation dated 24.3.2008 (Annexure-A/7) to the Respondents, in response to which, the Assistant Personnel Officer-II vide letter dated 25.3.2008 (Annexure-A/8) intimated as under:

“With reference to your above representation, it is to inform you that the age limit for UR candidates as notified in CPO/BBS’s Employment Notice No.S&G/02/2007-08 dt. 30.01.08 is between 18 to 33 years on on 01.07.08. As per your date of birth, you have already crossed the maximum age limit. Hence your application has been rejected on the ground of over age.

As such, your request to consider your candidature against the above employment notice, cannot be agreed to”.

3. Aggrieved with the above order of rejection of her candidature, the applicant has moved this Tribunal with the prayers referred to above.
4. Respondent-Railways have filed their counter opposing the prayer of the applicant to which applicant has also filed rejoinder. Respondent-Railways have also filed an additional counter.
5. We have heard Shri A.Das, learned counsel for the applicant and Shri B.B.Patnaik, learned counsel for the Respondent-Railways and perused the materials on record.
6. The applicant has urged very many grounds in support of his contentions that the cut off date fixed by the Railways, i.e., 1.7.2008 for reckoning the age limit has no reasonable nexus and as such, it should have been fixed to 01.01..2008 as followed by them in their earlier advertisements.

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7. The Respondents have taken the plea that the date of birth of the applicant being 1.6.1975 she was adjudged overaged as on the cut off date i.e., 1.7.2008. According to Respondents, the rationality in fixing cut off date to 1.7.2008 is that the date of notification fell within the period of January to June of the same year. In this regard the counsel for the Respondents brought to our notice the circular dated 4.11.1999 (Annexure-R/4) stipulating the criterion for reckoning of age of the candidates for appointment to the Railway Services for Group C and D posts.

8. We have considered the submissions made by the learned counsel for the parties. From the revelation of facts, the following point needs determination:

“Whether the cut off date as fixed by the Respondent-Railways for determining the age limit has any reasonable nexus and if so, whether the applicant has a right to be considered for the post in question”.

9. In this connection, it would be worthwhile to quote hereunder the Railway Estt.Srl.No.276/99 (Annexure-R/4), which reads as under:

“Date of reckoning of age of candidates for appointment to the Railway Services for Group C and d posts.

It has been noticed that there is no uniformity in the dates for reckoning of age of the candidates appearing in the various examinations conducted by the Railway Recruitment Boards/Railways. With a view to maintain uniformity, Ministry of Railways (Railway Board) have declared that henceforth, the date of reckoning of age of the candidates desirous of appearing in Railway service **will be 1st of July of the year for those posts, notification for which are issued between January to June and 1st of January of next year for those posts for which notification are issued between July and December”.**

10. The applicant to the above, in her rejoinder in Para-9 has replied as under:

[Handwritten signature]

“That the Railway Board instruction under Annexure-R/4 is dated 4.11.1999. If it was so, the Respondents ought not to have willfully violated such provisions of fixing cut off date and issued circulars as mentioned in Annexure No.A/2 and A/3(which are only samples), which are contrary to such circular issued by Railway Board in Annexure-R/4. It is trite law that discretion cannot be used discriminatorily. If it is so then utilization of discretion is bad in law. As such the instructions filed under Annexure-A/4 is of hardly any help to them on the face of the facts stated above. Further it is submitted that this was not the ground taken in the order of rejection of the representation”.

11. We have considered the above submissions made by the applicant on the forefront of Annexure-R/4 filed by the Respondent-Railways. The grounds urged by the applicant in the rejoinder as mentioned above, are not sustainable for the reasons, inter alia, as under:

- i) The applicant has not challenged vires of instructions issued by the Railway Board vide Esst.Srl.No.276/99, whereby the determination of age limit has been fixed to a date other than the last date fixed for receipt of applications, i.e., 29.2.2008.
- ii) Annexures-A/2 and A/3 produced by the applicant as an outcome of violation of the above referred Estt.Srl.No.276/99 are of no help in view of the fact that those Annexures in the years 2003-2004 and 2006-2007 inviting applications for Scout & Guide quota might be mistakes having been issued in disregard of Estt.Srl.No.276/99 by the Respondent-Railways, but that by itself cannot create a precedent nor adjudge the applicant to have been discriminated against. In other words, a mistake needs rectification but can by no stretch of imagination confers any right on the ground of discrimination.
- iii) By the issuance of Employment Notification vide Annexures-A/2 and A/3 no discretionary powers exercised by the Respondent-Railways discriminatorily is written large.


12. For the reasons discussed above, we hold that Employment Notification having fallen between January to June, the Respondent-Railways have rightly

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stipulated the cut off date 1.7.2008 as stipulated in the circular for considering the age limit of the aspiring candidates for the post in question. Accordingly, we answer the point in issue as under:

The cut off date as fixed by the Respondent-Railways for determining the age limit has reasonable nexus, which is based on the Est. Sl.No.276/99 and in the circumstance the applicant having been adjudged over-aged as on cut off date has no right to be considered for the post in question.

13. In the result, the O.A. fails. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

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