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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

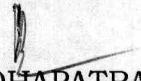
Original Application No.173 & 196 of 2008
Cuttack, this the 20th day of April, 2009

Sukanti Lata Panda Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.173 & 196 of 2008
Cuttack, this the ~~20th~~ day of April, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

OA No.173/2008

Sukantilata Panda, aged about 53 years, wife of Sukanta Kumar Panda, At/Po:Kamakshya Nagar, Dist. Dhenkanal now working as Chief Matron in the office of the Chief Medical Superintendent, Khurda Road, At/Po.Jatni, Dist. Khurda.

.....Applicant

-Vs-

1. Union of India represented through the General Manager, East Coast Railway, Rail Bihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandraekharapur, Bhubaneswar, Dist. Khurda.
3. Yasobanti Mohananda at present working as Chief Matron, East Coast Railway Hospital office of the Chief Medical Superintendent, Khurda Road, At/Po.Jatni, Dist. Khurda.

....Respondents

OA No. 196 of 2008

Sukantilata Panda, aged about 53 years, wife of Sukanta Kumar Panda, At/Po:Kamakshya Nagar, Dist. Dhenkanal now working as Chief Matron in the office of the Chief Medical Superintendent, Khurda Road, At/Po.Jatni, Dist. Khurda.

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-Vs-

1. Union of India represented through the General Manager, East Coast Railway, Rail Bihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandraekharapur, Bhubaneswar, Dist. Khurda.
3. Chief Medical Superintendent, East Coast Railway Hospital, Khurda Road, At/Po. Jatni, Dist. Khurda.

....Respondents

Advocate for Applicant. :M/s.B.R.Routray,D.K.Mohapatra,
S.Das, D.Routray, S.Jena.

Advocate for Respondents: Mr.S.K.Ojha, Standing Counsel

ORDER

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

The Applicant is a Chief Matron in the Office of the Chief Medical Superintendent, E. Co. Railway, Khurda. According to the Applicant, she was not called to appear at the written examination scheduled to be held on 24.04.2008 for filling up of the post of Assistant Nursing Officer on promotion basis; whereas her junior i.e. Respondent No.3 was allowed to appear at the test. She submitted representation dated 21.02.2008. As no decision prior to conducting the examination scheduled to be held on 24.04.2008 was conveyed, she has approached this Tribunal by filing OA No. 173 of 2008 seeking the following reliefs:

"To admit the Original Application, call for the records, issue necessary direction to the Respondents 1 and 2 to consider the candidature of the present applicant for promotion to the post of A.N.O along with other eligible candidates and accordingly she may be appointed as A.N.O as against the existing vacancy.

2. The aforesaid matter was heard on 23rd April, 2008 on which date this Tribunal while directing notice to the Respondents to file their reply, as an interim measure directed **"to allow the applicant to appear at the test scheduled to be held on 24.04.2008 subject to the condition that she is eligible for appearing at this test. In case she is not able to appear at the test on 24.04.2008 she may be allowed to appear on a subsequent date when the supplementary test for the above purpose will be conducted by the concerned authority."**

3. The representation of the Applicant, as was pending since 21.2.2008 (i.e. prior to filing OA No. 173/2008), was rejected and communicated to the applicant in letter dated 23.04.2008. Being aggrieved by the said order of rejection, the Applicant again moved this Tribunal in OA No.196/2008 challenging the said letter of rejection dated 23.04.2008 as also seeking direction to the Respondents to allow her to sit at the supplementary written test or to conduct a special test for the examination for promotion to the post of ANO against the existing vacancy.

4. Respondents by filing counter in both the cases opposed the contentions made in both the OAs and have prayed for dismissal of this OA. According to the Respondents for filling up of three UR posts of Assistant Nursing Officer on ad-hoc basis in the Medical Department of E. Co. Railway, Bhubaneswar, notification dated 03.10.2007 was issued calling for option/willingness from among the Chief Matrons in the scale of Rs.7450-11500/- of Medical Department who have completed minimum two years of non-fortuitous service in the grade of Rs.7450-11500/- or minimum three years of non-fortuitous combined service in the grade of 7450-11500/- and Rs.6500-10500/- as on 01.04.2007. As per the zone of consideration rules, for three posts ordinarily ten eligible candidates are to be called for the test. As only eight chief matrons possessing the eligibility conditions by the cut off date (01.04.2007) were available, a list containing such eight names was published inviting willingness to appear at the test scheduled to be held on 24.04.2008 pursuant to which seven persons submitted their willingness. Out of seven,

meanwhile one retired from service so he was excluded from the list. Ultimately five eligible candidates appeared at the test held on 24.04.2008; as one Smt. G.R.Premalata did not appear. The Respondents have denied the assertion that Respondent No.3 is junior to Applicant. It has been stated that Respondent No.3 was junior to the Applicant in the grade of Matron but on restructuring of cadre, Respondent No.3 being SC candidate was promoted to the post of Chief Matron on 01.11.2003 and became senior to the Applicant in the said grade as the promotion of the applicant to the Chief Matron was only on 11.07.2007. As the applicant did not fulfill the eligibility condition as on the date cut off date i.e. 01.04.2007 her name was rightly not included in the eligibility list of employees for appearing at the ANO examination. Applicant was informed in letter dated 09.01.2008 and 23.04.2008 that as she lacks the eligibility condition as provided in RBE No.70/2007 her name did not figure in the list of candidates eligible to appear at the ANO examination. It has been averred by the Respondents that the aforesaid vacancies are of the period from 1.4.2007 to 31.3.2009 and as such, there was no wrong in following the provision of RBE No.70/2007. Accordingly, Respondents opposed the stand of the applicant and prayed for dismissal of both the OAs.

5. Arguments, relying on the pleadings advanced by the respective parties were heard and perused the materials placed on record. Rejoinder and written note of argument filed by the Applicant reiterating the stand taken in the OAs have been taken note of.

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6. The main stand taken by the Applicant in support of the relief claimed in this OA is that Board's RBE No.70/2007 came into effect on 3.5.2007 which having no retrospective application, the vacancies ought to have been filled up as per the provisions of RB's letter No. E(GP)99/2/22 dated 22.07.2004 as it is well established principles of law that rules existing as on the date of vacancies shall have the determining factor for filling up of those vacancies (**Y. V. Rangaiah and others v J. Sreenivasa Rao and others**, AIR 1983 SC 852). It has been stated that as per the letter dated 22.7.2004 whoever completes three years service in the scale of pay of Rs.5000/- will be eligible for consideration for the post of ANO. It has been contended that as per RB's Letter No.E/GP/87/2/72 dated 11.1.1988 and 22.10.1991 the assessment of vacancy should be certified by the cadre authority and the concerned establishment officer and before issue of notification the assessment of vacancy should be got approved by the concerned PHOD/CHOD. The vacancy so assessed has to be apportioned for 70% (selection) and 30% (LDCE) duly indicating the reservation break up. Since the advertisement does not speak of details in regard to the above, it pre-supposes that the vacancies include existing as well as anticipated; especially when there was no other notification was issued for the post of ANO prior to 03.10.2007 and as such, determining the eligibility of the candidate by the provision of RBE No.70/2007 is not justified. Further contention of the applicant is that as per RB's letter dated 09.04.1981 and 26.09.1981 for three vacancies at least ten candidates should have been called for the test and as such non-calling the applicant not only

tantamounts to violation of the instruction of the Railway Board but also curtails the rights of the applicant to be considered. Although three candidates selected two of them were appointed in the post of ANO and still two vacancies in the post of ANO are lying vacant. Next contention of the applicant is that if there is no cut off date in the prescribed rules the last date is the date of making application as fixed in the advertisement or the date of examination. In the instant case in spite of there being no cut off date in the rules or in circular, the respondents fixed the cut off date as 1.4.2007 which is unreasonable, unjust and unwarranted in the eyes of law. In view of the above Learned Counsel for the Applicant submitted that as the applicant already participated in the test on 24.4.2008 pursuant to the interim order of this Tribunal, direction may be issued to the Respondents to declare the result and take further step based on the performance of the applicant in the said test as against the existing vacancies of ANO.

On the other contrary, Learned Standing Counsel relying on the averments made in the counter has emphatically pointed out that since the applicant did not fulfill the conditions of eligibility by the cut off date provided in the advertisement, she was not eligible to appear at the test for the post of ANO; for which her name did not figure in the eligibility list of candidate prepared by the Respondents. Besides the above, it has been pointed out by him that since it is the contention of the applicant that the selection was not conducted in accordance with rules, she should have prayed for quashing of the entire selection but she failed to pray so and that, though the

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applicant raised objection to inclusion of some of the names in the eligibility list claiming to be junior to her, she failed to make them party in this OA. His next contention is that the applicant has also not prayed for quashing of the notification fixing the cut off date as 1.4.2007. For the aforesaid reason, Learned Standing Counsel sincerely prayed for dismissal of this OA.

7. We have given our thoughtful consideration to various points raised by the parties. In view of the stand taken in the counter and not controverted by the Applicant, it is held that Smt.Y.Mahananda was senior and having eligibility by the cut off date to be called for the ANO test. No record has been produced by the Applicant to substantiate that vacancies were existing prior to coming into force of RBE No.70/2007 to defeat the stand of the Respondents that the assessment period of vacancy was from 01.04.2007 to 31.03.2009. In the notification dated 03.10.2007 it was clearly provided that one must fulfil the eligibility condition as on 01.04.2007. The applicant has not challenged the said notification by way of making any prayer to quash the same. As such by applying the ratio of the decision of the Apex Court rendered in the case of **Ashok Kumar Sharma and others v Chander Shekhar and Another**, 1997 (4) SCC 19 that there should be no deviation from the conditions stipulated in the advertisement, the submission of the applicant that the cut off date is irrational is held to be without any merit. Merely because vacancy exists and the applicant had appeared at the test due to the interim order of this Tribunal cannot bestow any right on

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her particularly when she was not eligible to appear at the test for the post of ANO.

8. In the light of the discussions made above, we find no merit in both the OAs. The OAs are accordingly dismissed. No costs.

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(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

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

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