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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.25 of 2008
Cuttack this the 14th day of March, 2012

Pravakar Baral 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 Tribunal or not?

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

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

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ORIGINAL APPLICATION NO.25 OF 2008
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HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Pravakar Baral, aged about 40 years, S/o. late Anand Baral of Vill/PO-Chhatipur, PO/Dist-Khurda, presently working as T.T.I., East Co.Railway, Bhubaneswar

...Applicant

By the Advocates: M/s. G.Rath, S.N. Mishra, T.K. Praharaj & S.Rath

-VERSUS-

1. Union of India represented by General Manager, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager (O), East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Orissa
3. Senior Divisional Commercial Manager, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Orissa
4. Senior Divisional Personnel Officer, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Orissa
5. Sri Gadadhar Panda aged about not known, S/o. not known, working as TTI at Khurda Road, C/o. Station Superintendent, Khurda Road Division, At/PO-Jatni, Dist-Khurda, Orissa

...Respondents

By the Advocates: Mr.S.K.Ojha, SC

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O R D E R

A.K.PATNAIK, MEMBER (JUDL):

The Applicant is presently working as T.T.I. in the East Coast Railways, Bhubanewar. Aggrieved with the inaction of the Respondent-Railways in allowing him to appear at the departmental examination for promotion to the post of Chief Ticket Inspector, he has moved this Tribunal in the present Original Application seeking the following relief.

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- "i) To direct the Railway Authority to consider the name of the applicant for promotion to the post of C.T.I.
- ii) To direct the Railway to conduct supplementary test for the applicant for promotion to the post of C.T.I.
- iii) To give any other relief/reliefs, direction/directions, order/orders as the Hon'ble Tribunal deems fit and proper."

2. The genesis of the case is that Respondent-Railways published a notice dated 30.6.2007 for holding written test for selection to the grade of Chief Ticket Inspector against 15 vacancies belonging to unreserved category fixing the date of written test and supplementary written test to 4.8.2007 and 11.8.2007 respectively. The post of Chief Ticket Inspector being a selection post, as per the relevant rules of Railway Establishment Manual governing such selection, 1: 3 formulas is to be taken into account. In other words, **for one vacancy three eligible candidates** are to be called for the selection test. Having regard to the above Rules, Respondent-Railways published a list comprising 45 eligible candidates as per enclosure (Annexure-I) to Annexure-A/2 dated 30.6.2007. Since the name of the applicant did not find place in the said list of eligible candidates, he submitted successive representations to the Respondent-Department, which did not yield any fruitful result; this Original Application has been filed with the aforesaid prayer.

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 3. On the other hand, the Respondents have opposed the prayer of the Applicant. In the counter filed by them it has been stated that the list of the candidates was prepared strictly in accordance with Rules and, therefore, there being no illegality in publishing the eligibility list of candidates for appearing at the CTI Examination, this O.A. deserves no consideration.

4. The main thrust of the argument advanced by Shri G.Rath, learned Senior Counsel is that incumbents placed at Sl.Nos. 2, 8 and 12 of the gradation list of T.T.I. vide Annexure-A/1 having retired from service already and that the applicant being at Sl.No.49 of the said gradation list, his position was to go up to Sl.No.46 and one Shri Gadadhar Panda (Respondent No.5) who was at Sl.No.71 of the gradation list of TTI at Annexure-A/1 and ought not have been found place in the list of eligible candidates for appearing at the CTI Examination has been placed at Sl.No. 32 of the eligibility list. According to Shri Rath, had the name of Respondent No.5 not been interpolated, the applicant's name could have been found place at Sl.No.45 of the said eligibility list. In addition to this, Shri Rath further submitted that out of six eligible candidates who had submitted their willingness for appearing at the examination, five persons had submitted their unwillingness prior to the date fixed for main written examination, i.e., 1.8.2007, which were received

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on 10.8.2007, i.e., prior to the supplementary written test that was held on 11.08.2007. Based on this, Shri Rath submitted that in the above circumstances, nothing stood in the way of the Respondents to allow the applicant to sit for the supplementary written examination for the post in question. Last but not the least, Shri Rath, for the Applicant submitted that since there is a provision for conducting supplementary test, keeping in view the unwillingness of the persons who had not appeared the preliminary written test, the ratio of 1:3 should have been taken into consideration thereby making good the shortfall candidate for appearing at the supplementary examination. With these submissions, Shri Rath reiterated his prayer as in the O.A.

On the other hand, Shri S.K. Ojha, Ld.SC for Railway-Respondents submitted the circumstances under which the eligibility list of 45 candidates was prepared. According to Shri Ojha, while preparing the eligibility list, names of retired employees, as submitted by Shri Rath did not find place. So far as interpolation of name of Shri G.Panda (Res.No.5) at Sl.No.32 of the eligibility list is concerned, by Shri Ojha submitted that with the approval of the competent authority, the seniority position of said Shri Panda, TTI appearing at Sl.No.71 had been changed and interpolated at Sl.No.34-A, i.e. between Sri Prafulla Kumar Tripathy (Sl.No.34) and Sri

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A.K.Bandopadhyay (Sl.No.35). To substantiate his contention Shri Ojha drew our attention to Annexure-R/4 dated 27.6.2007 and submitted that the applicant having not raised any objection to this interpolation at any point of time before the Respondents, he is deemed to have acquiesced this position. In so far submission of unwillingness by five eligible candidates prior to the date of supplementary written examination is concerned, Shri Ojha put-forth two fold submissions, i.e. (i) supplementary test is held in order to give a further scope to the candidates in the eligibility list who due to circumstances beyond their control could not appear at the main written examination and (ii) no additional candidate could be called in place of candidates submitting unwillingness after commencement of the selection. In so far as the last contention of the applicant, it was contended by Mr. Ojha, Learned Standing Counsel appearing for the Respondents that supplementary test is meant for the candidates in the eligibility list prepared by adhering 1:3 formula but could not appear due to the reason beyond their control and in that event the scope for preparing a fresh eligibility list having regard to 1:3 formula.

5. We have considered the rival contentions and given our anxious thoughts to the arguments advanced at the Bar.

6. From the contentions of the parties as raised above, the sole point to be decided is whether the applicant

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has been left out of consideration by infringement of any rules or instructions governing preparation of eligibility list. In other words, whether any right of the applicant has been infringed by the Respondent-Railways in not allowing him for appearing at the supplementary written examination for promotion to the post of C.T.I. that was held on 4.8.2007.

7. From the records adduced, it is an admitted position that the eligibility list for CTI Examination has been prepared after eliminating the incumbents who had already retired from service. In so far as interpolation of name of Shri Gadadhar Panda (Respondent No.5) is concerned, we found that this has been so interpolated at SI.No.32 of the eligibility list based on the corrigendum issued by the Respondent-Railways vide Annexure-R/4. It is not the case of the applicant that at any point of time he had ever made any representation or challenged such interpolation. In this view of the matter the legality of interpolation of name of Shri Gadadhar Panda at SI.No.32 of the eligibility list cannot be called in question at this stage. As regards submission of unwillingness by five candidates in the eligibility list, in order to determine this, a reference has to be made to relevant rules laid as down in IREM, which reads as under:

NOTE(4): Persons who have expressed their unwillingness and those who do not fulfill the

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eligibility conditions should not be reckoned for determining the field of consideration.
(NOTE(1) below sub-para (e) of Para 215 of IREM)

NOTE(5): If a candidate who has not formally given his willingness and does not appear in the selection he has to be construed to be in the reckoning for selection and has to be called for the supplementary selection, if the circumstances so warrant. Similarly, if he gives unwillingness after a subsequent date after the commencement of the selection, additional candidates cannot be called in his place.

Note (2) below sub-para (e) of para 215 of IREM)

NOTE(3) of Para-5.2 under Para-5 PROCESS OF SELECTION:

Inclusion of names of candidates, who are not originally in the zone of consideration, is not allowed.

8. On a harmonious reading of NOTE-(4) and NOTE-(5) supra, it is clear that a candidate in the eligibility list has to give his willingness formally. Annexure-A/2 notification along with eligibility list was issued on 30.6.2007 fixing the date of main written test and supplementary test to 4.8.2007 and 11.8.2007 respectively. Respondents have furnished a copy of letter dated 5.8.2007(Annexure-R/5) wherein the applicant had been provided with information under RTI Act by the office of D.R.M.(P), East Coast Railway, Khurda Road. It has been indicated therein that no unwillingness were received in this office prior to the Main Written Test held on 04.08.2007. However, unwillingness of five staff (Sl.No. 1 to 5) have been received in this office on 10.08.07, i.e., prior to the

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supplementary written test held on 11.08.07. 11. On a reference being made to unwillingness as submitted by the applicant vide Annexures-A/4 series, the detailed particulars are indicated hereunder against each.

| <u>Sl.No.</u> | <u>Names</u> | <u>Date of unwillingness</u> |
|---------------|--------------|------------------------------|
| 1. | M.R.P. Rao | 01.8.2007 |
| 2. | B.S.Mohanty | 30.07.2007 |
| 3. | A.Singh | 04.08.2007 |
| 4. | A.K.B.Rao | 02.08.2007 |

9. In the above backdrop, it is to be examined as to whether the unwillingness submitted by these eligible candidates have been so submitted before the commencement of selection or otherwise. Respondents have taken the stand that as per Estt.Srl.No.266/99 for conducting one selection, firstly, assessment of vacancies will be made and also notified for selection. After such notification eligible candidates will be notified. Thereafter, readiness notice will be issued before finalizing the date of main as well as supplementary written test. Then notification is to be issued asking the candidates to take part in the written test and advising the controlling authority to spare them for participation. From the above procedure adopted by the Respondents in the matter of selection, it is clear that with the issuance of notification asking the candidates to take part in the written test and advising the controlling authority to spare them for participation, the entire

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process for selection ends. Viewed from this, it cannot be held that the unwillingness was submitted by the eligible candidates before the commencement of selection. This apart, the applicant in his representation as well as relief sought herein has prayed for allowing him to appear at the supplementary written test. Supplementary test, as referred to above, is held only in respect of the candidates in the eligibility list who could not appear at the main written examination due the circumstances beyond their control but certainly not by introducing additional candidates beyond the scope and purview of eligibility list already prepared, finalized and circulated after undergoing a checkered career. Apart from the above, it is the specific and categorical instruction issued vide Note (2) below sub-para (e) of para 215 of IREM) NOTE(3) of Para-5.2 under Para-5 PROCESS OF SELECTION (supra) that inclusion of names of candidates, who are not originally in the zone of consideration, is not allowed.

10. For the reasons discussed above, we answer the point in issue that the applicant has not been left out of consideration by infringement of rules or instructions governing preparation of eligibility list nor any of his rights has been infringed by the Respondent-Railways in not allowing him for appearing at the supplementary written examination for promotion to the post of C.T.I. that was held on 4.8.2007.

M. A. Ali

11. In the result, the O.A. is held to be without any merit
and the same is accordingly, dismissed. No costs.

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(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

Alka
(A.K.PATNAIK)
JUDICIAL MEMBER

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