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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 357 of 2008

Cuttack, this the ~~31st~~ day of March, 2011

Binod Bihari Moharana 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*

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 357 of 2008

Cuttack, this the 31~~st~~ 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)

Binod Bihari Maharana, S/o. Kartik Maharana, aged about 45 years, At/Po-Kantia, Via-Jatni, PS-Jatni, Dist. Khurda.

.....Applicant

By legal practitioner: M/s.S.K.Purohit, K.M.H.Niamati,
A.K.Das, S.K.Mohanty, Counsel.

-Versus-

1. Union of India represented by the Secretary to the Government of India, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi-1.
2. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda-3.
3. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/Po-Jatni, Dist. Khurda.
4. The Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.

....Respondents

By legal practitioner: Mr.T.Rath, Counsel.

ORDER

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

In this Original Application filed under section 19 of the A.T. Act, 1985, the prayer of the applicant is that his father while working in the Railway superannuated from service on 30.06.1989. The Applicant and other similarly situated persons applied for enrolment of fresh faces as substitute for utilization against day to day casualties keeping in mind the poverty and

difficulties of the retired Railway employees, pursuant to the notification dated 13-08-1990 (Annexure-2) issued by the Respondents inviting application from the children of the Railway Employees who had retired on superannuation or voluntarily after 1-1-1987 or were to retire from service by 31-12-1993. Accordingly, applicant along with others appeared at the Screening test conducted by the duly constituted Screening Committee, pursuant to the call letter issued to him in Annexure-3 in furtherance to the Notification dated 13.8.1990. But neither result of the said test was published nor the applicant was provided any engagement.

2. It is the further case of the applicant that some of the candidates who had appeared but yet to know the result of the test, approached before this Tribunal in OA No.511 of 1994. Thereafter, as many as 20 similarly situated candidates approached this Tribunal in OA No. 520 of 2001. The said OA was disposed of by this Tribunal on 16.4.2004. Again 149 candidates approached this Tribunal in OA Nos.256 and 336 to 483 of 2005 which were disposed of by this Tribunal on 8.6.2005. Another OA No. 256 of 2007 was filed by Tajmul Hussain which was also disposed of by this Tribunal on 03-10-2007. In the above background, stating that his case is covered by the earlier decisions of this Tribunal, he requested the Respondents to consider his case

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while considering the cases of others but according to the Applicant no decision has been communicated to him. Hence he has approached this Tribunal in the present OA seeking direction to the Respondents to consider his case for appointment as substitute by relaxing the upper age in terms of the decision of this Tribunal dated 16.4.2004 in OA No. 520 of 2001.

3. Respondents filed their counter in which it has been admitted that pursuant to the notification inviting application, screening test was conducted in the year 1991. Applicant along with others participated in the Screening Test. But before finalization of test/panel the entire screening papers were seized by the Vigilance Department of S.E.Railway. However, it was admitted by the Respondents that they have challenged the order of this Tribunal dated 4.1.1999 in OA No. 511 of 1994 before the Hon'ble High Court of Orissa in WP (C) No. 8814 of 2004 which was disposed of on 17.3.2006 copy of the order has been placed by the Respondents at Annexure-R/1. In the present case, the main stand of the Respondents is that as the applicant has approached belatedly he is not entitled to the relief claimed in this OA. Rejoinder and reply to the rejoinder have also been filed by the respective parties and we have gone through the same.

4. Heard Learned Counsel for both sides and perused the materials placed on record. It was contended by the learned Counsel for the Applicant that the Respondents being the model employer should not have expected that each and every similarly situated individual should take the shelter of the Court of law seeking the same relief as granted in a particular case. It has been contended that it is the duty of the authorities in the present case Railway to extend the benefits of the decision to all similarly situated persons so as to bring uniformity in approach. But for the reasons best known to the Respondents/Railway, in spite of specific undertaking, they have only extended the benefits, in compliance of the direction of the Hon'ble High Court to twenty Applicants thereby depriving the applicant his legitimate right to be appointed like others which is not sustainable in the eyes of law being contrary to the provision of Articles 14 and 16 of the Constitution. Further it was contended that Constitutional scheme of equality would apply to the cases where the parties are similarly situated. Hence, non-extension of the benefit to the present Applicant and extension of the benefit to the Opposite Parties in Writ Petition No.8814 (C) of 2004, besides being contrary to constitutional mandate is against the decision of the Constitution Bench of the Hon'ble Apex Court in the cases of

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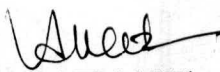
K.C.Sharma and others v Union of India and others, 1998(1) AISLJ 54 and **Maharaj Krishan Bhatt and Another Vs State of Jammu and Kashmir and others** (2008) 2 SCC (L&S) 783 in which their Lordships while relying on the provisions enshrined in Articles 14 & 16 have held that once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons. Next contention of the Applicant is that as the case of Applicant is covered by the decision of the Hon'ble High Court of Orissa in WP (C) No.8814 of 2004 dated 17.3.2006 unless the benefits of the said decision are extended by following the decision of the Hon'ble Apex Court in the case of **Raj Kishore Pandey v State of Uttar Pradesh and others**, (2009) 1 Supreme Court Cases (L&S) 537, to the Applicant, injustice or discrimination caused in the decision making process to the applicant will be allowed to perpetuate and the Applicant will be highly prejudiced. On the other hand it was contended by the Respondents' Counsel that as the applicant was not vigilant he is not entitled to the relief as claimed in this OA.


Considered the rival submission of the parties. Going by the decision of the Hon'ble Apex Court in the case of K.C.Sharma and others (surpa) we agree with the submission made by the Applicant and hold that merely because of the delay

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in approaching this Tribunal, the applicant cannot be denied the benefits of the decision reached by the Hon'ble High Court in a similar matter in WP (C) No.8814 of 2004 dated 17.3.2006. Hence, the Respondents are hereby directed to consider the case of the applicant in the light of the observation and direction of the Hon'ble High Court of Orissa dated 17.3.2006 in WP (C) No. 8814 of 2004 and grant the applicant, if otherwise suitable, the same benefit as has been granted to the Opposite Parties in the aforesaid Writ Petition within a period of 90(ninety) days from the date of receipt of copy of this order.

5. With the aforesaid observation and direction 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.)