

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No. 816 of 2010
Cuttack, this the 26th day of April, 2013

CORAM
HON'BLE MR.A.K.PATNAIK, MEMBER(JUDL.)
HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)
.....

B.Venkata Rao,
Aged about 33 years,
Son of B.Narasimha,
At-D No.50-5-3/2,
Seethammampeta,
Visakhapatnam.

....Applicant

(Advocate(s)) -M/s.G.Rath, Achintya Das)

-Versus-

Union of India represented though its –

1. General Manager,
E.Co. Railway,
Rail Vihar,
Chandrasekharapur,
Bhubaneswar,
PIN 751 017.
2. Chief Personnel Officer,
E.Co.Railway,
Chandrasekharapur,
Rail Vihar,
Bhubaneswar,
Dist.Khurda,
PIN -751017.

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3. The Divisional Railway Manager,
ECoRailway,
Khurda Road,
Po.Jatni,
Dist. Khurda,
PIN- 752 050.
4. The Senior Divisional Personnel Officer,
E Co. Railway,
Khurda Road.
Po.Jatni,
Dist. Khurda,
PIN 752 050.

.....Respondents

(Advocate (s) --Mr.T.Rath)

.....

ORDER**A.K.PATNAIK, MEMBER (JUDL.)**

The uncontroverted facts, in brief, ^{are} ~~is~~ that the Applicant was one of the candidates for recruitment to Gr.D post pursuant to Employment Notification No.1/98 dated 05.11.1998 issued by the East Coast Railway. He had qualified both in written and physical tests conducted by the Respondents. Thereafter the Respondents verified the documents of the applicant and other selected candidates after which vide letter dated 16/28.6.2006 it was intimated to the applicant that the photograph and signature on the admit



17
card for physical test is not at all matching with the photographs and signatures on the admit card for written test and original application.

2. The rejection of his candidature as intimated in letter dated 16/28.6.2006 was earlier challenged by the Applicant in OA No.45 of 2005. The Respondents filed their counter contesting the case of the applicant and the applicant has also filed rejoinder. After hearing Learned Counsel for both sides, vide order dated 5th August, 2010 this Tribunal disposed of the aforesaid OA with certain observation/direction relevant portion of which is extracted herein below:

"5. In the additional counter, the Respondents have not stated whether they have sent to the GEQD for verification and to get the experts opinion. Hence, we direct the Respondents to refer the documents in the present case to the GEQD, Kolkatta for examination, if not sent to the GEQD. After obtaining the expert opinion, the Respondents are directed to supply a copy of the expert opinion as stipulated in para 7 of the additional counter and also the expert opinion from the GEQD after obtaining from the GEQD. If the applicant is aggrieved by the expert opinion, it is open to the applicant to challenge before the appropriate forum. Since we are directing the Respondents to supply a copy of the experts opinion, keeping pending of this OA is not necessary."

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18

3. Whereupon, in compliance of the aforesaid order of this Tribunal, the Respondents, in letter dated 18.10.10 at Annexure-A/6 communicated extract copy of report of EX-DY.GEQD in which it has been stated that the 'the persons who wrote the blue enclosed signatures marked A1 & S1 did not write the read enclosed signatures marked Q1 & Q2 and the person who wrote the blue enclosed signatures marked A 1 & S1 also wrote the red enclosed signatures marked Q3 to Q5'.

4. Being aggrieved, the applicant has filed this Original Application inter alia challenging the manner in which the verification was conducted with prayer to quash the letter under Annexure-A/1 dated 16/28.06.2006 in which the candidature of the applicant was rejected, the report dated 12.1.2010 of the EX.DY.GEQD communicated vide letter under Annexure-A/6 dated 18.10.2010 with a further prayer to direct the Respondents to appoint ~~ment~~ the applicant in the post for which he was selected forthwith, with all consequential service and financial benefits

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19

retrospectively as the candidates selected along with the applicant had already been appointed in the Railway. In alternative, he has prayed for a direction to the Respondents to send the signature and LTIs/RTIs of the Applicant in pursuance of the decision of this Tribunal dated 16th March, 2009 in OA No. 21/2006 (**Santosh Kumar Swain Vrs Union of India and others**) at Annexure-A/2 to the GEQD/Government Handwriting Experts under intimation to the applicant and thereafter act on the basis of the report received therefrom within a stipulated period.

5. The main thrust of the Respondents in their counter filed in this case is that the selection in question being of the year 1998, the normal life of the panel which was valid for two years has already expired and as such the present OA is not maintainable. In this connection they have placed reliance on the decisions of the Hon'ble Apex Court in the cases of **Surinder Singh and Others Vrs. State of Punjab and Another** (1997) 8 SCC 488 & **State of Bihar and Others Vrs Amrendra Kumar Mishra**, 2006 (12) SCC 561. It has been contended that if the applicant is not



20

with the letter dated 18.10.2010, he can challenge the same before the Civil Court but certainly not before this Tribunal as has been done by the Applicant. Further stand of the Respondents is that the Railway Board have circulated the approved panel of experts for the above purpose and, therefore, when the signatures, LTI etc. of the candidates were found doubtful the same were got verified through the said experts. The applicant has not challenged the said order of the Railway Board selecting a panel of experts. As such, this OA is liable to be dismissed.

6. Applicant has filed rejoinder in which it has been stated that despite availability of panel of experts, this Tribunal while disposing of similar matter OA No. 21 of 2006 on 16th March, 2009 filed by Santosh Kumar Swain Vrs Union of India and others issued specific direction to the Railway Administration/Respondents to send the photographs and signature on admit card etc. of the Applicant –Santosh Kumar Swain and all other similarly situated cases (whose candidature has been rejected due to discrepancy of signature LTI etc) to the GEQD/Hand Writing



21

Experts namely to the Government Examiner of Questioned Documents for expert opinion with intimation to the applicant to that effect within a period of thirty days, whereas the Respondents instead of sending the documents in compliance of the said order to the appropriate authority under intimation to the applicant got the matter verified from the Ex-Dy.GEQD who were empanelled by the Railway which was nothing but an eye wash and as such, the discrepancy as pointed out by the Respondents needs to be verified through an independent body not connected/appointed with the Railway/by the Railway.

7. Mr.G.Rath, Learned Senior Counsel appearing for the Applicant and Mr. T.Rath, Learned Standing Counsel appearing for the Respondent-Railway have reiterated the stand taken in their respective pleadings and to avoid repetition we are not inclined to record the same once again.

8. The stand of the Respondents that the panel having been prepared in the year 1998 the normal life of the panel which was valid for two years has expired and as such the applicant is not entitled to relief is not at all correct. It is

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22

seen that from the day one the applicant has been agitating his grievance before this Tribunal by challenging the action of the Respondents. When the matter relating to recruitment is under judicial scrutiny before the appropriate court of law it cannot be said that delay will disentitle the applicant to be appointed if otherwise it was found that the decision taken by the Authority is not justified. Hence said plea of the Respondents is not accepted. Similarly, the stand taken by the Respondents that it is the civil court where the applicant can challenge the letter under Annexure-A/6 is not correct in view of the provisions made in the A.T. Act, 1985. Hence the said plea is over ruled.

9. Law is well settled in a plethora of judicial pronouncements that however suspicion grave may be that cannot be proved in a domestic enquiry. Further law is well settled in a catena of decisions that even if rule does not provide compliance of natural justice the same being integral part of the rules the same has to be complied with. It is the specific stand of the Applicant that there was no impersonation either in the Written Test or Physical Test.

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Right to life is a fundamental right as enshrined in Article 21 of the Constitution of India. Every citizen has a right to earn their livelihood and earning of livelihood ultimately depends upon his appointment to the post to which he was duly selected. In view of the above, there should not be any apprehension of any foul play in the decision of the Railway administration. Transparency in every action of the Government is also one of the cardinal principles which should ^{be} follow^{ed} by every Department of the Government. The Applicant's grievance is that he will be satisfied if the discrepancies are verified from the experts in Government instead of being verified by the persons appointed by the Railway. We also feel genuine^{ness} in the said grievance of the Applicant. When this Tribunal in OA No. 21 of 2006 had specifically directed to send all such cases where discrepancy is noticed to the GEQD/Hand Writing Experts, we see no reason/justification ^{to} ~~to~~ ⁱⁿ ~~oppose~~ ^{oppose} sending those documents with discrepancy, if any noticed for verification to the GEQD/Hand Writing Experts available in Government.

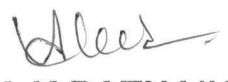
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10. For the discussions made above, we find force in the submission made by Mr.G.Rath, Learned Senior Counsel appearing for the Applicant for sending the questioned signature and documents to an independent agency of the Government such as GEQD/Hand Writing Experts. Accordingly, we direct the Respondents to send the questioned signature/LTI/document to the independent agency of the Govt. of India such as GEQD/Hand Writing Experts etc., under intimation to the Applicant, within a period of 60(sixty) days from the date of receipt of copy of this order with a request to the concerned authority to verify and return the same at an early date. Thereafter, depending upon the report of the said agency/authority Respondents to take action without any delay.

11. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


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