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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.145 OF 2009
Cuttack this the 11th day of April, 2012

Durga Madhab Mishra Applicant
Versus
Union of India & Others 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.)

V.A.C.
(A.K.PATNAIK)
Member (Judi.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.145 OF 2009
Cuttack this the 11th day of April, 2012

CORAM;

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

Durga Madhab Mishra, aged about 37 years/DOB 20.7.72, Son of Sri Gadadhar Mishra, working as Sr.Token Porter at Charbatia under Sr.Divisional Operations Manager, E.Co.Railway, Khurda Road, Permanent resident at Podasahi, (Mukundaprasad), P.O.P.N.College, Dist.Khurda, PIN-752 055

...Applicant

By the Advocates:M/s.G.Rath, A.Das & D.K.Mohanty
-VERSUS-

1. Union of India service through General Manager, E.Co.Railway, ECoR Sadan,Samant Vihar, PO-Mancheswar, Dist-Khurda, PIN-751 017
2. Sr.Geputy General Manager, E.Co.Railway, ECoR Sadan,Samant Vihar, PO-Mancheswar, Dist-Khurda, PIN-751 017
3. Divisional Railway Manager, E.Co.Railway, Khurda Road, PO-Jatni, Dist.Khurda, PIN-752 050
4. Additional Divisional Railway Manager, E.Co.Railway, Khurda Road, PO-Jatni, Dist.Khurda, PIN-752 050
5. Sr.Divisional Personnel Officer, E.Co.Railway, Khurda Road, PO-Jatni, Dist.Khurda, PIN-752 050
6. Sr.Scientific Officer, S.e.Railway, 11 Garden Reach Road, Kolkata, PIN-700 043
7. Junior Scientific Officer/Phych., Ministry of Railway, RDSO, (Research Development Standardization Organization), Lucknow
8. Sri Khirod Kumar Patnaik, Jr.Token Porter, under Station Manager (Gaz.), E.Co.Railway, Bhubaneswar, PO-Bhubaneswar-1, PIN-751 001

...Respondents

By the Advocates:Mr.S.K.Ojha, SC(Rly)

M/s.M.K.Mishra,P.K.Patnaik,B.K.Mishra
Counsel(For Respondent No.8)

O R D E R

A.K.PATNAIK, MEMBER (J):

Calling in question the legality and validity of the order dated 06.03.2009 where under the Respondent-Railways have selected Respondent No.8 (Sri Khirod Kumar Patnaik) for undergoing training

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course of Pro. ASM commencing with effect from 16.3.2009 and in the circumstances, he has sought the following relief.

- “i) To quash the selection and appointment of Respondent No.8 under Annexure-A/9;
- ii) To direct the Respondents to appoint the applicant to the post in question retrospectively with all consequential service and financial benefits;
- iii) To pass any other order/orders as would be deemed fit and proper for the ends of justice.”

2. Facts, in brief, leading to filing of this Original Application are that the applicant while working as Sr. Token Porter, the Respondent-Railways issued a Notification dated 12.01.2007 for holding selection for formation of panel for promotion to the post of Assistant Station Master in the scale of Rs.4500-7000/- against 15% quota through Limited Departmental Competitive Examination(in short LDCE). Applicant having qualified in the written test was called to appear at the Psychological Aptitude Test along with other qualified candidates, in which he appeared. It is needless to mention that the applicant belongs to UR category and as per the Notification, there were two vacancies of ASM belonging to UR category to be filled in against 15% LDCE.

3. The result of the Physiological Aptitude Test was declared wherein 3 nos. of UR candidates including the applicant were declared suitable. In the above background, the tabulation statement was published under Annexure-7 dated 15.01.2009 wherein under Remarks Column in so far as applicant is concerned, it was indicated that “suitable, but not empanelled, as he belongs to UR category”. Having learnt the above fact, the applicant sought information under the RTI Act in response to which, he was intimated as under:

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"The applicant had secured only 69.5 marks out of 100 which is less than the marks secured by the selected candidates. Further, there are only 02 UR vacancies and both have been filled up by UR candidates who have secured more marks than the applicant."

4. Meantime sparing letter dated 06.03.2009 was issued for sparing the selected and empanelled two UR candidates to undergo Pro. ASM training course for which the applicant submitted a representation dated 16.03.2009 to the Respondent-Department and having received no response, moved this Tribunal in the instant O.A seeking relief as referred to above.

5. Respondent-Railways by filing a detailed counter have opposed the prayer of the applicant. According to the Respondents, the O.A. being devoid of any merit is liable to be dismissed. No separate counter has been filed by the Respondent No.8.

6. Through affidavit filed on 1st March, 2011, the Applicant has brought to the notice of this Tribunal a copy of the letter No. EC.II/16 (Part-18)/RTI/20087/2010 dated 27.12.2010 issued by the Controller of Examination, Utkal University, Vanivihar, Bhubaneswar stating as under:

"With reference to your letter & the subject cited above, I am to inform you that name of the candidate bearing Roll No.131U95085 of +3 Final Degree Examination, 1999 of K.P.A.N.Colege, Bankoi is Khirod Kuamr Patnaik and his result has been declared as fail." [emphasis supplied].

7. Heard Shri G.Rath, learned Senior Counsel for the Applicant, Shri S.K.Ojha, learned Standing Counsel for the Respondent-Railways and Shri D.K.Patnaik, Learned Counsel appearing for the Respondent No.8 and perused the materials on record.

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8. Shri Rath, learned senior counsel contended that the Private Respondent No.8 being not a graduate, as per Rules and eligibility criterion mentioned in the Notification for the post of ASM, he was not at all eligible to be chosen and therefore, his candidature should have been rejected at the thresh hold— far less calling him for appearing at the written test. To substantiate his contention, Shri Rath, Learned Senior Counsel appearing for the Applicant drew our attention to Annexure-A/13 to the affidavit wherein the Utkal University Vani Vihar has declared the Respondent No.8 'failed' in the +3 Final Degree Examination, 1999. Therefore, he submitted that by means of producing a graduation certificate he has got a promotion which is nothing but a fake one and on this score alone the Respondent No.8 should be dealt in the precise manner. In the circumstances, it was the submission of Mr.Rath, Learned Senior Counsel that had the candidature of Respondent No.8 should have been rejected on this score & certainly, the Applicant being at Sl.No.3 should have been empanelled for the post in question. To the contrary, Shri Ojha, Learned Standing Counsel for the Respondent-Railways submitted that at the time of his entry into service, Respondent No.8 was having the qualification of +2 ITI. But subsequently, he attained the qualification of Graduation & submitted a certificate to that effect before the authorities. Shri Ojha further submitted that Respondent No.8's qualification as +2 had been erroneously indicated in the tabulation sheet. In other words, Shri Ojha, Learned Standing Counsel submitted that had the Respondent No.8 not attained the qualification of Graduation, undoubtedly, his candidature would have been rejected being not eligible for the post in question, during the scrutiny of his application, based on

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the prescribed qualification as contained in the Notification. However, Shri Ojha, Learned Standing Counsel did not refute the veracity of the letter issued by the Utkal University (Vani Vihar) under Annexure-A/13, to the extent of declaring the applicant failed in the +3 Final Degree Examination, 1999. Mr. Patnaik, Learned Counsel appearing for the Respondent No.8 by reiterating the stand taken by the Respondent-Railways has contested the case of the applicant and expressed his inability to state anything on the letter under Annexure-A/13.

9. We have considered the rival submissions made by the Learned Counsel for the parties and have gone through the materials available on record as well as rejoinder filed by the applicant.

10. The Hon'ble Apex Court in the case of **Manoj Kumar v. Government of NCT of Delhi**, reported in (2010) 11 SCC 702 held as under:

"8. There is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information."

Similarly in the case of **R. Vishwanatha Pillai v. State of Kerala** reported in (2004) 2 SCC 105 it was held by the Hon'ble Apex Court that the persons who had obtained admission or got the appointment on the basis of false caste certificate thereby usurping the seat/ post reserved for the Scheduled Castes/Scheduled Tribes were required to be weeded out by prompt action. This view has also been reiterated by the Hon'ble Apex court in case of **Kerala Solvent Extractions Ltd. v. A. Unnikrishnan**, reported in (2006) 13 SCC 619.

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In the case of **Regional Manager, Central Bank of India**

Vrs Madhulika Guruprasad Dahir and others, (2009) 1 SCC (L&S) 272

it was held by the Hon'ble Apex Court that a person who enters the service by producing false/fake certificate and obtains appointment to the post meant for another, thereby depriving a genuine candidate for appointment to that post he/she does not deserve any sympathy or indulgence.

11. Neither Respondent No.8 nor the Departmental Respondents have refuted the contents of the letter dated 27.01.2010 declaring the applicant **failed in +3 final degree examination, 1999** by virtue of which certificate the candidature of Respondent No.8 was considered and empanelled can by no stretch of imagination be held that he had ever produced a genuine certificate before the Respondents' Department for being considered/appointed to the post in question. We find that despite the well settled position of law that procuring appointment by producing false certificate is a serious consequence and the person secures the appointment by adopting such procedure needs to be weeded out no material has been produced by the Respondent-Department that any action has been taken after the letter under Annexure-A/13 came to their notice against the Respondent No.8. Be that as it may, for the foregoing discussions we quash Annexure-A/9 in so far as selection and appointment of Respondent No.8 to the post in question. As a consequence, we direct the Respondent-Department to consider the case of the Applicant for appointment to the post in question and pass appropriate orders within a period of 60(sixty) days hence. In the result

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this OA is allowed to the extent indicated above. There shall be no order
as to costs.

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(C.R.MOHAPATRA)

ADMINISTRATIVE MEMBER

Amrit
(A.K.PATNAIK)

JUDICIAL MEMBER

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