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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 32 of 2011
Cuttack, this the 23rd day of July, 2015

Suresh Chandra Srichandan & Ors. Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ☒
2. Whether it be referred to PB for circulation? ☒


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


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

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HON'BLE MR. A.K. PATNAIK, MEMBER (J)

HON'BLE MR. R.C. MISRA, MEMBER (A)

.....

1. Suresh Chandra Srichandan,
Aged about 42 years,
Son of Late Rama Chandra Srichandan,
Working as Sr. Trolley Man under
Senior Section Engineer (Permanent Way)/Barang
At present residing At/PO Kudiary, PO- Jatni,
Dist. Khurda, PIN-752050.

2. Prasanna Kumar Jena,
Aged about 40 years,
Son of Sri Braja Kishore Jena,
Working as Sr. Gate Keeper under
Senior Section Engineer (Permanent Way)/Bhadrak
At present residing near Korai L.C.Gate, PO- Korai,
Dist. Jajpur, PIN-755022.

3. Sakya Singh Mohanty,
Aged about 41 years,
Son of Sri Balabhadra Mohanty,
Working as Sr. Trolley Man under
Senior Section Engineer (Permanent Way)/Talcher
At present residing At/PO Thermal, Talcher,
Dist. Angul, PIN-759101.

4. Saroj Kumar Pathak,
Aged about 38 years,
Son of Sri Satyanarayan Pathak,
Working as Gate Keeper under
Senior Section Engineer (Permanent Way)/Barang
At present staying at Plot No. 665/4211, Sri Vihar,
Chandrasekharpur, Dist- Khurda, PIN-751031.

.....Applicants

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

VERSUS

Union of India represented through

1. The General Manager,
East Coast Railway,
Chandrasekharpur, Bhubaneswar.



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2. Chief Personnel Officer,
East Coast Railway,
Chandrasekharpur, Bhubaneswar,
Khurda, PIN-751023.
3. Divisional Railway Manager,
East Coast Railway, Khurda Road,
PO- Jatni, Dist-Khurda, PIN- 752050.
4. Senior Divisional Personnel Officer,
East Coast Railway, Khurda Road,
PO- Jatni, Dist-Khurda, PIN- 752050.

.....Respondents

Advocate(s)Mr. T.Rath

.....

ORDER

A.K.PATNAIK, MEMBER (JUDL.):

The case of the Applicants, concisely, is that the Respondents invited applications for filling up of 787 posts of Gangman and 225 posts of Gr. D staff in Operating Department vide Employment Notice No. 1/98 dated 05.11.1998. They have applied, appeared and got selected for appointment in Gr. D posts in Operating Department but they were offered the appointment in the Civil Engineering Department whereas candidates who applied, appeared and got selected for the Engineering Department were offered the appointment in the posts of Gr. D in Operating Department. However, in pursuance of the offer of appointment, the Applicants joined in their respective places of posting and post in Civil Engineering Department and thereafter by making representations on 29.9.2010, 10.10.2010 and 29.10.2010 they have sincerely prayed for the removal of injustice caused to them in the matter of appointment and alleging inaction on the part of the Respondents, they have approached this Tribunal with the following prayers;



“ (i) To produce the relevant file of papers justifying their action in posting the applicants in the posts of Group-D in Civil Engineering Department instead of posting them in Group-D in Operating Department for which they applied and had undergone Physical Test and Written Test for the Group-D posts in Operating Department.

(ii) To direct the Respondents to appoint the applicants retrospectively from the date other similarly situated persons were appointed in Group D posts of Operating Department with all consequential service benefits.

(iii) To pass any other order.....”

2. Respondents have filed their counter in which they have stated that all the Applicants belong to UR category. As a matter of fact, the total number of posts allotted to UR category for Operating Department was 113. Thus the first 113 candidates on the merit list belonging to UR were allotted to the Operating Department and the rest of the UR candidates were allotted to Engineering Department. As the merit position of the Applicants were 154, 347, 244 and 139 respectively and were below those 113 UR candidates who were allotted to Operating Department as per their merit position in the written test, hence, there is no justification on the part of the Applicants to challenge the same after five years of joining in the Engineering Department. Besides, it has been stated that the applicants after their empanelment were specifically asked either to accept their posting under the Engineering Department by accepting the offer of appointment or to choose otherwise. All the applicants joined their duty without any demur at that point of time. Therefore now they are



estopped to veer round and challenge the same at this distance place of time. Hence, they have prayed for dismissal of this OA.

3. The Applicants have filed their rejoinder and the Respondents have also filed reply to such rejoinder.

4. We have heard the arguments advanced by Mr.G.Rath, Learned Senior Counsel assisted by Mr.D.K.Mohanty, for the applicant and Mr. T.Rath, Learned standing Counsel for the Respondent-Railway.

5. Learned Senior Counsel appearing for the applicants by placing reliance on the averments made in the pleadings submitted that when the applicants have specifically applied for consideration in Gr. D posts in Operative Department and got selected through a due process of selection, preparation of the merit lists by bringing the candidates who had applied for Engineering Department was itself illegal, arbitrary and against the Rules/Law and only when they came to know of such illegality, they have prayed for removal of the injustice caused to them by making representations which cannot in any manner be said to be a stale claim or will attract the doctrine of estoppels. On the above grounds, he has sincerely prayed for the relief claimed in this OA.

6. On the other hand, the learned Standing Counsel for the Railways Mr.T.Rath vehemently contested the aforesaid stand by stating that it is purely within the domain of the authorities to decide how to deploy the selected candidates in an orderly manner and, therefore, in compliance of the principles of natural justice, option was

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given to the applicants by way of offer either to accept and join the post in Engineering Department or to choose otherwise but the applicants without any demur joined the posts in Engineering Department and after long years of their joining and continuance if the prayer of the applicants are allowed this will tantamount to unsettling a settled thing that too after long lapse of time which is neither permissible nor acceptable in the eyes of law.

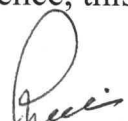
7. Therefore, after hearing the matter in part, opportunity was granted to the Learned Senior Counsel appearing for the Applicants to ascertain and apprise us as to whether any one securing less mark than that of any of the applicants has been posted to Operating Department but despite adequate opportunity by way of adjourning the dates of final hearing he was not able to show us any such example. Even according to the Applicants the notification was dated 05.11.1998. Written test was conducted on 02.11.2003 and offer of appointments were issued to the selected candidates raising from 2003 to 2005. The applicants have filed their representation for the first time on 29.9.2010 and thereafter on 10.10.2010 and 29.10.2010. The candidates who had applied and got selected for Engineering Department but have been appointed in Operating Department have not been made as party in this OA. The legal maxim of *Electio semel facta, placitum testatum non patitur regressum* clearly provides that having accepted the offer and joined the Engineering Department, the Applicants are precluded to raise any objection with regard to their allotment to Engineering Department that's too at this




distance ^{to point} ~~place~~ of time especially when despite adequate opportunities no material has been placed that any of the candidates having secured lesser mark than that of any of the applicants has been allotted to Operating Department. The delay and laches ^{are} also staring against the applicants in the present case. Last but not the least in this connection we would like to place reliance on a decision of the Hon'ble Apex Court in the case of State of Bihar -vs- Kaushal Kishore Singh & others reported in AIR 1997 SC – 2643. Para – 5 of that decision is relevant for the purpose and the same is quoted herein below

“ Even if options were called for and given, it is not mandatory for the Government to accept options of the candidates and make appointment to the post. Asking for options of the candidates is only a discretionary matter and the Government is not bound to select candidates on the basis thereof. Under these circumstances the candidates who applied for though opted for have not acquired right much less indefeasible and absolute right for selection and appointment to a particular post. As stated earlier, the Government have to prescribe an objective and rational method or manner of allotment of the candidates selected to the Department, depending upon the job necessity and requirement.”

8. Hence taking into consideration the totality of the facts and circumstances of the case besides the law, we see no merit in this OA. Hence, this OA is accordingly dismissed. No costs.


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


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