

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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O.A.No. 52/2011
Cuttack this the 7th day of January, 2016

CORAM

HON'BLE SHRI A. K. PATNAIK, MEMBER (J)
HON'BLE SHRI R.C.MISRA, MEMBER (A)

Arabinda Prasad Mohanty aged about 40 years S/o Shri Sashi Bhusan Mohanty
at Bandhamunda, PO Tentulipada, P.S. – Tirtol, District Jagatsinghpur.

...Applicant

By the Advocate(s)- Mr. A.Panda

-VERSUS-

- 1- Union of India represented through the General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar-23, District Khurda.
- 2- Divisional Railway Manager, E.Co.Railway, Khurda Road Division, At/PO-Jatni, Dist. Khurda.
- 3- Divisional Railway Manager (P), E.Co.Railway, Khurda Road Division, At/PO Jatni, Dist. Khurda.
- 4- Senior Divisional Personnel Officer, E.Co. Railway, Khurda Road Division, At/PO Jatni, District Khurda.

...Respondents

By the Advocate-Mr.S.K.Ojha

ORDER

PER A. K. PATNAIK, MEMBER (J):

The instant application has been preferred for applicant's appointment as a Substitute consequent upon the Notification No. 1/1990 dated 13th August, 1990 (Annex. A/1) favouring those Railway employees who had retired voluntarily or on superannuation between 1st January 1987 and 31st December, 1993.

2. It is the case of the applicant that similarly situated persons who were not belonging to Khurda Division got appointment and the Hon'ble High Court in **Writ Petition No. 8814/2014** ordered appointment of 20 such petitioners under the garb of Notification

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Annex.A/1 and as his candidature was not considered, he had approached this Tribunal in O.A. No. 186 of 2010 wherein, this Tribunal directed vide its order dated 16.04.2010 (Annex.A/6) to the respondents to consider the same within 90 days which was rejected vide Annex.A/8 dated 24.06.2010, which is impugned and called in question in the case in hand. It is contended that although he had also appeared in the same selection process like other incumbents who had filed OA No. 520/2001 but the respondent No. 3 had never given any heed nor taken any care to carry out the order passed by this Tribunal vide Annex. A/6 complying in the same manner vis-à-vis the applicants of OA No. 520/2011. While deciding OA No. **520/2011 (Trilochan Sahu and Os. Vs. UOI & Ors.)** this Tribunal directed that "as under the existing policy of the Respondent-Department, there is no bar for considering the wards of the Railway Employees for enrolment of substitutes alongwith outsider candidates, the Respondents are, hereby, directed to consider the cases of all the Applicants, who had applied in response to the Notification under Annexure-A/2 dated 13.08.1990(Annexure A-1 of instant OA) as and when they would take action for enrolment of substitutes under their organization." In turn, the respondents kept the decision on applicants' representation pending till the outcome of WP No. 8814/2004 which was filed by the UOI against **Trilochan Sahu and Ors.** before the High Court of Orissa at Cuttack. In its order dated 17.03.2006 (Annex.A/6) the Hon'ble High Court has held as under :-

"In the result, the writ petition is allowed in part. The impugned judgment and order passed by the Tribunal is modified to the extent that on the availability of vacancies the petitioners shall invite applications according to their requirement by making publication in some newspapers having wide circulation. Opposite parties 1 to 20 shall also be allowed to apply therein along with the outsiders, in case, they move applications pursuant to the same mentioning that they were applicants had applied for in respect of the earlier notification dated 13.8.1999

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inviting applications for the same purpose. The case of those who have become over-age shall be considered for relaxation."

3. The respondents have filed their counter-reply opposing the prayer of the applicant. However, in the additional counter-reply, it is submitted that notwithstanding the cancellation of the Notification, the Railway Administration has taken a conscious decision in conformity with the orders of the Tribunal so also the High Court of Orissa to prevent unnecessary litigations. It is further submitted that in the next Notification for the erstwhile Group 'D' posts to be published by the Railway Recruitment Cell, Bhubaneswar, the candidature of the applicant will be considered if he applies duly enclosing an attested copy of the call letter in support of attending the Screening/Physical Test conducted against the Notification dated 13th August, 1990 as well as copy of this speaking order fulfilling other terms and conditions of employment notification. Not only this, the respondents have candidly submitted that if an incumbent who applies under the next notification to be issued and by the time he becomes over aged, then also his overage aspect will be considered as one time exemption.

4. We have heard the learned counsel for both the sides and considered the submissions as mentioned above. Since the Respondent-Railways are willing to consider the matter, applicant is at liberty to apply under the next notification for the erstwhile Group 'D' posts duly enclosing an attested copy of call letter in support of Screening/Physical Test conducted under the Notification dated 13.08.1990 subject to fulfilling other terms and conditions, and in such eventuality, he will not be debarred due to over-age and this aspect will be considered as one time relaxation by the respondents.

5. With this direction, O.A. is disposed of with no order as to costs.


(R.C.MISRA)
Member (A)


(A.K.Patnaik)
Member(J)