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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 165 of 2009
Cuttack, this the 22nd day of June, 2011

Manoj Kumar Mohapatra and others Applicants

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


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

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CORAM:

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

A N D

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

1. Manoj Kumar Mohapatra, 43 years, S/o. of Debaraj Mohapatra, Bachharapatna, PO. Jatani, Dist.Khurda, at present Khalasi/helper, East Coast Railway, Section Engineer Bridge (South), Khurda Road, Khurda.
2. Saurendra Kumar Samal, 36 years, S/o.N.C.Samal, 330-A, Retang Colony, Jatni, at present serving as Khalasi/helper, SE/WWRly, East Coast Railway, Khurda Road, Khurda.
3. Prasanna Kumar Behera, 36 years, S/o. of Purna Chandra Behera, Godasahi, PO. Godiput Matiapada, Dist. Puri Khalasi/Helper, East Coast Railway, Kaluparaghata, Dist. Khurda.

.....Applicants

By legal practitioner: Mr.J.K.Rath, Sr. Counsel

M/s.Niranjan Panda-1,
S.K.Acharya,B.Das,
M.K.Panda, Miss.Mazumdar
Counsel.

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Divisional Railway Manager, East Coast Railway, Khurda Road, Dist. Khurda.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, PO. Jatni, Dist. Khurda.

....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

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

A doubt was raised whether Helper-I of all departments, Trackmen, Trolley men, Gate Keepers, Diesel Cleaners, Call Boys, A/C Coach Attendants and Station Peons are to be given avenue of promotion to the post of Office Clerks in the Lowest Grade. Therefore, a clarification was sought by one of the Divisions of the ECoRly regarding the question of specific Gr.D categories to whom avenue is to be provided for entry into the lowest grades of Office Clerks category in Gr. C. Accordingly, the Deputy CPO (HQ), ECoR in circular No. ECoR/Pers/R/Selectioni/2 dated 10.5.2002 issued certain instruction/clarification in regard to avenue of promotion for staff in Gr. D categories to Gr. C categories by selection/Promotion.

2. Thereafter, Notification dated 26.7.2005 was issued by the DRM (P), ECoRly,KUR inviting application from the eligible Group D employees

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working in the Civil Engineering Department of the ECoRly for filling up of 4(four) vacancies of Junior Office Clerk in the pay scale of Rs.3050-4590/- (RSRP) against 16.2/3rd quota in Civil Engineering Department through Limited Departmental Competitive Examination (LDCE). The eligibility criteria provided in the Notification was that candidate should be a regular Group D employee in Civil Engineering Department with at least 2(two) years regular service as on 31.12.2004 and he should be a matriculate and that, Gangman, Trackman, Khalasi, Chowkidar who have no channel of promotion in their own line and working in the Civil Engineering Department are eligible to be considered.

3. In response to the aforesaid notification, three Applicants, in this OA who are continuing in Group D posts in the Civil Engineering Department of ECoRly since 13.5.1997, 20.6.1997 and 17.4.2000 respectively applied for consideration. A list of 121 Group D

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employees who were found eligible to appear at the test, including the Applicants was published by the Respondents on 10.10.2005. Accordingly, all of them were allowed to appear at the written test conducted on 13.11.2005. Out of 121 candidates who appeared at the written examination, only 18 candidates came out successful as per the list published by the Respondent No.4 on 31.1.2006 in which the name of the Applicants find place at Sl. Nos. 1,2 and 8 respectively.

4. While the matter stood thus, alleging that the selection was irregular being conducted de hors the instructions dated 10.5.2005, the Respondents in letter under Annexure-A/6 dated 11.7.2006 cancelled the selection being against the extant provision available in the Railway.

5. Being aggrieved by such decision of the Respondents, Applicants submitted representation and while the representation was pending, they approached

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this Tribunal in OA No.563 of 2006. As no decision was taken on the said representation of the Applicants, this Tribunal in order dated 19.11.2008 disposed of the OA with direction to the Respondent No. 1 to consider the grievance of the applicants as raised in their representation and communicate the decision in a well reasoned order to them within two months from the date of receipt of the order of this Tribunal dated 19-11-2008; after which the Respondent No.1 considered the representation but did not incline to interfere in the order of cancellation of the selection and communicated the said decision to the Applicant in letter under Annexure-A/9 dated 05.02.2009.

6. Hence, by filing the present OA, the Applicants seek to quash the letter under Annexure-A/5 dated 10.5.2005, letter under Annexure-A/6 dated 11.7.2006, the letter under Annexure-A/9 dated 05-02-2009 and consequently, to direct the Respondents to publish the

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 final result as per Annexure-A/3 and give them promotion to the post of Junior Officer Clerk Group C if they otherwise found suitable on merit.

7. The letter under **Annexure-A/6** dated **11.07.02007** reads as under:

“In KUR division, there is only a seniority group/cadre of office clerks in Engineering Department, Trackman/Gatekeeper/Khalasi Helper of Engineering Department are not eligible to appear for selection to the post of “Office Clerk”. Only where there is a separate seniority group/cadre/sanctioned post of “Time Keeper”, the Trackmaan/Gatekeeper/Khalasi helper of Engineering Department can appear in selection for those posts. Since the selection in question is for filling up the post of “Office Clerk” and not for filing up posts of “Time Keepers”, it is wrong to have allowed Trackman/Gatemen/Khalasi Helper to appear for the “Office Clerk” Selection of Engineering Department. Due to these reasons, the said selection is irregular and violates extant AVC provision in the Railway and is, therefore to be cancelled with the approval of the competent authority.”

8. The Letter under Annexure-A/9 dated 05.02.2009 reads as under:

“The CPO/ECoR had clarified vide letter No. ECoR/Pers/R/Selection/2 dt. 10.05.2005, the avenue of promotion for staff in Group D category to Group C category by selection/promotion basing on the provisions laid down in paras 180 to 189 IREM Vol.1 (revised edition 1989) and Railway Board's letter No. (NG)1-80CFP-9 dtd.01.05.1981. As the notification was issued by Sr. DPO/KUR on 26.7.05, the instructions circulated under CPO's letter dated 10.05.2005 have to be followed by the Divisions. After formation of New Zonal Railway, instruction/guideline framed by other Railways viz; S.E.Rly, as quoted by you are not applicable to this Railway.

Since, KUR Division did not follow the instructions circulated by East Coast Railway/Hd.Qrs. vide letter mentioned above the selection notification dtd. 26.7.2005 had to be cancelled.

In view of the above I find that cancellation of the said selection was in order.”

9. The Respondents, in their counter, have opposed the stand of the Applicants. Their stand is that after formation of ECoRly, the CPO/ECoR had issued clarification vide letter No. ECoR/Pers/R/Selection/2 dt. 10.05.2005 stipulating the avenue of promotion for staff in Group D category to Group C category by

selection/promotion in the light of the provisions laid down in paras 180 to 189 IREM Vol.1 (revised edition 1989) and Railway Board's letter No. (NG)1-80CFP-9 dtd.01.05.1981. In the said circular at Paragraph 4 (Srl.No. ix) it has specifically been made clear which category of Gr.D employees are eligible for promotion to which category. Despite this, the authority while issuing notification mistakenly made eligible certain Gr. D categories of employees for the post of Office Clerk though no such avenue of promotion is available to them. By this process unequal was made equal. The Selection comprised written test and scrutiny of service record. While the matter was under consideration, a representation was received from one Smt. Santilata Majhi, Record Sorter of Engineering Department stating that the selection was not carried out in accordance with the avenue of promotion for staff in Gr. D to C category by selection /promotion as clarified vide CPO/BB's



circular No. EPS-07/07 dated 10.5.2005. Therefore, the matter was referred to the HQ for clarification. After examination of the matter in its entirety, it was opined by the HQ in letter under Annexure-A/6 11.07.02007 that the selection was not in accordance with the existing policy of the Railway. Hence is liable to be cancelled. Accordingly, vide order dated 01-08-2006 (Annexure-R/2) Sr. Divisional Personnel Officer, ECoRly, KUR cancelled the selection.

10. Rejoinder was filed by the Applicants more or less reiterating the stand in their OA.

11. Heard Learned Counsel for both sides and perused the materials placed on record including the note of arguments filed by the respective Counsel. We feel that the notification for selection was not in accordance with the existing instructions of the ECoRly. Be that as it may, we do not feel it necessity to record all the arguments advanced by the respective parties in this

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regard, as it is noticed that challenging the action of the Respondents in canceling the said selection and rejection of the prayer by the Respondent No.1 one of the selected candidates namely Smt. Santilata Majhi had earlier approached this Tribunal in OA No. 103 of 2009 to intervene in the matter. Considering all aspects of the matter as in the instant case, the Division Bench of this Tribunal declined to interfere in the decision of the competent authority for canceling the selection, the same being de hors the Rules and in order dated 18.03.2009 dismissed the Original Application being devoid of any merit. We find no justification or material to reach a finding other than already reached by the earlier Division Bench.

12. In view of the above, this OA stands dismissed by leaving the parties to bear their own costs.

[Signature]
(A.K.PATNAIK)
Member (Judicial)

[Signature]
(C.R.MOHAPATRA)
Member (Admn.)