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ENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.88 of 2011

Cuttack this the 21ST day of June, 2017

Bharat Ch.Das ... Applicant

-VERSUS-

Union of India &Ors. ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 0
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ?

(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.88 of 2011

Cuttack this the 2nd day of June, 2017

CORAM:

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

Bharat Ch.Das, aged about 45 years, S/o. Late B.B.Das, At-Laxmipur,
PO:Rambha, Dist-Ganjam, presently working as Key Man HMA, under
SSE (P.Way) Rambla, Dist-Ganjam.

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy-1
A.Mishra

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railway, Khurda Road, Dist-Khurda
3. Asst. Divisional Engineer, East Coast Railway, Balugaon, Dist-Khurda
4. K.Basanta Reddy, presently working as Mate at TAP under SSE(PW)RBA, East Coast Railways, Headquarters at Rambha, Dist-Khurda
5. Sankar Singh Munda, presently working as Mate under SE(PW)KAPG, East Coast Railway, Headquarters at Nirakarpur, Dist-Khurda

...Respondents

By the Advocate(s)-Ms.S.L.Pattnaik

ORDER

A.K.PATNAIK, MEMBER(J):

Applicant belongs to Scheduled Caste category and is presently working as a Key Man HMA under the East Coast Railways.

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In this Original Application, he has questioned the legality and validity of order dated 10.02.2010 (A/2) by virtue of which Shri K.Basanta Reddy (Respondent No.4) has been promoted to the post of Mate; and also the transfer of Shri Sankar Singh Munda (Respondent No.5) from a different section and posting him as Mate under SE(PW) KAGP with headquarters at Nirakarpur.

2. Facts as inputted in the O.A. are that the Applicant joined the Railway service as T/Man on 15.05.1997 and was subsequently, promoted to the post of Key Man with effect from 20.04.2005. While working as such, he was called upon to appear at the suitability test on 21.12.2009 for promotion to the post of Mate. The suitability test was conducted on 23.01.2010 in which the applicant appeared and according to him, he had done fairly well in the test. While he was hopeful to get the orders of promotion as a Mate, to his utter dismay, Respondent No.3 issued order 10.03.2010 (A/2) promoting the Res.No.4 to the post of mate of DTM-21. In the said order, applicant could notice that the Res.No.5 belonging to S.T. category was given promotion to the post of Mate indicating him to be of S.C. category and posting him under SE(PW)KATP with headquarters at Nirakarpur.

3. Aggrieved with the above, the applicant submitted a representation dated 19.03.2010 to the Zonal President, ASI/ST, R&A, E.Co. Railways, Chandrasekharpur Bhubaneswar, with a copy being forwarded to Respondent No.2, alleging that due to ill-

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intention, Respondent No.3 has selected a junior candidate (Respondent No.4) belonging to UR category by ignoring his case, even though he had exceedingly done well in the suitability test. Applicant, inter alia, also pointed out that though 14 candidates had been called upon to appear at the suitability test, yet, 4 UR candidates and 2 ST candidates were selected with no SC candidate in the panel and that 3 candidates who are junior to him, were selected arbitrarily. Applicant, thereafter, submitted another representation dated 7.6.2010 to Respondent No.2. Since he did not receive any response, reiterating his grievance regarding non-promotion and supersession of three of his juniors belonging to UR category, he submitted a representation to Respondent No.1. While the matter stood as such, applicant received copy of seniority list of Key Man working under Respondent No.3 through the R.T.I. Act in which he has been shown senior to Respondent No.4 and one Mahendra Hansda, who had been promoted as Mate. This being the cause of action, applicant has moved this Tribunal in the instant O.A. seeking for the following relief.

- i) Quash the impugned order under Annexure-2 in so far as the promotion of respondent no.4 as well as the transfer and posting of respondent No.5 are concerned; and thereby
- ii) direct/order/command the respondents to allow the applicant promotion to the post of Mate w.e.f. 10.03.2010, the date when his junior namely respondent No.4 was given promotion;

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- iii) pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.

4. Under the facts and circumstances as already stated above, to substantiate his claim, the applicant has pleaded that he being senior to Respondent No.4, he ought not to have been superseded while granting promotion. According to the applicant, if his service records are compared with that of Respondent No.4, the only conclusion that could be derived is that applicant has arbitrarily been superseded by his junior (Res.No.4). The further ground urged is that whereas Sri Sankar Singh Munda (Res.No.5) belonging to ST category candidate of a different section was allowed to be transferred and posted against the post of Mate under SE(PW) KAGP with his headquarters being fixed at Nirakarpur by indicating him to be belonging to SC category, the applicant was illegally denied promotion to the post of Mate under SE(PW) KAGP with headquarters Nirakarpur. In other words, the Applicant has pointed out that the Railway Administration in order to deprive him of his promotional benefit had filled up the post of Mate at Nirakarpur by transferring Shri Sankar Singh Munda (Res.No.5). Therefore, the case made out by the applicant is that had the said Sankar Singh Munda (Res.No.5) not been transferred and posted as Mate at Nirakarpur, he could have been promoted. The further contention of the applicant is that since the post of Mate was required to be filled up from the

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grade of Key Man by conducting a suitability test and viva voce, and the applicant having done fairly well in the said test, there was no reason to deny him promotion thereby allowing his junior to supersede. Lastly, it has been submitted that the denial of promotion to the applicant is violative of the doctrine of legitimate expectation.

5. On being noticed, Railway Administrative has filed a reply opposing the prayer of the applicant. Private Respondent Nos.4 and 5 though duly served with notice, have not chosen to either enter appearance or filed any reply.

6. In the counter filed by the Railways, it has been submitted that the applicant while working as a Key Man under SSE/P.Way, RBA was called for the selection of Mates along with all other eligible candidates and as per the stipulation, he had also taken part in the pre-selection training. According to respondent-railways, in all, 18 candidates belong to UR, SC, ST category who were found eligible had been screened during the examination. It has been pointed out that the post of Mate belongs to safety category which requires adequate skill to tackle critical situations in maintaining the track as per the norms to ensure safety of passengers. This being the position, the selection process consists of assessment of knowledge towards track elements, safety and leadership qualities of the candidates. The literacy of the candidates is also required to be taken into consideration for the post of Mate in order to maintain muster roll, gang chart, diaries etc. of the gang which will be headed by the

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Mate. Therefore, overall assessments are required to be made in respect of each of the candidates based on which merit list has to be prepared. Having regard to this, result of the suitability test for the post of Mate was published on 01.02.2010 (R/5) in which the name of the applicant was found place at Sl.No.13 and thus, he was declared failed.

7. In the reply, respondent-railways have brought out that during the trade test, applicant could not be able to identify the P.Way materials which were exhibited as a part of the selection at the examination spot. He was also unable to tell the materials where and under the circumstance of which the materials could be used on the track. Since the applicant was found not to have the adequate knowledge about the P.Way materials, he was adjudged not unsuitable as required for the post of Mate and accordingly, he was declared not successful in the suitability test.

8. As regards the allegation of the applicant regarding suppressions by his junior, it has been submitted by the respondents that the selection to the post of Mate is not based purely on seniority. It has been brought on record that overall assessment of the candidate in various areas is required to be adjudged to ascertain the capability to hold such a sensitive post which is directly related to the safety of track, which in turn, is related to the safety of the travelling passengers. On the point of transfer and posting of Sri

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Sankar Singh Munda (Res.No.5) at Nirakarpur, it has been urged that the same has been done for the administrative convenience.

9. With these submissions, the respondent-railways have prayed that the O.A. being devoid of merit should be dismissed.

10. We have heard the learned counsel for both the sides and perused the records. Neither the Applicant has filed any rejoinder to the reply statement filed by the official respondents nor written notes of submission. However, respondent-railways in their written notes of submissions have brought some additional facts. They have stated that the qualifying marks prescribed in the suitability test and interview for UR category is 51 and for reserved category is 45, whereas the applicant could secure only 27 marks whereas the Respondent No.4 had secured 70 marks and hence he was declared successful.

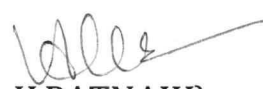
11. From the above recital facts, it goes without saying that the post of Mate belongs to safety category. It is also an undisputed point that for filling up the aforesaid post, suitability test and interview of the eligible candidates are required to be conducted to adjudge their suitability for promotion. From this, it is quite clear that the post of Mate is not filled up solely on the basis of seniority. In view of this, the claim of the applicant that he has been superseded by his juniors is overruled. Since the applicant could not secure the prescribed qualifying marks in the suitability test as required for the

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reserved category, his claim for promotion to Mate is unfounded and baseless. As regards the posting of Respondent No.5 at Nirakarpur is concerned, we are at one with the submissions made by the counsel appearing on behalf of the respondents that this is due to administrative convenience and in this respect, applicant cannot lay any claim.

12. For the discussions held above, we are of the view that applicant has not been able to establish his case for the relief sought. In the result, the O.A. being devoid of merit is dismissed.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)