

11

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No. 166 of 2009
Cuttack, this the ~~07th~~ day of September, 2011

Mukti Ranjan Mohapatra & Ors Applicants

-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

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

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

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

12

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O.A No. 166 of 2009

Cuttack, this the 07th day of September, 2011

CORAM:

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

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

Mukti Ranjan Mohapatra & OrsApplicants

By legal practitioner: M/s.Bhimasen Sahoo
N.K.Sahoo,D.K.Mohanty
Counsel.

-Versus-

1. Union of India represented the General Manager, East Coast Railway, B-9, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, 2nd Floor, South Block, Samanta Vihar, Bhubaneswar-751 017.
3. Senior Divisional Personnel Officer, Office of the DRM, Khurda Road Division, East Coast Railway, PO-Jatni, Dist. Khurda, PIN No. 752 050.
4. Divisional Personnel Officer, Office of the DRM, Sambalpur Division, At/Po.Modipara, Dist. Sambalpur, PIN No. 768 002.

....Respondents

By legal practitioner: Mr.B.B.Pattnaik, Counsel

ORDER

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

The prayer of the Applicants in this Original Application is to declare the employment notice under Annexure-2 in respect of vacancies earmarked for Hearing Impaired candidates in respect of category Nos. 1, 3,6,7,8 & 10 as illegal and consequently the result declared on 24.3.2009 under Annexure-7 in respect of category Nos.

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1,3,6,7,8 & 10 belonging to Hearing Handicap be quashed and necessary direction be made for fresh recruitment in respect of the said vacancies.

2. According to the Applicants the conditions stipulated in the advertisement and the process followed by the Respondents do not have the support of Rules. As such, the advertisement and selection held for the purpose is liable to be quashed.

3. Respondents have denied the allegations levelled by the Applicants. It has been stated by the Respondents that advertisement and the process of selection were made in accordance with Rules. There was no violation of any of the provisions existing under the Rules in the Railway. The selection was conducted in a free and fair manner and candidates coming out successful in the process of selection were selected and appointed to the posts. Applications were invited from Deaf and Partial deaf candidates keeping in mind the requirement and capability to discharge the duties. As such, no illegality was conducted by the Respondents Hence this OA deserves to be dismissed.

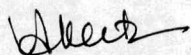
4. Heard the rival submissions put forwarded by the parties with reference to their respective pleadings and perused the materials placed on records.


5. It is seen that pursuant to the notification in question, the applicants have appeared at the test and after being found unsuccessful have challenged the selection in this OA alleging discrepancies in issuing the advertisement and conducting the selection. They have also approached this Tribunal challenging the advertisement and selection of successful candidates without making the candidates as parties to this OA. On examination of record, we find that the conditions put in the advertisement are not de hors the rules particularly keeping in mind the ability to discharge the duty to the post. In this connection we may refer to the decision of the Hon'ble Apex Court in the cases of **Dr.G.Sarana v University of Lucknow & Ors**, 1976 SLJ 562 (SC) = (1976) 3 SCC 585 and **Vijendra Kumar Verma V Public Service Commission** (2011) 1 SCC 150 wherein the Hon'ble Apex Court had declared that candidates who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. In **Union of India and Others V S.Vinodh Kumar and Others**, 2008 (1) SLJ 407 at paragraph 18 it was held by the Hon'ble Apex Court that it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to

question the same. Besides the above, none of the candidates applied, appeared and selected have been made as a party to this OA.

6. Running of Railway has direct nexus with the life of citizens. Hence their safety and security is of paramount consideration. Which post would be managed by the candidates having how much percentage of disability is a decision which falls in the domain of the authority manning the administration. It is not for this Tribunal to assess which post would be managed by what category and with what percentage of disability.

7. In view of the discussions made above, we hold that this OA sans any merit and is accordingly dismissed by leaving the parties to bear their own costs.


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


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