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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.452 of 2011
Cuttack, this the 24th day of August, 2014

Usha Rani Applicant


-Versus-

Union of India & Others 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 (Judicial)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 452 of 2011
Cuttack, this the 28th day of August, 2014

CORAM
THE HON'BLE MR.A.K. PATNAIK, MEMBER (JUDL)
THE HON'BLE R.C.MISRA, MEMBER (ADMN.)

.....

Usha Rani, aged about 37 years, W/o. Dr.S.Mallick of Plot No. A/332, Po/Ps. Saheed Nagar, Dist. Khurda presently working as Rajbhasha Assistant Grade-I in Rajbhasha Vibhag, East Coast Railway, Head Quarters, Bhubaneswar, Dist. Khurda.

...Applicant

(Advocates: M/s.B.Dash, C.Mohanta)

VERSUS

UNION OF INDIA represented through -

1. The General Manager, East Coast Railway, At-Chandrasekharpur, Po.Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Bihar, Chandrasekharpur, Po.Bhubaneswar, Dist. Khurda.

... Respondents

(Advocate: Mr.B.K.Mohapatra)

ORDER

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

The case of the Applicant in nut shell is that she is working as a Rajbhasha Asst. Gr.I in Rajbhasha Vibhag, ECoRly, HQ, BBSR. On 02.09.2008, the Respondents issued notification for filling up of three posts (2 UR & 1-SC) of Rajabhasha



Adhikary through Limited Departmental Competitive Examination against 70% quota vacancy (2007-09) for which written and viva voce tests were conducted by the Respondents but instead of publishing the final result of the selection, Respondents in letter dated 20.07.2010, alleging procedural irregularity in the matter of conducting the said test, cancelled the said selection and intimated that the selection will be initiated de novo. Accordingly, letter for holding selection for formation of Group B/Rajbhasa panel was issued on 28.7.2010 but instead of 2-UR and 1-SC as was published earlier, all the three posts were notified as UR for which selection was conducted and panel containing three names of Gr.C staff was published on 28.10.2010 and they were promoted to the posts of Rajabhasha Adhikari vide order dtd 04.11.2010. On 17.05.2011 a letter was issued for holding selection for formation of Gr.B Rajabhasha panel for one (UR) post of Rajbhasa Adhikari for the year 2009-2011. The name of the Applicant was also included in the list of the candidates eligible to appear at the selection. Being aggrieved, she has preferred representation dated 18.05.2011 stating therein that as per the reservation roster, out of four posts, one post was to be reserved for SC candidates which

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has not been done and, therefore, she has prayed for necessary interference in the matter after which alleging inaction she has filed the instant OA with prayer to quash the orders under Annexure-A/5 & A/11, to declare the Respondents to reserve the 4th post of Raj Bhasha Adhikari for SC candidate and to take step to fill up the post out of the SC community candidates i.e. the applicant who came out successful in the test meant for the said purpose and to grant her consequential benefits.

2. Respondents have filed their counter resisting the case/claim of the applicant and praying that this OA being devoid of any merit is liable to be dismissed. The Applicant has also filed rejoinder.

3. We have heard Mr. B.Dash, Learned Counsel appearing for the Applicant and Mr.B.K.Mohapatra, Learned additional CGSC appearing for the Respondents and perused the records.

4. Mr.Dash submitted that Respondents issued notification dated 2.9.2008 for conducting selection for formation of panel for filling up of three posts (2-UR & 1-SC) of Gr.B/Rajbhasha Adhikri and a panel containing eleven names including the name of applicant as SC candidate was prepared. They have conducted the

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written test and based on the result of the written test, viva test was also conducted in which the applicant had participated. Alleging procedural irregularity, the Respondents abruptly cancelled the selection so as to hold the selection de novo. Surprisingly, they have issued another notification (Annexure-A/5) stating therein that all the three posts will be filled up by UR candidates though the shortfall vacancy of SC has not been filled up by anybody. In the counter, the Respondents have pointed out that the roster was wrongly assessed for which one post was shown to be filled up by the SC community. It has been stated that the number of vacancy declared to be filled up by a certain category candidates cannot be filled up by candidates from any other category. Therefore, the notification under Annexure-A/5 is liable to be set aside. It has been stated that the Senior Rajbhasa Adhikari pointed out that there are four posts of Rajbhasa Adhikary and requested the authority to fill up all the four posts keeping one post reserved for SC community. The Respondents though notified to fill up another post of Raj Bhasa Adhikary but again vide Annexure-A/11 committed the same mistake by declaring the said post to be filled by UR community. The Respondents having found procedural

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irregularity cancelled the entire selection in order to hold selection de novo and, therefore, they should not have encroached upon the vacancy reserved for SC candidate. It has been stated that though they have cancelled the selection process by stating procedural irregularity in the counter, they have come forward that the cancellation was for the reason that question papers were set by an authority who was not competent to do so and even if it is accepted to be true then also they should not have changed the post earmarked for SC candidates. Notification dated 2.9.2008 was issued after calculation of the vacancies as per the roster register. The construction of roster in the newly formed ECoRly was done correctly as per clause 1 of initial option (explanatory notes of in Lr.No.95-/E (SCT)1/49/5(2) dated 21.8.1997) of Establishment Srl.No.114/97. This was done by showing Sri Om Prakash (SC) against roster point no.1 as he was selected against roster point reserved for UR candidate in S.E.Rly on the basis of SER Memorandum No. DCPO (G)/Con/SBP/18/94 dated 17.02.1995. Under 14 point roster from out of 4 posts, the forth post is to be given to a candidate from SC community. There is a shortfall of one SC candidate. Therefore, the respondents should not have

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allowed all the four posts to be manned by candidates from UR community. His next contention is that the GM of ECoRly cancelled the selection process as the same was done in violation of Railway Board's letter dated 14.08.2008 and directed for de novo selection. The authorities who were not otherwise empowered to sit over the decision of GM went a step ahead and altered the distribution of posts and thereby changed the vacancy position to 3 (UR) from 2-UR and 1-SC. Hence the decision taken by the lower authority is not sustainable in the eyes of law being contrary to the provision of reservation. In the counter the Respondents have taken the stand that Shri Om Prakash was from the SC community and therefore no SC candidate is required to be given appointment. Though Sri Om Prakash belongs to SC but he was assigned roaster point no.1 as he was selected on the basis of higher merit position. In the counter it has further been stated by the Respondents that Shri Om Prakash belongs to SC community and holding roaster point No.4 was promoted to the post of Sr. Rajbhasa Adhikary. If that is true then the post held by Shri Om Prakash was meant to be filled up by the SC community only. It has been stated that as per the information under RTI Act, 2005

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supplied to the applicant, Shri Om Prakash was appointed as a UR candidate. As per SER Memorandum No. DCPO (G)/Con./SBP/18/94 dated 17.02.1995, Sri Om Prakash was accommodated against one UR vacancy and was shown against roster point No.1. The said clarification was given to the applicant vide letter dated 19.04.2012 under RTI Act, 2005. Therefore, Shri Om Prakash could not have been shown against roster point No.4. In stating so, Mr.Dash has prayed for the relief claimed in this OA.

Mr.Mohapatra, on the other hand submitted that in a matter of selection the employer has absolute right to cancel or modify or alter the process of selection and ingredients pertaining to selection including number of vacancies and matter of reservation before making final selection for any public post. In the instant case the applicant had not been selected or anybody has been selected through the process of selection thereby jeopardizing the interest of the applicant and, therefore, this OA is not maintainable and is liable to be dismissed. It has been stated that the selection process which was started on the basis of notification dated 13.08.2007 was cancelled due to irregularities before final publication of the select list vide order dated 20.7.2010. Thereafter,

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the Respondents have got absolute right to issue fresh notification which has been done in the instant case in which the mistake which was committed in the earlier notification in so far as earmarking the vacancies are concerned was/were rectified in showing that all the three vacancies are meant for UR candidates. As per the Model Roster (Vide Railway Board's letter No. 95E(SCT) 1/49/5/2 dated 21.08.1997), after filling up all the posts in vertical row the counting of roster is to be made in horizontal row and the first point in horizontal row is UR. So the first vacancy of the assessment year 2009-2011 needs to be filled up by UR. After cancellation of earlier process of selection, fresh selection was initiated. It was found that Shri Om Prakash (SC), RBA/WAT was already there in the EcoRly and, therefore, was shown against roster point No.4 of the RBA roster in terms of Annexure-iii of RBE No. 114 of 1997. Hence, distribution of vacancies was modified as three UR against roster point Nos. 1,2 and 3. The initial roster point shown against Shri Om Prakash in the S.E.Railway on the basis of his selection cannot be a ground to consider the case of the applicant for promotion as she belongs to SC community in the newly constituted ECoRly. Therefore, there

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was no wrong committed by the Respondents in notifying all the vacancies as UR. Hence, he has prayed for dismissal of this OA.

5. We have considered the rival contentions of the parties. In this case the entire controversy ^{is} with regard to determination of roaster point. We find that in the counter as also in course of hearing the stand of the Respondents is different than the information supplied to the Applicant under RTI Act, 2005. In the counter the Respondents have stated that Shri Om Prakash has been shown to have been appointed as SC candidate whereas in the counter information supplied under RTI Act, 2005 has been stated that Shri Prakash was appointed against point no.1 as he secured highest marks. The information sought by the applicant and supplied to her in letter dated 25th May, 2009 reads as under:

“Particulars of required information:

1. There are 4 posts of Rajbhasha Adhikaris (Group-B) in East Coast Railway during the assessment year 2007-09. As per post based reservation policy for 4 (four) posts, one post shall be reserved for SC Candidate and remaining three posts shall be kept unreserved. In spite of availability of one incumbent Rajbhasha Adhikar (Group-B) under SC community in the cadre at the time of notification during September, 2007, further reservation of one post for SC candidate has been made in the CPO/ECOR's notification dated 28.09.2007. Out of 3(three) vacant posts, three posts should be exclusively meant for unreserved candidates, whereas notification for

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3 posts (UR-2, SC-1) has been made. In context of CPO/East Coast Railway's notification No. ECor/Pers/Gaz/RB/RBA 70% selection dated 28.09.2007 and Rajbhasha Adhikari (Group-B) cadre please state whether the present incumbent (SC community) who holds lien on the post of Rajbhasha Adhikari (Group-B)/East Coast Railway had passed the qualifying selection test of Rajbhasha Adhikari/Asst. Hindi Officer (Group-B) with General (UR) standard merit marks and posted against the post of Rajbhasha Adhikari (Group-B) meant for UR candidate.

2. If the answer under item No.1 above is affirmative (Yes), please furnish Xerox/True copies of the relevant office orders/Memorandum in support of the answer with jurisdiction;
3. If the answer under item No.1 above is negative (No), please state whether the above notification shall be revised to rectify the 3 (three) vacancies as exclusively 3(three) unreserved posts instead of 3 posts (UR-2, SC-1) before formation of the panel;
4. Please state the basis and justification for assessment of two UR posts and one SC post of Rajbhasha Adhikari (Group-B) for the selection test for the assessment year 2007-09 as notified in above notification although one SC incumbent is already available in the said cadre.

PIO's reply.

PIO had replied that "in reference to appellant's application, the desired information is furnished below:

Item No.1: The present incumbent, Shri OM Prakash (SC), Sr.Rajbhasha Adhikari/ECOR/BBS was empanelled as Rajbhasha Adhikari/Gr.B against of UR vacancy by S.E.Rly vide CPO/SER/GRC's memorandum No. DCPO (G)/CON/SBP/18/94, dated 17.02.95;

Item No.2: The Xerox copy of CPO/SER/GRC's said memorandum dated 17.02.95 had been provided;

Item No.3: This office notification for formation of a Gr.B/Rajbhasha panel for 03 (UR-02&SC-01) nos of Rajbhasha Adhikari/Gr.B for 2007-09 issued vide this office letter NO. ERO/Pers/Gaz/RB/RBA-70% Selection dated

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13.08.2007 cannot be revised as the assessment of RBA vacancy is correctly made. In terms of post based Roaster issued by Railway Board vide Lr.No.95-E(SCT)1/49/5/2 dated 21.08.97 (RBE No. 114/97), Annexure-III, in the case of 04, there are 03 UR points at point No. 1,2,3&4 point is SC. Since Sh.Om Prakash, the then RBA/WAT was at point No.1, the vacancy was for point 2 (UR), point -3(UR) & Point-4(SC). **So the notification issued for 03 vacancies (UR-02&SC-01) of RBA/Gr.B vide this office letter dated 13.08.2007 was correctly made.**

First Appellate Authority ordered.

First Appellate Authority ordered that "it is seen that the clarification asked for by the applicant reflects more of personal grievances rather than asking for information as defined under the RTI Act, 2005. The applicant is hereby advised to meet the Chief Personnel Officer, East Coast Railway in connection with disposal of grievances with prior and scheduled appointment.

Relevant facts emerging during Hearing:

The following were present.

Appellant: Absent.

Respondent: Mr.M.R.Murmu, PIO.

"The appellant has been provided information but he wants specific information about whether present incumbent (SC community) who holds lien on the post of Rajbhasha Adhikari (Group-B)/East Coast Railway had passed the qualifying selection test of Rajbhasha Adhikari/Asst. Hindi Officer (Group-B) securing General (unreserved) standard merit marks and consequently posted against the post of Rajbhasha Adhikari (Group-B) meant for a UR candidate". The PIO states that the particular information is not available on the records. However, the PIO has sent a memo dated 17/02/1995 showing that a panel of staff approved by General Manager on 16/02/1995 had selected the person. This information has also been sent to the applicant."

6. This OA was filed by the applicant on 5th July, 2011.

On 19.7.2011 this Tribunal while issuing notice has directed, as an

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ad interim measure to keep the process of selection pursuant to notification dated 17.5.2011 in abeyance. As admitted by the Applicant, in pursuance of the notification dated 28.07.2010 (Annexure-A/5), three persons have already been promoted vide order dated 4.11.2010. But they have not been made as party respondents in this OA. Therefore, the prayer of the applicant to quash the notification dated 27.07.2010 is hereby rejected.


7. In so far as quashing the notification dated 17.5.2011 is concerned the Respondents have admitted that nobody has been selected till date. Maintaining consistency and transparency in governmental action is sine qua non. Law is well settled if a reserved candidate secured highest marks from amongst the candidates in the fray of selection he/she cannot be treated to have been appointed as a reserved candidate and will be treated as UR. Further deviation of the principle of reservation is a serious consequence. As we find inconsistency between the stand taken in the counter and the information supplied to the applicant under RTI Act, 2005, quoted^{ed} above especially with regard to appointment of Shri Om Prakash as also determination of reservation by application of vertical and horizontal manner

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calculation, we quash the said notification dated 17.5.2011 but we are not inclined to direct appointment of the applicant to the post as we find that the earlier notification was for the vacancies of the year 2007-09 and the second one was for 2009-11. In case the said vacancy is determined to be filled up SC candidate then more number of candidates may be eligible to be considered and, therefore in the above circumstances we remand the matter to the Respondents to first determine the roster point taking into consideration the total number of posts/vacancies in the said cadre out of which how many posts/vacancies were/are to be filled up by which category of candidates with reference to the rules of reservation and then to go ahead with the selection by issuing fresh notification. In the result, with the aforesaid observation and direction, this OA stands disposed of. There shall be no order as to costs.


(R.C.Misra)
Member (Admn.)


(A.K.Patnaik)
Member (Judicial)