

20

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.580 of 2011

Cuttack this the 16<sup>th</sup> day of October, 2017


G.Narayan Patra...Applicant

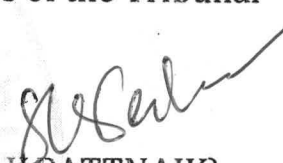
-VERSUS-

Union of India & Ors. Respondents

FOR INSTRUCTIONS

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

  
(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

  
(S.K.PATTNAIK)  
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.580 of 2011

Cuttack this the 16<sup>th</sup> day of October, 2017

CORAM:

HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)  
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

G.Narayan Patra, aged about 30 years, S/o. late G.B.Patra,  
working as Licensed Porter No.96 (empanelled as Jr.Track Man)  
residing at Purunapatna, PO-Chikalakhandi, Dist-Ganjam, PIN-  
761 020

...Applicant

By the Advocate(s)-Mr.G.Rath

-VERSUS-

Union of India represented through:

1. General Manager, E.Co. Railway, Mancheswar,  
Bhubaneswar-751 017
2. Chief Personnel Officer, E.Co.Railway, Mancheswar,  
Bhubaneswar-751 017
3. Chief Medical Director, E.Co.Railway, Mancheswar,  
Bhubaneswar-751 017
4. Divisional Railway Manager, E.Co.Railway, Khurda Road,  
PO-Jatni, Dist-Khurda-752 050
5. Sr.Divisional Personnel officer, E.Co.Railway, Khurda  
Road, PO-Jatni, Dist-Khurda-752 050.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Licensed Porter at the time  
of filing the O.A. He is aggrieved by his non-selection to the post  
of Gangman(Jr.Track Man) and has filed this O.A. for the  
following reliefs:

- 22
- i) To direct the Respondents to provide appointment to the applicant in the post of Gangman (Jr.Tracknan) for which he applied, faced the Screening Test and qualified retrospectively.
  - ii) And/or in alternative to direct the respondents to appointment the applicant any other alternative category.
  - iii) To direct the Respondents to appointment the applicant with effect from the date when other similarly placed persons even juniors who were found less meritorious than the applicant in the test were appointed with all consequential service and financial benefits retrospectively.
  - iv) And further be pleased to quash the letter of rejection of his representation dated 11.4.2011 under Annexure-A/8.
  - iv) To pass any other order/orders as deemed fit and proper.

2. The facts of the matter as they appear from the O.A. are as follows:

The applicant was working as a Licensed Porter having Badge No.96/KUR/Station Manager, East Coast Railway, Khurda Road prior to 26.2.2008. He claims that in the budget speech of 2008-09, the then Minister of Railways, Government of India had announced that in view of long pending demand of Licensed Porters it was decided as one time basis to appoint them as Gangmen and to offer Group D posts after due screening. Accordingly, the Railway Board had issued the necessary instructions and guidelines. The applicant was called for screening test in a call letter dated 28.4.2008 from the DRM(P), Khurda Road. He appeared for the same on 30.4.2008 and was sent for medical examination on 26.5.2008 to the Chief Medical

23

Superintendent, East Coast Railway, Khurda Road. However, since he was not offered appointment as Gangman, he submitted a representation dated 31.7.2008 to the Sr.Divisional Personnel Officer, Khurda Road which had not been disposed off till the filing of the O.A. He has subsequently submitted a number of representations and also appealed for re-medical examination. But he was informed by the Chief Medical Director, East Coast Railway, Bhubaneswar on 11.4.2011(A/8) that he should have appealed for re-medical examination within a period of one month, instead of which he appealed after 2 years and 2 months. Therefore, his representation could not be accepted for reconsideration. Aggrieved by this letter dated 11.4.2011, applicant has filed the present O.A. praying for the reliefs as mentioned Paragraph-1 above.

3. The grounds on which applicant has based his prayer are as follows:

- i) The announcement of the Ministry of Railways was to uplift the social status of SC/ST/OBC categories. Denial of the job of Gangman to the applicant is an act of gross violation of the social objectives of such announcement.
- ii) Although the applicant has been found unfit for the post of Gangman, he should have been considered for alternative technical category as per the Railway Board's letter No.E(NG)/62 dated 26.10.1962,
- iii) Denial of a job to the applicant is in violation of Articles 16 and 21 of the Constitution of India and also is contrary to law since discretion by the respondents cannot be used discriminatorily to deny equal opportunity to the applicant.

- iv) Applicant claims that he has no eye defect, his vision is perfectly alright which has nothing to do with regard to performance of duties of Gangman/Jr.Trackman.
- v) The rights of the medically de-categorized citizens make it legally incumbent on the respondents to provide a job to the applicant. He has been performing his duties as Licensed Porter without any problem and therefore, not finding him medically fit is an attempt to deprive him to accommodate some other candidates.
- vi) The action of the respondents is therefore, illegal, arbitrary, mala fide and in violation of Articles 14,16 and 21 of the Constitution of India.

4. Respondents in their counter-reply filed on 5.9.2011 have contested the claim of the applicant. It is their contention that the applicant was found unfit for appointment as a Jr.Trackman in PB 6200-20200 + Grade Pay Rs.1800/-, since he was declared failed in Bee-One medical category as communicated by the Sr. Divisional Medical Officer, East Coast Railway, Khurda Road vide his letter dated 04.06.2008. He was, therefore, not issued an offer of appointment. The respondents have also raised preliminary objection on the ground that the present O.A. is barred by limitation since the applicant had attended medical examination on 26.5.2008 and having failed to qualify, he did not file any appeal before the Medical Board within the statutory period. The authenticity of the representations annexed at A/4 and A/5 is doubtful, because, no appeal

27

preferred by the applicant was received by the concerned authorities. His representation dated 7.7.2010 was received by the Respondents on 8.7.2010, i.e., more than two years after the medical examination. He also did not file his O.A. in time staking his claim for the post of Gangman. Therefore, the O.A. filed by the applicant is devoid of merit. He has no legal right on the basis of any rules or law in the matter.

5. We have heard the learned counsel for both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicant has any legal right to be considered for the post of Gangman and due to his failure in the medical examination whether he has any right for any other alternative post.

6. On 1.4.2008, the Railway Board had issued RBE No.50/2008 which reads as follows:

“Sub: Appointment of license porters to the post of Gangmen:

- i) Only those license porters will be considered for appointment who were possessing a valid license in terms of extant rules as on 26.2.2008, i.e., the date of announcement in Parliament.
  - ii) Educational qualification may be kept as “Read and Write”.
  - iii) The appointment will be subject to surrendering the license and badge and right to be license porter. No subsequent transfer of license would be allowed.
  - iv) The license porters should be medically fit for the post of Gangman.
- nd

- v) The genuineness and authenticity of every claimant as a license porter for appointment is to be established and authenticated by the Sr.DCM.
- vi) The screening for appointment will be done by a Committee of 03 (three) Jr. Scale Officers of Commercial, Personnel and Civil Engineering Department nominated by Divisional Railway Manager. The Screening Committee would adjudge the candidates as per appointment criteria including 'read and write'. The recommendations of the Screening Committee would be approved by DRM. However, their placement will be done within the zonal jurisdiction in which they are working as license porters.

The above exercise should be completed within two months from the date of issue of this letter".

7. Both the applicant and respondents agree that the applicant had a valid license as a Porter on 26.2.2008. It was one of the conditions that the Licensed Porter should be medically fit for the post of Gangman. He was not found to be medically fit for the post of Gangman. Although he has annexed copies of representations, there is nothing on record to prove that those representations were received by the Chief Medical Director as an appeal against the rejection by the Medical Board. He claims that he had approached the non-Railway Doctors who declared him fit for hard work. But the certificate of a non-Railway Doctor is not obviously enough for selection to the post of Gangman. It also appears from A/4 which is a representation dated 31.7.2008 wherein the applicant says that he was working as a Porter at the Khurda Road Station for five

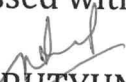
27

years, whereas in the representation dated 15.2.2010, he has mentioned that he was working as Licensed Porter at Khurda Road Station for four years. Again on 8.7.2010, he has mentioned that he was working as Porter for five years. On 5.10.2011, he seems to have written to the DRM, East Coast Railway requesting for alternative appointment on Licensed Porter quota. The respondents in their reply to the applicant have cited IREM 2000 Para-522(1)(i) to inform that the candidate has to appeal for re-medical examination within a period of one month. Applicant has failed to file an appeal within a period of one month from his rejection by the Medical Board and the Respondents have acted within their legal rights when they informed the applicant of this position in their letter dated 11.4.2011. Although the applicant has stated that there is provision for appointing medically de-categorized persons in some other posts as per Railway Board Letter No.99/E/RRB/25/12/1 dated 7.8.2000, the applicant could not be considered under the medical decategorized category since he was not a railway employee at the time of his rejection by the Medical Board. He was only a Licensed Porter and had not acquired any legal right to be considered for appointment into an alternative post when he was not found to be fit for appointment as Gangman under the 2008 scheme which was an one time offer to appoint Licensed Porters as Gangmen.



28

8. In view of the above, we find no merit in this O.A. which is dismissed with no order as to costs.

  
(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

  
(S.K.PATTNAIK)  
MEMBER(J)

BKS