

30

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.849 of 2011
Cuttack this the 29th day of June 2015

Abhaya Kumar Singh...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

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

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)

31

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.849 of 2011
Cuttack this the 29th day of June, 2015

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

Abhaya Kumar Singh
Aged about 39 years
Son of Ramio Singh,
Vill-Sahapur,
PO/PS-Sonepur
Dist-Saran, Bihar
At present residing C/o.B.A.Naidu
At-Hatabazar,
PO-Jatni
Dist-Khurda

...Applicant

By the Advocate(s)-Mr.D.K.Mohanty

-VERSUS-

Union of India represented through

1. The General Manager
E.Co. Railways
Rail Vihar
Chandrasekharpur
Bhubaneswar
Dist-Khurda-751 023
2. The Chief Personnel Officer
E. Co. Railways, Rail Vihar
Chandrasekharpur
Bhubaneswar
Dist-Khurda-751 023
3. The Divisional Railway Manager
E.Co. Railways
Khurda Road,
PO-Jatni
Dist-Khurda-752 050



32

4. The Senior Divisional Personnel Officer
 E.Co. Railways,
 Khurda Road
 PO-Jatni
 Dist-Khurda-752 050

5. The Deputy Chief Personnel Officer(Retd.)
 E.Co.Railways
 Rail Vihar
 Chandrasekharpur
 Bhubaneswar
 Dist-Khurda-751 023

...Respondents

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

ORDER

R.C.MISRA, MEMBER(A):

By filing this Original Application under Section 19 of the A.T.Act, 1985, applicant has sought for the following relief.

- i) To quash the order dated 30.12.2010(Annexure-A/7)
- ii) To direct the Respondents to provide alternative appointment to the applicant as has been given to others under Annexure-A/4.
- iii) To direct the respondents to provide alternative appointment retrospectively with all consequential service and financial benefits
- iv) To pass any other order/orders as deemed fit and proper in this case.

2. Facts of the matter in brief are that East Coast Railways, Bhubaneswar, made an Employment Notice bearing No.1/98 dated 5.11.1998 inviting applications for recruitment to the post of 787 Gangman and 225 Group-D (1012 in toto) in the Engineering Operating Department. Applicant was a candidate

Rath

33

for the post of Gangman and he did appear at the Physical Efficiency Test (in short PET) and written test conducted during 2001-2002 and 2003 respectively. Thereafter, the Respondents published a list of 1012 successful candidates and subsequently, those candidates were asked to attend verification of documents. According ^{to l} applicant, out of 1012 selected candidates, 42 remained absent and the documents submitted of 47 successful candidates were not in order. Resultantly, out of 1012 selected candidates 910 successful candidates were appointed, leaving aside (1012 - 910) 102 unfilled vacancies. In order to fill up those vacancies, another list of 89 successful candidates including the name of the applicant was prepared by the respondents and these 89 candidates including the applicant too were called for verification of documents on 24.12.2005. While verification of documents was going on, on the same day, by virtue of a notice dated 24.12.2005, verification of documents was postponed. Many candidates including the applicant preferred several representations but to no effect. Consequently, various litigations were filed before the Tribunal. In O.A.No.440 of 2006, this Tribunal vide order dated 24.8.2007 issued direction to Respondents to resume verification of documents of the selected candidates. Thereafter, the Respondents carried out verification of documents including ^{that of} the applicant. On being asked, applicant also furnished the attestation form, whereafter



he was sent for medical examination on 12.10.2009 and vide medical report dated 15.10.2009, applicant was declared fit in Bee-Two which is the lower medical category for appointment to the post of Gangman. Thereafter, applicant, on depositing the required fees, requested for further medical examination and on re-examination, according to him, he was declared fit in Bee-One which is required for the post of Gangman.

3. The case made out by the applicant is that having been selected for the post of Gangman through an open competition ~~been~~ and having found fit in Bee-Two/Bee-One, he has not been provided with an alternative appointment, whereas candidates similarly circumstanced, have been given alternative appointments as Storekeeper in the place of Gangman, vide order dated 14.09.2006(A/4) under the banner of the same Employment Notice No.1/98. Since his representation made in this regard did not receive any consideration of the authorities, applicant moved this Tribunal in O.A.No.345 of 2010, which was disposed of vide order dated 2.7.2010, with the following direction.

"For the discussions made above, without expressing any opinion on the merit of the matter, this Original Application is disposed of at the admission stage by granting liberty to the applicant to make a fresh representation incorporating the points raised in this OA to the respondent No.2 within a period of seven days and the respondent No.2 is hereby directed to consider the grievance of the applicant in the light of the consideration given to the case of the others in Annexure-A/4 and

communicate the outcome of such consideration in a reasoned order to the applicant within a period of 60 days from the date of receipt of such representation".

4. In the above background, applicant preferred a representation dated 8.7.2010(A/6) to the Chief Personnel Officer (Res.No.2) to provide him with alternative appointment, which was ~~re~~jected by the latter vide A/7 dated 30.12.2010 through a speaking order. Hence, this Original Application with the prayers referred to above.

5. In support of his case, applicant has pleaded that in respect of an advertisement issued in the year 1998 for filling up the posts of Gangman, the Railway Administration conducted medical test in the year 2010 and as such, by the efflux of time, there might be some problems developed in his eye-sight, which cannot be a good ground to deny alternative appointment. It has been argued that four candidates already selected for the post of Gangman vide Employment Notice No.1/98 could not be provided with appointment since they did not possess the required medical standard, i.e., Bee-One. However, they were provided with alternative appointments as Storekeepers, as would be evident from A/4 dated 14.9.2006. Therefore, according to applicant, he being similarly circumstanced, denial of alternative appointment is arbitrary and thereby, he has been discriminated ^{against}.



36

6. To retaliate the stand taken by the Respondents that the policy of providing alternative appointment to medically failed empanelled candidates selected through RRS/RRCs for any Group-C or D post has since been discontinued as per the decision taken vide letter No.99/E/(RRB)/25/12 dated 25.5.2009, applicant has placed reliance on the decisions of the Hon'ble Supreme Court in *Y.V.Rangiah & Ors. Vs.J.Sreenivasa Rao & Ors. Reported in AIR 1983 SC 852* and in *P.Mahandran & Ors. Vs.State of Karnataka & Ors. AIR 1990 SC 405.*

7. Respondents have filed their counter-reply strenuously opposing the prayer of the applicant. According to Respondents, initially, a select list of 1012 candidates was prepared based on the merit position in the written test and also keeping in view the quota allotted to various communities, i.e., UR, OBC, SC & ST, wherein the name of the applicant did not find place as he did not come within the zone of merit position. Thereafter, they were subjected to verification of their testimonials/documents. Whereas candidatures of some candidates were rejected on the basis of document verification, some candidates were absent for verification of documents. However, those of the candidates whose testimonials/documents were found to be in order were provisionally empanelled for appointment as Gangman in Engineering/Operating Department based on their merit position in the written test and keeping in view the quota

Ran

37

allotted to various communities. Those candidates who were provisionally empanelled were issued with provisional offer of appointments and were sent for pre-recruitment medical examination required for the post. During medical examination some candidates were found to be medically unfit in the medical category required for the posts, but found fit in lower medical category and as such their cases were referred to the Zonal Headquarters of East Coast Railway, Bhubaneswar seeking clarification. On the advice of the Chief Personnel Officer, East Coast Railways, cases of those candidates were forwarded to the Headquarters and they were absorbed in posts having the medical category these candidates were found fit in.

8. In so far as applicant is concerned, it has been submitted by the Respondents that since his documents were found to be in order, he was provisionally empanelled for the post of Gangman and was issued with provisional offer of appointment dated 12.1.2009 vide R/3. Thereafter, applicant was sent for pre-recruitment medical examination for the post of Gangman which carries the medical category of Bee-One and at the time of medical examination, applicant was found unfit in Bee-One, but found fit in Bee-Two. Therefore, he could not be appointed as Gangman in the Engineering Department. On his request, he was again sent for medical examination, but he was found unfit in the medical category required for the post of Gangman. It has



been submitted by the Respondents that as the recruitment process initiated in pursuance of Employment Notification No.1/98 dated 5.11.1998 has already attained its finality long back and as the selected list prepared in the normal course of selection containing 1012 persons has been exhausted way back in the year 2006, and, thereafter also the process initiated for filling up of 89 leftover vacancies by virtue of the order of this Tribunal in O.A.No.440 of 2006 has already been finalized and exhausted, the applicant is not entitled to any relief.

9. Respondents, in support of their plea also have relied on the decision of the Hon'ble Supreme Court in *Union of India & Ors. Vs. Ishwar Singh Khatri and Ors* reported in 1992 Suppl.(3) SCC 84 as well as in *Man Singh vs. Commr. Garhawal, Mandal, Pauri & ors.* decided on 3rd March, 2009

10. With these submissions, Respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

11. Applicant has not filed any rejoinder to the counter.

12. We have perused the pleadings of the parties and heard the arguments as advanced by both the learned counsels in support of their respective contentions. We have also gone through the written notes of submission filed by both the sides.

13. *Having regard to the pleadings of the parties, the short point that emerges for consideration is whether the applicant has a right to be provided with an alternative appointment because*



39

of his lower medical standard on the ground that similarly situated persons have been so provided.

14. Admittedly, applicant was a candidate for the post of Gangman in response to an advertisement issued by the Railway Administration vide Employment Notice No.1/98 dated 5.11.1998 for filling up of 1012 posts in Engineering/Operating Department. It is also an admitted position that in the initially brought out merit list containing the names of 1012 applicant had not been empanelled. It is also a fact that out of 1012 vacancies, 89 vacancies could not be filled up as the documents submitted by some of the empanelled candidates were not in order and some candidates remained absent during the verification of documents. Since the rest of the 89 vacancies were not filled up, this gave rise to many litigations. In O.A.No.440 of 2006 disposed of by this Tribunal on 24.08.2007 direction was, inter alia, issued to the Respondents to resume verification of documents for filling up those 89 unfilled. No doubt applicant's name was not in the earlier list of 1012 empanelled candidates. However, his name only could be ~~found~~ place^l within the left over 89 candidates while preparing the merit list in compliance of the direction of this Tribunal in O.A.No.440 of 2006. After verification of documents, he was sent for pre-recruitment medical examination on 15.10.2009, wherein, vide medical report dated 16.10.2009, he was found ~~unfit~~ in Bee-One, required for the



40

post of Gangman, but, found fit in Bee-Two medical category. Again, at his instance, he was sent for medical re- examination and this time also, he was found unfit in Bee-One medical category. Thereafter, the applicant made a request to the Respondents seeking alternative appointment and his request having not been considered, he approached this Tribunal in O.A.No.345 of 2010. This Tribunal vide order dated 2.7.2010 disposed of the said O.A. as already quoted above. From the above, it is clear that the applicant is not claiming any relief for appointment to the post of Gangman against the 89 left over vacancies. He is only claiming some alternative appointment as has been extended to similarly situated candidates vide A/4 on the ground of lower medical category. This has been rebutted by the Respondents, while issuing speaking order dated 30.12.2010(A/7), complying to the orders of this Tribunal dated 2.7.2010 in O.A.No.345 of 2010, the relevant part of which reads as under.

"Ministry of Railways (Railway Board) has reviewed the provision of alternative appointment in the same grade to candidates selected for Group- C and Group-D posts by RRBs and RRCs who fail in the prescribed medical examination and decided as under vide letter No.99/E(RRB)/25/12 dated 25.5.2009 (RBE No.90/RRCB No.A/2009):

Considering all these aspects, Board have decided to discontinue the policy of providing alternative appointment to medically failed empanelled candidates selected through RRBs/RRCs for any Group C or Group D post.



41

The above instruction is being followed from the date of issue of the letter, i.e., 25.5.2009".

15. To overcome the above contingencies, applicant has relied on the decisions of the Hon'ble Supreme Court in *Y.V.Rangaiah and P.Mahendran* (supra). In his written notes of submission he has indicated as under.

be ✓

"That there could, possibly, no quarrel of the well settled law that "vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules and in this connection, it is advantageous to rely on the decision of the Hon'ble Apex Court in the case of **P.Mahendran and others vs. state of Karnataka and others, AIR 1990 SC 405** in which it was held that "it is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement issued by Public service Commission in accordance with recruitment rules, he acquires right to be considered for selection in accordance with the then existing rules. This right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature".

The above decision is the reiteration of the earlier decision of the Hon'ble Apex Court rendered in the case of **Y.V.Rangaiah and others vrs.JH.Sreenivasa Rao and ors. AIR 983 SC 852**".

16. It is the case of the applicant that his grievance is covered by the above decisions of the Hon'ble Supreme Court(supra).



42

17. We have considered this submissions and perused the contents of the above decisions as produced by the applicant. In the case at hand, in our considered opinion, interpretation of any amended or unamended rule is not involved. It is not the case of the applicant that after the Respondents resorted to take action pursuant to Employment Notice No.1/98 dated 5.11.1998 for filling up 1012 vacancies, have attempted to recourse to certain amended recruitment rules in that behalf during the course of selection. It is also not the case of the applicant that the Respondent-Railways have violated or infringed any of the terms and conditions of Employment Notice No.1/98 in the matter of selection and appointment to 1012 Group-D posts. Therefore, by no stretch of imagination, there has been any infraction of the existing provisions of the recruitment rules as notified in the Employment Notice No.1/98 and in effect, no right of the applicant has been taken away by the respondents in any manner, whatsoever.

18. One important ground urged by the applicant is that four similarly placed candidates were provisionally posted in Group - D category on alternative appointment ground as per Office Order dated 14.9.2006 placed at A/4 of the O.A. Applicant claims similar consideration. But the facts reveal that the applicant was provisionally empanelled for the post of Gangman as his documents were found in order and issued with a provisional order of appointment dated 12.1.2009. At



43

the stage of pre-recruitment medical examination he was found unfit for prescribed medical category B-One, ^{ee} _Q but was found fit for category B-Two. The applicant had filed O.A.No.345 of 2010 which was disposed of by the Tribunal on 7.7.2010. The applicant as per this order made a representation on 8.7.2010, which was rejected by a speaking order dated 30.12.2010. The main ground of rejection was that in RBE No.90/RRCB No.1/2009, the Railway Board had decided as follows.

“Considering all these aspects, Board have decided to discontinue the policy of providing alternative appointment to medically failed empanelled candidates selected through RRBs/RRCs for any Group C or Group D post”. The Railways have further clarified that this instruction is being followed from the date of issue of the letter, i.e. 25.5.2009. The speaking order further states that alternative appointment to some of the candidates found fit in lower medical classification were given during 2006, i.e., much before the instructions issued by the Railway Board vide letter dated 25.5.2009.

19. The above contention of the Railways cannot be overlooked. Any parallel to alternative appointment given to four persons in 2006 cannot be drawn in the case of the applicant. This is because the case of the applicant came to be considered after the cut off date of 25.5.2009. The applicant was admittedly not fit in the prescribed B-One ^{ee} _Q medical category for Gangman. He was being considered for alternative



JY

appointment on the basis of his medical fitness in ee B-Two category. By the time of that consideration, the policy of alternative appointment was jettisoned by the Railway Board. This policy decision, as per our view, cannot be interfered with by the Tribunal. Employment is a matter of Government policy. The present applicant has neither an inherent nor an indefeasible right to be considered for alternative appointment. Had he produced any case of alternative appointment made after the cut off date of 25.5.2009, he could have contended that his right to equality under Article 14 of the Constitution has been infringed. Therefore, the contention of the applicant claiming a precedent of alternative appointment by the Railways as at A/4 loses its force. The direction of the Tribunal in the previous O.A. was certainly for consideration of the applicant's case in the light of consideration given to others as but in order at Annexure-A/4 cannot be construed as a positive direction to confer alternative appointment on the applicant. His case was considered by the authorities as per the Tribunal's direction and has been found to be rejected on grounds that appear valid and convincing.

20. Respondent-Railways have, in support of their contention, relied on the decision of the Hon'ble Supreme Court in **Union of India vs. Ishwar Singh Khatri and Ors. reported in 1992 Suppl.(3) SCC 84**, the relevant portion as brought to the notice of the Tribunal by the Respondents, reads as under.



45

"The selected candidates have right to appointment only against 'vacancies notified' and that too during the life of the select list as the panel of selected candidates cannot be valid for indefinite period. Moreover, empanelled candidates "in any event cannot have a right against future vacancies".

We, however, do not find this judgment pertinent to the present case, since the respondents as against advertisement notice of the year 1998, have given appointment in the year 2006, based upon which the applicant makes his prayer.

21. Having considered all aspects of the matter, we answer the point in issue against the applicant and in favour of the Respondents. Accordingly, we hold that applicant has no right to be provided with an alternative appointment because of his lower medical standard on the ground that similarly situated persons have been so provided.

22. For the aforesaid reasons, the O.A. is held to be without any merit and accordingly, the same is dismissed, leaving the parties to bear their respective costs.

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

BKS

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)