

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NOs. 34 OF 2009

Cuttack, this the 30th day of January, 2009

Prakash Kumar Pattanaik Applicant
Vs.
Union of India & Others Respondents

FOR INSTRUCTIONS

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

(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 34 OF 2009
Cuttack, this the 30th day of January, 2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
&

Hon'ble Mr. C.R. Mohapatra, Administrative Member

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Prakash Kumar Pattanaik, aged about 36 years, S/o Prafulla Kumar
Pattnaik, At- Raja Athagarh Railway Station, P.O-Khuntni, Dist-Cuttack.
..... Applicant

By the Advocate(s) M/s. R.C. Das,
S.K. Mohanty

Vs.

1. Union of India, represented through the General Manager, E.Co. Railway, Chandrasekharpur, Bhubaneswar.
2. Divisional Manager, Khurda Road Division, E.Co. Railway, Khurda Road, P.O. Jatni, Dist-Khurda, Pin-752050.
3. Senior Divisional Personal Officer, E.Co. Railway, Khurda Road, P.O. Jatni, Dist-Khurda, Pin-752050.

..... Respondent(s)

O R D E RHON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)

Aggrieved by the non-selection and non-appointment of the applicant to the post of casual labour in Engineering Department of erstwhile S.E. Railway, Khurda Road Division during 1996, the applicant has approached this Tribunal on the second round of litigation. The short facts of the case are that during 1996 General Manager, S.E. Railway, had ordered engagement of 907 casual labourers in Khurda Road Division for Monsoon patrolling for a period of 119 days. Accordingly, a notification had been issued calling for applications from open market. In response to the notice, the applicant applied and was called to the interview, but he was not selected as he had secured less marks in total. Challenging the above selection that had taken place in 1996, the applicant had approached this Tribunal by filing O.A. No.69/1997. It was alleged in the said O.A; that the evaluation of the answer sheets and also awarding of marks were not correct and the applicant should have been awarded more mark than the marks awarded to the selected persons. However, upon hearing the Counsels on either sides, by the order dated 11.11.1997 this Tribunal disposed of the O.A. No.69/97 asunder:-

“... But the point remains that B. Balamurali, the last person in the Berhampur select list has been given 11 out of 10 marks in Extra-curricular activities which is absurd. What is more, B. Lakshminarayana, the last general candidate in Berhampur select list has been given 12 out of 10 marks in Extra-curricula activities which is again an absurdity because one cannot get more than the

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maximum marks. In consideration of this, the respondents are directed to carefully go through all the mark-lists once again and where such palpable mistakes have occurred and persons have been given marks more than the maximum marks, the same must be brought down to the maximum level and accordingly the inter se position of the candidates should be worked out. If in the process the applicant stands to gain and comes within the select list, then he should be put in the select list. If, even after these corrections, his name does not come within the select list, then nothing further can be done for him. This exercise should be completed within a period of 60 (sixty) days from the date of receipt of copy of this order."

2. The said order of this Tribunal had been challenged before the Hon'ble High Court of Orissa in OJC No.575/1998 by the applicant as he was not satisfied with that. However, as per the judgement dated 23.02.2001 the Hon'ble High Court concurred with the findings and affirmed with the order of this Tribunal and granted thirty days time for compliance thereof. The above order having not been complied, the applicant filed Criminal Misc. Case No.390/01 for taking contempt action against the Respondents. However, finding that the Respondents have not committed any contempt the Hon'ble High Court closed the matter. Thereafter, the applicant filed some representations, the last one being dated 18.08.08. Now, the applicant, in this Original Application, has sought for the following relief:-

" ... (i) Direct to the Respondents to appoint him as casual labourer in East coast Railway as per his performance in the interview, which merits in the selection, since he has secured 79 marks out of 100 which is more than a mark secured by selected candidates.

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(ii) Pass such other order(s)/direction(s) as may be deemed fit and proper in the bonafide interest of justice."

3. We have heard the Ld. Counsel for the applicant on the question of admission. It is to be noted that the applicant has approached this Tribunal after lapse of more than 07 years of the dismissal of the contempt proceedings, due to his absence, by the Hon'ble High Court, holding that the Respondents had not committed any contempt. Further, it is to be noted that the applicant now claims that he has got more marks than the last selected person. We have no material before us to find that the stand taken by the applicant is correct. This Tribunal, while disposing of the O.A. had noted that the notification was for engagement of casual labours for a short period of 119 days and that too during Monsoon patrolling in the year 1996. This, by its implication, is axiomatic that the work for the period of 119 days, for which selection had taken place for engagement of casual labourer, has long since over and at this distant point of time, there is no justification for us to interfere in the matter. Further, it is to be noted that this Tribunal had only stated in the order dated 11.11.97 that "if in the process the applicant stands to gain and comes within the select list then he should be put in the select list". Also this Tribunal held that "if even after these corrections, his name does not come within the select list, then nothing further can be done for him".

4. This being the situation, and in view of the fact that the Hon'ble High Court dismissed the contempt petition without finding any fault with the Respondents, we conclude that the

applicant having secured less mark could not have come within the select list and therefore, the Respondents, under no obligation, were to do anything.

5. For the reasons aforesaid, the O.A. besides being hit by laches and limitations, is devoid of merit and accordingly, the same is dismissed. No costs.


(C. R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

Kalpeshwar