

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.457 of 2009
Cuttack, this the 11th day of March, 2010

Rupesh Kumar Sahoo Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of the CAT
or not? *yes*


(M.R. Mohanty)
Vice-Chairman


(C.R. Mohapatra)
Member (Admn.)

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.457 of 2009

Cuttack, this the 11th day of March, 2010

C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
AND
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Rupesh Kumar Sahu, aged about 34 years, son of Gaurahari Sahu, At/Post-Talipara, Ward No. 4, Post/Dist.Bargarh at present working as Deputy Station Superintendent, E.Co.Railway, At-Khariar Road, Dist. Nuapara.

.....Applicant

Legal practitioner :M/s.B.B.Patnaik, S.K.Routra, Counsel
- Versus -

1. Union of India represented through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Block No.12, Kendriya Karyalay Parisar, Lodhi Road, New Delhi-110 003.
2. Regional Director (ER), Staff Selection Commission, 5 Esplanade Row West, Old Assembly Building Ground Floor, Kolkata-700001.
3. Deputy Director, Staff Selection Commission (ER), Department of P&T, Government of India, 5 Esplanade Row, Kolkata-700001.

.....Respondents

Legal Practitioner :Mr.B.Dash, ASC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

The case in nut shell is that the Staff Selection Committee, in short 'SSC' (Respondent No.2) invited application for recruitment of 250 Section Officer (Audit) Group B non-Gazetted in the Office of Comptroller and Auditor General in the pay scale of Rs.6500-10,500/- vide advertisement No. 3/4/2007-P&P-II dated 15-21 September, 2001 through competitive examination. In the said advertisement age limit of the candidates was stipulated as 18 to 27 years as on 12.10.2007 with further stipulation that five years age relaxation would be given to candidates belonging to SC/ST and three years for OBC candidates. Similarly under clause 4D of the

L

advertisement it was provided that age limit is relaxable up to the age of 32 years (37 years for SC/ST candidates and 35 years for OBCs candidates) of Central Government employees holding civil posts who have rendered not less than three years continuous service on regular basis as on 12.10.2007 and they continue in their service till they get final selection. Applicant belongs to OBC community. He also completed three years regular service in the Railway by the cut off date. In response to the advertisement, he submitted an application for being considered along with others. He having been called upon, appeared at the written test held on 06.01.2008 and has also qualified in the said test as per the result dated 3rd June, 2008 published and available in the web site of the SSC. While others who qualified in the written test were called to face the interview scheduled to be held on 25th to 29th August, 2008 no such intimation was issued to the applicant to appear at the interview in spite of representation by him. Thereafter, he approached this Tribunal in OA No. 322 of 2008 seeking direction to allow him to participate in the interview scheduled to be held on 25th to 29th August, 2008. By the order of this Tribunal dated 27.08.2008, Applicant participated in the interview along with others on the dates fixed for the above purpose and the result of the interview of the applicant was produced by the Respondents which was perused by this Tribunal as also Learned Counsel appearing for the Applicant. As this was the only prayer of the applicant in the aforesaid OA, which having been met, this Tribunal, vide order dated 13.08.2009 disposed of the matter holding that there remains nothing further to be adjudicated. Thereafter applicant, having received no offer of appointment while such offer was given to other selected candidates, by making



representation he prayed for issuance of offer of appointment to him. The said request of the applicant was rejected and communicated to him in letter under Annexure-A/6 dated 21st August, 2008. As such by filing the present OA, the applicant seeks to quash the letter under Annexure-A/6 and to declare that the applicant is a Central Government employee as per the order passed by the CAT, Jabalpur Bench in OA No. 236 of 2008 under Annexure-A/7 and to direct the Respondents 2 & 3 to issue order of appointment in favour of applicant fixing his seniority at par with the candidates given appointment to the post of Section Officer (Audit) pursuant to the advertisement dated 15-21st September, 2007. The letter under Annexure-A/6 reads as under:

“With reference to his candidature for the Section Officer (Audit) Examination, 2007, Shri Rupsh Kumar Sahu, Roll No. 3580451 hereby informed that during scrutiny it has been found that he has sought age relaxation as a Central Government Civilian Employee. In terms of Para 4D of the relevant notice published in the Employment News/Rozgar Samachar date 15-21 September, 2007 relaxation in Upper age limit is admissible to Central Government Civilian Employees. As per the decision of the Government of India, Railway Employees are not Central Government Civilian Employees for the purpose of age relaxation in the examinations conducted by Staff Selection Commission inasmuch as CCS (Conduct) Rules, 1964 do not directly apply to the Railway employees. Shri Sahu is over aged by the standard of age limit fixed for the candidates belonging to OBC category.

The candidature of Shri Rupesh Kumar Sahu Roll No. 3580451 for the examination stated above is, therefore, cancelled on the ground of his being over aged.”

2. No separate counter has been filed by Respondent No.1. However, SSC filed counter stating the reason as stated in the order of rejection under Annexure-A/6. It has also been stated that in terms of the Government Policy, Railway employees, not being Central Government Civilian Employees, are not entitled to the benefit of age

2

-4/ 11

relaxation. Accordingly, the Respondents have prayed for dismissal of this OA.

3. Heard Learned Counsel for both sides and perused the materials placed on record. Learned Counsel for the Applicant has submitted that the plea of the Respondents that persons working in the Railway are not Government of India employees holding civil posts is not correct and in support of this, he has relied on the decisions of the Chandigarh and Jabalpur Benches of this Tribunal declaring the DOP&T Letter dated 28.8.2007 as non-est since its inception and holding that persons working in Railway are Central Government Civilian employees. On the other hand, Learned Counsel appearing for the Respondents by producing copy of the order of the Madras Bench of the Tribunal argued that the applicant is not entitled to the relief claimed in this OA. The Madras Bench of the Tribunal taking support of the DOP&T instruction dated 28.8.2007 held that persons working in Railway are not Government of India employees holding civil post and accordingly, Learned Counsel appearing for the Respondents reiterated his stand that there is no wrong in cancelling the candidature of the applicant.

4. We have gone through the decisions relied on by the respective parties. It is seen that the Chandigarh Bench of the Tribunal in order dated 6th March, 2008 in OA No. 289 of 2007 (Sanjeev Kumar Gupta and others v SSC and others) has gone into the details of this matter. The question before the Chandigarh Bench of the Tribunal as to whether age relaxation sought to be provided to the Civil servant shall be extended to the applicants therein they being Railway servant. After considering various aspects of the matter, it was ultimately held by the

2

-5- 12

Chandigarh Bench of the Tribunal that Indian Railway is a department of Central Government and its employees are also Central Government Civilian employees. As such the candidature of the applicants could not be rejected on the ground that they were over aged on the cut off date on the plea that they were not Central Government Civilian employees. Similar question came up for consideration in another case filed by Ranjeet Singh v Union of India and others before the Allahabad Bench of the Tribunal in OA No. 992 of 2009. By relying on the instruction of the DOP&T No.39028/09/2007-Estt. dated 28.08.2007, the Respondents tried to uphold their stand that as the Railway employees are not coming within the meaning of Central Government employees holding the Civil post, they are not entitled to get the benefit as claimed in the said case. The Allahabad Bench of the Tribunal taking note of the earlier decision of the said Tribunal held as under:

“(i) D.O.P & T Letter No.39028/09/2007-Estt. dated 28.8.2007 (on the issue clarifying that Railway Employees are not the Central Government Civilian Employees for the purpose of examination conducted by SSC) is quoted and **declared ‘non-est’ since its inception;**

(ii) The Applicant (Railway employee) is declared ‘Central Government Civilian Employee’ and directed to be treated as such ignoring DOPT letter dated 28.8.2007 (as referred in the impugned order dated 28.7.2008 (Annexure-A-1/Compilation 1 of the OA);

(iii) The Applicant/Ranjeet Singh and all other similarly situated candidates- who have appeared in ‘Combined Graduate Level Examination-2006) on entitled to the benefit of ‘Age relaxation’ under ‘statutory Rules’ in question, and extended all consequential benefits, privileges etc with respect to ‘selection’/‘appointment’, whether result already declared or not and the Respondents shall ensure that no prejudice’ on discrimination of any kind is caused the candidates in the said examination irrespective of the fact whether a candidate has not approached or approached Court/Tribunal; unless there is other otherwise of a higher Court/Tribunal.”

L

5. But it is seen that the Madras Bench of the Tribunal in its order dated 10th September, 2009 in OA No. 518 of 2008 relying on the aforesaid DOP&T letter dated 28.8.2007 have taken a view contrary to the view already taken by the Chandigarh and Allahabad Benches of the Tribunal quoted above. The aforesaid decision of the Chandigarh Bench and Allahabad Bench of the Tribunal though was available it is seen none of the parties before the Madras Bench produced the said decisions declaring the DOP&T letter as non-est. Further it is seen that the Allahabad Bench of the Tribunal by taking into consideration several decisions of the Hon'ble Apex Court as also Tribunal declared the aforesaid DOP&T letter as non-est. Had it been brought to the notice of the Madras Bench, the Madras Bench could not have reached the conclusion based on the DOP&T letter which was no more available by the time of taking the decision. As such the decision of the Madras Bench has no application in this case for the reason that the DOP&T letter based on which the said conclusion was reached by the Madras Bench was no more available and secondly being *per incurium*.

6. In the said premises, by applying the law laid down by the Chandigarh as also Allahabad Bench of the Tribunal we hold that employees of the Railway are Central Government Civilian employees. As such the candidature of the applicant could not be rejected on the ground that he was over aged on the cut off date on the plea that he was not a Central Government Civilian employee and accordingly we quash the order under Annexure-A/6 and direct the Respondents to grant the benefits as has been granted to others who were selected pursuant to the advertisement No. 3/4/2007-P&P-II dated 15-21

2

-7- 14

September, 2001 for the post of Section Officer (Audit) Group B non-Gazetted in the Office of Comptroller and Auditor General in the pay scale of Rs.6500-10,500/- within a period of thirty days from the date of receipt of this order.

7. In the result the OA stands allowed to the extent stated above. No costs.


(M.R. MOHANTY)
VICE-CHAIRMAN


(C.R. MOHAPATRA)
MEMBER (ADMN.)