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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.597 OF 2009

Cuttack this the 24th day of October, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Sri Bighna Bhanja, aged about 32 years, Son of Sri Narayan Bhanja, Ex.trainee Technician, Gr.III(Track Machine) under Chief Engineer, E.Co.Rly., Bhubaneswar – now staying at Plot No.140, Contractor Colony, Hamirpur, PO-Rourkela-3, Dist-Sundergarh, PIN-769 003

... Applicant

By the Advocates:Mr.Achintya Das

-VERSUS-

1. Union of India service through General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN-769 003
2. Chairman, Railway Board, Rail Bhavan, New Delhi, PIN-110 001
3. General Manager, E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN-751017
4. Chief Personnel Officer, E.Co.Railway, Rail Vihar, chandrasekharpur, Bhubaneswar, PIN-751 017
5. Dy.Chief Engineer(Tract Mechanic), E.Co.Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, PIN-751 017

... Respondents

By the Advocates Mr.P.C.Panda

ORDER (ORAL)

A.K.PATNAIK, JUDICIAL MEMBER: In this Original Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for the following relief.

“To direct the Respondents to consider the case of the applicant in the light of CPO/BBS's letter dated 24.7.2007 (Annexure-A/7) for his appointment in the “same grade post in alternative category” having medical category of ‘Cey-One’ and below as per the Railway Board's order dated 20.8.99”.

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2. The short facts leading to filing this Original Application are that consequent upon a selection, the applicant was selected and offered with the appointment to the post of Technician, Gr.III(Track Machine), in which post he joined on 21.3.2006 under the Respondent-Railways. Thereafter the applicant was sent for field training of Track Machine at Waltair where he reported on 25.3.2006. In course of training, as there were holidays in between, he came to his native place at Rourkela. When the applicant resumed his duties at Waltair on 3.4.2006, he was directed by the authorities concerned to report to COP/BBS and upon so reporting on 4.4.2006, he was handed over a letter dated 30.3.2006 by the latter wherein it was indicated that his training for the post of Tech-III™ had been cancelled as he had been found unfit in the prescribed medical category. The applicant submitted a representation dated 5.4.2006 seeking alternative appointment. According to applicant, on being directed, he reported to Chief Medical Superintendent, Khurda Road for medical fitness test in B 2 or below category for alternative appointment in Group C post as approved by the competent authority. The applicant was so examined and found fit in 'Cee One'. According to applicant,

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notwithstanding submission of such fitness certificate to the Respondent-Department as he was not offered with any alternative appointment, he preferred a representation dated 4.7.2008 (Annexure-A/10) and having received no response, has moved this Tribunal in the present O.A. seeking the relief as referred to above.

3. Respondent-Department have filed their counter opposing the prayer of the applicant. Though they have not disputed more or less the factual aspect of the matter, but have stated that the Railway Board vide EBE -90/09 dated 25.5.09(Annexure-R/6) have discontinued the policy of alternative appointment stipulating therein that this order superseded all other previous orders on the issue and taken effect immediately. According to Respondents, no where there is mandatory provision to the effect that medically unfit candidates should be offered alternative appointment if they were found fit in lower medical category. They have further submitted that there being no such instruction issued by the Railway Board, the applicant has no right to claim alternative appointment. Accordingly, they have submitted that the O.A. being devoid of merit is liable to be dismissed.

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4. We have heard Shri A.Das, learned counsel for the applicant and Shri P.C.Panda, learned counsel for the Respondent-Railways and perused the materials on record. We have also gone through the rejoinder as well as RBE No.211/1999 and RBE No.150/2000 dated 20.8.1999 and 7.8.2000 respectively, filed by the applicant, in the matter of recruitment of medically unfit direct recruits in alternative categories. At the same time, we have also gone through the condition No.3, as set out in the offer of provisional temporary appointment to the applicant vide Annexure-R/1 dated 23.1.2006, as well as Annexure-R/6 dated 25.5.2009 regarding alternative appointment to medically unfit candidates empanelled by RRBs and RRCs in Group C and Group D posts, the main stay of authority of the Respondent-Railways. However, the fact remains that the applicant was advised vide Annexure-A/7 dated 24.7.2007 for re-medical test in lower category for alternative appointment based on RBE Nos.211/99 and 150/2000, which is prior to coming into force Annexure-R/6 dated 25.5.2009, cannot be brushed aside and in effect, it neutralizes condition No.3 of the offer of appointment vide Annexure-R/1 . It is also an admitted position that in re-medical test in lower category the

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applicant has been found fit in Cey One vide Annexure-A/9 dated 2.8.2007. In this view of the matter, application of RBE No.211/1999 read with RBE No.150/2000 cannot be called in question. In so far as application of Annexure-R/6 dated 25.5.2009, as contended by the Respondent-Railways, in the said Annexure-R/6, it has been clearly spelt out that the **"these orders supersede all earlier orders issued on the subject and will take effect from the date of issue"**. Thus, it conspicuously makes it clear that Annexure-R/6 having taken effect from 25.5.2009 whatever superseding effect on earlier orders regarding alternative appointment to medically unfit candidates empanelled by RRBs and RRCs in Group C and Group D posts would be forthcoming only on and from 25.5.2009 and not prior to that date. Here is a case where the Respondent-Department having translated into action the basic ideas and intuitions in keeping with RBE No.211/1999 and RBE No.150/2000 which attained its finality on 2.8.2007, when Annexure-A/9 came to be issued declaring the applicant fit in 'Cey One', it is far fetched on their part to submit that no where there is mandatory provision to the effect that medically unfit candidates should be offered alternative appointment if they were found fit in lower

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medical category. In this view of the matter, we reject the plea of the Respondents which they have urged in their counter based on Annexure-R/6 dated 25.5.2009.

5. Having regard to the discussions held above, we direct the General Manager, East Coast Railways, (Respondent No.1) to consider the matter in the light of what has been instructed in RBE No.211/1999 read with RBE No.150/2000 dated 20.8.1999 and 7.8.2000, respectively, subject to conditions as set out therein, for appointment in technical category and issue a reasoned and speaking order within a period of sixty days from the date of receipt of this order, under intimation to the applicant.

With the above observation and direction, this O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

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(A.K. PATNAIK)
JUDICIAL MEMBER