

13

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.615 of 2009

Cuttack, this the 1st day of February, 2012

Shri Subhajit Dash Applicant

Vs

UOI & 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)
Member (Admn.)

A.K.PATNAIK
(A.K.PATNAIK)
Member (Judl.)

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.615 of 2009
Cuttack, this the 1st day of *February*, 2012

C O R A M:
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A);
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.).

Shri Subhajit Dash, aged about 37 years, Son of Sri Baidyanath Dash, working as Technical Assistant to Chief Project Manager (Junior Engineer, Grade-I) under Railway Electrification Project, At-B/29, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

.....Applicant

By legal practitioner: M/s.B.Routray, D.K.Mohapatra,
D.Routray, P.K.Sahoo, R.P.Dalai, S.Jena, Sr. Counsel/Counsel.

-Vrs-

1. Union of India represented by the General Manager, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN- 751 017.
2. Chief Personnel Officer, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN 751 017.
3. Chief Electrical Engineer, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN 751 017.
4. Chief Mechanical Engineer, East Coast Railway, ECoR Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda, PIN 751 017.
5. Sri Avanindra Ray, A.D.E.E. (TRD), ECoR, At-Jabdalpur Railway Station, PO. Jabdalpur, Dist. Bastar, Chhattisgarh.
6. Sri B.V.Ramana, A.D.E.E. (TRD), ECoR, At-Arku Railway Station, Po.ARKU, Dist. Visakhapatnam, Andhra Pradesh.
7. Sri R.C.Raiger, Asst. Personnel Officer, Office of the Divisional Railway Manager, Waltair Division, Visakhapatnam, Andhra Pradesh.
8. The Chairman, Railway Board, Rail Bhawan, Raisina Road, New Delhi.

.....Respondents

By legal practitioner: Mr.S.K.Ojha, SC
M/s.A.K. Mohapatra-I, S.C.Rath,
Counsel (for Respondent Nos. 5 to 7)

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O R D E R

A.K.PATNAIK, MEMBER(JUDL.):

The facts which are not in dispute are that the Applicant while working as JE-I / Railway Electrification / Bhubaneswar had exercised his willingness for appearing at the selection for promotion to the post of Gr-B / Assistant Electrical Engineer against 30% Limited Departmental Competitive Examination (hereinafter called as LDCE) for the assessment period 2007-2008.

[Signature]

There were 04 vacancies sought to be filled up by the Department out of which UR-02, SC-01 & ST-01. Out of 153 candidates called upon to appear at the examination only 76 candidates including the applicant had participated in the examination. After evaluation of the answer booklets of two papers i.e. Professional Paper-II (i) & II (ii), SEVEN candidates, including the Applicant, came out successful in the written examination and accordingly, in terms of the Rules, those SEVEN candidates were sent for Medical Examination and after being declared medically fit for Group B/Electrical Service, they were subjected to viva voce test on 04.06.2009. The Selection Committee recommended the names of THREE candidates in order of merit for their placement in the provisional panel for promotion to Assistant Electrical Engineer/Group B in Electrical Department of the East Coast Railway. After the approval of the recommendation of the Selection Committee by the GM, ECoRly on 08.06.2009, a provisional panel containing the name of THREE successful candidates was published vide Memorandum dated 10.06.2009 wherein the name of the applicant could not find place. Being aggrieved for non-inclusion in the panel, he preferred representation on 03-07-2009 to the CPO, ECoRly, BBS and on 18-08-2009 to the GM, ECoRly, BBS pointing out the anomalies in evaluation of his answer sheets of professional Paper-II(i) (in the objective type of question Nos. 2(i), 3(i), 3(xxx) and 12(d) and objective type question Nos. 6(viii), 6(x) and 14(iv) of professional Paper II (ii) and also requesting for his promotion to the post of Assistant Electrical Engineer /Group B. The matter was placed before the Chief Electrical Engineer, ECoRly, BBS who advised to obtain the remarks of both the evaluators and Presiding Officers. The remarks of the evaluators and Presiding Officer were received. But no decision was taken/communicated to the applicant after receipt of the remarks from the Evaluators and Presiding Officer as the Applicant had approached this Tribunal in the instant OA seeking the following reliefs:

- a) Admit the Original Application;
- b) Call for the records;
- c) And to quash the notification issued vide memorandum dtd.10.06.2009(Annexure-11) empanelling the Respondent Nos. 5&6 as Group B Officers of Electrical Department of East Coast Railway and modify the office order dtd.12.06.09 (Annexure-12) accordingly and direct the respondents to take immediate steps for necessary correction of errors in evaluation of answer scripts of the present applicant and direct them to award

15
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- d) proper marks considering the appeal made through this application and consequently revised merit list may be made accordingly;
- e) Issue appropriate order/orders, direction/directions to respondent to give appointment/promotion to the present applicant as Group B officer in the Electrical Department of East Coast Railway retrospectively from the date when respondent 5 6 and 7 were given such promotion;
- f) And pass any other order/orders as this Hon'ble Tribunal deem fit and proper for the ends of justice."

2. The Respondents in the counter while opposing the prayer of the applicant contended that the selection was conducted in terms of the Rules and the question papers were set and evaluation of answer sheets were made according to the laid down procedures. The name of the applicant did not find place in the successful list of candidates because of the less marks secured by him in aggregate in comparison to other THREE candidates. Further it has been averred that the applicant having participated in the selection and after becoming unsuccessful is estopped under law to challenge by stating that the selection or of that matter setting up the question papers or awarding of the marks were not in accordance with Rules. Accordingly, Respondents have prayed for dismissal of this OA.

3. Although Respondent Nos. 5 to 7 appeared through their counsel, despite adequate opportunity no counter was filed on their behalf.

4. By drawing our attention to the information which he had obtained under RTI Act (Annexure-A/17) to the rejoinder, the Applicant pinpointed his argument in regard to awarding of marks and stated that due to faulty procedure in awarding of marks the applicant could not find his place in the merit list which deserves judicial scrutiny / intervention. He has stated that though he has given the correct answers discrimination was caused in award of marks between him and others. According to him he was entitled to get more marks for the answers given by him as he has given the answer befitting to the questions put in the examination. He has further contended that he has no grievance against any person or authority nor even the conducting examiners but as against awarding marks to the answers furnished by him. Therefore, according to him since injustice was caused in the decision making process of awarding marks; this Tribunal can direct

the Respondents for re-checkup of the answer scripts of the applicant. Besides the above, Mr. Routray, Senior Counsel appearing for the Applicant has drawn our notice to the order dated 9.3.2010 passed in MA No. 50/2010 and has stated that despite the order of this Tribunal giving liberty to the Respondent Nos. 1 to 4 to re-examine the grievance of the applicant and to grant necessary relief as due and admissible under the Rules to the applicant, no consideration has been given on the representation of the applicant on the ground of pendency of this OA. On the above ground, Learned Senior Counsel appearing for the Applicant has reiterated his prayer made in this OA.

5. On the other hand Mr. S.K.Ojha, Learned Standing Counsel appearing for the Respondent-Railway by placing reliance on the decision of the Hon'ble Apex Court in the case of **H.P. Public Service Commission -Vrs- Mukesh Thakur**, reported in JT 2010 (6) SC 326 has reiterated the stand taken in the counter that the applicant having appeared in the selection and declared being unsuccessful is estopped to challenge the very same selection process or of that matter awarding of marks by the examiners. His contention is that there was no anomaly in awarding the marks. The examiners were the experts and as such the applicant cannot question awarding of marks given by them. Hence he has prayed for dismissal of this OA.

6. We have given our anxious thoughts to various contentions raised by the respective parties and perused the materials placed on record including the documents filed by the Respondents in a sealed cover. On perusal of the information supplied to the applicant under the RTI Act, 2005 which has been enclosed to this OA as Annexure-A/17, *prima facie* it appears that the answers given by the applicant to the questions formulated by the Respondent-Department do not deserve the mark "0" ~~has~~ given to the Applicant. It is no doubt but true that the court cannot take upon itself the task of an examiner or selection board and examines discrepancies and inconsistencies in question papers and evaluation thereof and award marks over the marks awarded by the experts but certainly it cannot be said that the authority competent is not endowed

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with power if on necessary judicial scrutiny, it is found that awarding of such marks is not befitting to the answers given by the candidate or for similar answer mark has been given to other candidate. As discussed above, it has been stated by the Respondents in their counter that on receipt of the representation from the applicant, the matter was placed before the CEE, ECoRly, BBS and on his advice remarks from evaluators and PO were called and received but no decision has been taken thereon as the applicant meanwhile has approached this Tribunal by filing the instant OA. Further, it is seen that despite the order dated 9.3.2010 passed in MA No. 50/2010 in making the hands of the authority free to take a decision on the pending representation of the applicant, no decision was taken due to pendency of this OA as evident from Annexure-14 dated 30.9.2010.

7. For the discussions made above, we hereby dispose of this OA with direction to the Respondent No.1 to examine the entire issue on merit and communicate the decision to the applicant in a well reasoned order within a period of 90(ninety) days from the date of receipt of copy of this order. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl.)