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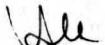
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 61 of 2009
Cuttack, this the 29th day of April, 2011

Abani Ranjan Jena Applicant
-v-
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?


(A.K.PATNAIK)
Member(Judl)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 61 of 2009
Cuttack, this the 29th day of April, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
A N D
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Shri Abani Ranjan Jena, aged about 32 years, Son of Lingaraj Jena of Co-operative Colony, II-Lane, Kamapalli, Post-Berhampur, Dist. Ganjam, Orissa, PIN 760004.

.....Applicant

By legal practitioner: M/s.A.Das,D.K.Mohanty, Counsel.

-Versus-

1. Union of India represented through Chairman, Railway Board, Ministry of Railway, Government of India, New Delhi, PIN 110 001.
2. The Member Secretary for Chairman, Railway Recruitment Board, 5 Dr.P.V.Cherian Crescent Road, Egmore, Chennai, PIN-600 008.
3. The General Manager, Southern Railway, Headquarters Office, Chennai, PIN-600 003.
4. The Chief Personnel Officer, Southern Railway, Headquarters Office, Chennai, PIN 600 003.

....Respondents

By legal practitioner: Mr.S.K.Ojha, SC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The prayer of the Applicant in this OA are two fold viz; to direct the Respondents to appoint him to the post of DMS-I for which he was qualified in a positive act of selection or alternatively to direct the Respondents, notwithstanding the Lasik Operation which he had undergone meanwhile, he should be

✓ 18 appointed to the post of SE/Signal retrospectively from the date the other selected candidates were appointed to the said post with all consequential service and financial benefits.

2. The Respondents, for the reasons stated in their counter, have stated that the applicant is not entitled to any of the reliefs sought in this OA. In so far as the first prayer of the Applicant is concerned it has been stated that out of total number of DMS-I vacancies, two posts were meant for UR candidates. The post was advertised to be filled up by way of positive act of selection in other words based on the merit position in the selection. While applicant secured 55.33% marks, two other UR candidates were placed above the Applicant by securing 84.67% and 83.11% respectively. Hence they were appointed against two UR vacancies of DMS-I. In so far as the second prayer of the Applicant is concerned, it was stated by the Respondents that common examination for a particular group of categories was conducted and merit list was prepared on the basis of the marks secured in the selection. In case of non-availability of posts opted by candidates, the candidates were allotted in other category of vacancies. This was followed, as a matter of principle, with a view to ensure that the candidates who come out successful should not be deprived of getting opportunity in the matter of appointment

but however, no compulsion was put on the candidates to accept the offer. Accordingly, as the applicant came within the list of candidates eligible for the post of Section Engineer/Signal having the necessary qualification for the post, though he had not opted, his case was recommended for the post. After following necessary formality in this respect, final panel for the post of Section Engineer/Signal was published no 12.08.2008. But he was disqualified in the Medical Test to hold the post of Section Engineer/Signal. Therefore, he was not appointed to the post of Section Engineer/Signal.

3. Through rejoinder, the Applicant more or less reiterating the stand taken in his OA has tried to justify his stand in support of the relief claimed in this OA.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having given our anxious consideration to various points raised by them in course of hearing, we have perused the materials placed on record. We have also gone through the concerned file produced by Learned Standing Counsel, in compliance of the order of this Tribunal. We find no error in the submission of the Respondents in so far as giving appointment to the two UR candidates whose merit position was higher than the present Applicant in the merit

list. Hence we find no ground in so far as his first prayer to direct the Respondents to appoint to the post of DMS-I is concerned. Similarly, we find no justifiable reason to accept the second prayer of the applicant to appoint him in the post of Section Engineer/Signal as appointment to the said post is subject to finding him fit in the medical test and the fact remains that the applicant was medically unfit to hold the said post. It is the contention of the applicant that he applied and appeared for the post of DMS-I. Even after being successful, due to lower in rank, he was not appointed to the said post. Therefore, he should not have been considered for appointment to the post of Section Engineer/Signal. If it is accepted, then the second prayer of the applicant falls to the ground as the applicant cannot choose to blow hot and cold in same breath. Be that as it may, since medical fitness is a pre condition and the applicant having been found disqualified medically, he cannot claim appointment to the post of Section Engineer/Signal.

5. In view of the above, we find no merit in this OA. This OA stands dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member (Judicial)


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