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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.134 OF 2010

Cuttack this the 7th day of October, 2013

Alok Ranjan Ray...Applicant

-VERSUS-

Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi or not ? *yes*


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Alok Ranjan Ray
Aged about 44 years
S/o. late Prafulla Kumar Ray
A permanent resident of Village-Rasulpur
District-Jagatsinghpur
PIN-754 103
At present working as Peon
Under O/O the COS/ECO Rly
Bhubaneswar

...Applicant

By the Advocate(s)-M/s.G.Rath
A.Das

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Chandrasekharpur
ECoR Sadan
Bhubaneswar
Dist-Khurda
PIN-751 017
2. The Chief Personnel Officer
East Co.Railway
2nd Floor
South Block,
ECoR Sadan
Bhubaneswar-751 017
3. The Controller of Stores
E.Co.Railway
Chandrasekharpur
ECoR Sadan
Bhubaneswar
Dist-Khurda-751 017
4. The Assistant Personnel Officer
Office of the CPO,
ECoR Sadan



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 Bhubaneswar
 Dist-Khurda-751 017
 5. The Senior Personnel Officer(HQ)
 Office of the CPO
 ECoRly.
 ECoR Sadan
 Bhubaneswar
 Dist-Khurda-751 017

...Respondents

By the Advocate(s) Ms.S.L.Pattnaik

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

The prayer of the applicant in the present Original Application is for quashing the list prepared by the Respondents under Annexure-A/6 so far as only declaring him ineligible and for direction to the Respondents to maintain his lien in the post of Peon in the East Coast Railway Headquarters and for declaring the applicant eligible to appear at the test.

2. The short facts of the case are that the applicant joined the Construction Unit of S.E. Railways on regular basis in the year 1992 in Group-D post of Khalasi. After the East Coast Railways was created the applicant was posted as Khalasi (Stores) in a Group-D post in the Headquarters office of East Coast Railways on 20.7.2006. While the matter stood thus, the Chief Personnel Officer, East Coast Railway, Bhubaneswar issued a circular dated 17.11.2008 stating that the lien of the persons named in the said letter except Sl.No.6 and Sl.No.7 (the present applicant) is fixed as Khalasi in the East Coast railway Headquarters as they did not opt to be absorbed in the cadre of Peons & Senior Peons in the East Coast Railway Headquarters when the options for the same were called for. Pursuant to the said letter, it was intimated by the Controller of Stores, East

[Signature]

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Coast Railway to the Asst. Personnel Officer, East Coast Railway that only
the applicant has submitted his application for change ^{of R} his designation from
Khalasi to Peon. Even though this letter was sent on 2.12.2008 along with
the option of the applicant, no further communication was received and
therefore, the applicant made representation stating his grievance on
23.10.2009. Thereafter also, no other communication was received by the
applicant and therefore, he presumed that his request for change of
designation has been acted upon treating him as Peon in the Headquarters
of East Coast Railways for all purposes. Thereafter, by issuing a notification
on 1.10.2009, applications were invited by the Respondents for filling up 21
vacancies of Junior Clerk-cum-Typists against the departmental promotion
quota from amongst the group-D viz., Office Peons, Records Stores, Ferro
Typers of East Coast Railway seniority. The applicant claims to be a
Matriculate having proficiency in typewriting and having fulfilled the
required conditions as prescribed in the notification applied for being
considered on 23.10.2009 in the prescribed format. The Respondents vide
letter dated 4.3.2010 published a list of candidates eligible to appear at the
test scheduled to be held on 4.4.2010. However, the applicant was
declared ineligible and his name was published in the ineligible list. Then
the applicant made a representation dated 9.3.2010, ^{questioning} ~~questing~~ ^R the decision
of the authorities declaring him ineligible to take part in the selection test.
This representation did not bring forth any response from the Respondents.
It is the allegation of the applicant that there has been gross injustice
caused to him and discrimination has been made between the applicant
and similarly situated employee, viz., Shri Gautam Rout. His further

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 allegation is that the Respondents have used their discretion arbitrarily and declared the applicant ineligible for the selection test scheduled to be conducted on 4.4.2010. It is the further case of the applicant that the Chief Personnel Officer, East Coast Railways in letter dated 17.11.2008 has communicated that excepting the applicant and another person, the lien of others has been fixed as Khalasi. The said letter also indicates that the applicant and another person opted to be absorbed in the cadre of Peons and Sr.Peons in the East Coast Railway Headquarters when the options for the same were called for. This conclusively proves that the lien of the applicant was not fixed as Khalasi as admittedly he had opted for the cadre of Peon and Senior Peons. The CPO, East Coast Railways has not taken prompt action to re-designate the applicant as Peon and Sr.Peon for which the applicant should not suffer nor should ~~not~~^{he} be debarred from participating in the selection test held on 4.4.2010. The applicant had every right to be considered for selection as Junior Clerk-cum-Typist and his merit has been ignored by the concerned authorities.

3. In the counter affidavit filed by the Respondent-Railways, it has been submitted that the applicant did not submit any application for the change of category at his own request on bottom seniority from the category of Khalasi to Peon and therefore, he is not eligible to appear in the promotional selection. If ~~is~~^{his} application is considered with protection of seniority, it will create resentment among other similarly situated Peons in the East Coast Railway Headquarters. The applicant was regularized as Khalasi with effect from 22.9.1995 and posted under CPM/HQ/BBS on 4.3.1998. Regarding the allegation of the applicant that his option for the

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change of designation from Khalasi to Peon was not taken into account, it is clarified in the counter affidavit that for the change of designation, a notification was issued in the year 2004. In response to that the applicant did not submit his option for change of category from Khalasi to Peon. However, in the year 2006, the applicant submitted his application with option for change of his category with protection of seniority, but his application could not be considered as per the Rules. However, he was posted as Khalasi in the Stores Department vide Office Order dated 11.5.2006. His application dated 2.12.2008 for change of category was considered in the Joint Meeting of Administration with both the recognized Unions wherein a consensus could not be arrived at regarding protection of seniority. The position taken by the Respondents in the counter affidavit is that since the applicant did not apply in the year 2004, and if his application would have been considered with protection of seniority at a later stage, it would have created resentment among other similarly situated Peons in the East Coast Railways Headquarters. It is stated further in the counter affidavit that since there is no avenue for promotion of Khalasi in the East Coast Railway Headquarters, Railway Administration had issued notification inviting applications from willing Group-D staff for change of category from Khalasi to Peon in the year 2004. The promotional channel for Peons is to the Office Clerk category whereas the same for Khalasi is to the Technician category. Those who had changed their category from Khalasi to Peon are eligible to appear in the selection for filling up of the post of Clerk category, whereas the applicant holding the post of Khalasi till date is not eligible for the purpose. According to

Respondents, it is not possible to believe that the application for change of category has been accepted since no Office Order has been issued for change of category from Khalasi to Peon. 97 applications were received by the CPO office for the selection to fill up the post of Junior Clerk cum Typist for which notification was issued on 1.10.2009. Out of the same, 66 candidates were found to be eligible and rest 31 candidates were found to be ineligible because of not fulfilling the required terms and conditions. The list of eligible and ineligible candidates was finalized with the approval of the CPO and published as annexed at Annexure-A/6 to the O.A. The applicant's name finds place in the ineligible list. It is further submitted in the counter affidavit that in obedience to the Tribunal's order dated 26.3.2010, the applicant was allowed to appear in the written examination held on 4.4.2010, but his result was not published as per the direction of this Tribunal. The point that has been emphasized in the counter affidavit is that the applicant did not exercise his option for the change of designation from Khalasi to Peon in the year 2004 when the notification was issued. The applicant, however, submitted his option in the year 2006 but he was posted as a Khalasi in the Stores Department of the East Coast Railways Headquarters without change of his category. His application dated 2.12.2008 was considered in the Joint Meeting of the Administration with the recognized Unions wherein a consensus decision could not be arrived at for protection of his seniority.

4. Having heard the learned counsel for both the sides, we have perused the records. The learned counsel for both the sides have also filed their respective written note of arguments, in which they have

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reemphasized the points as urged in the O.A. as well as in the counter affidavit.

5. From the pleadings of the parties the issue to be decided herein is whether the applicant has exercised his option for change of his category from Khalasi to Peon and whether the option exercised is valid for making him eligible to appear in the selection test for Junior Clerk cum Typist through Departmental Promotion quota.

6. The Respondents have taken a ground that when the options were called for in the year 2004, the applicant did not give his option. It is however, admitted by the Respondents that the said option was submitted by the applicant in the year 2006. It is found at Annexure-A/3 of the O.A. that the Assistant Material Manager, East Coast Railways has written to the Assistant Personnel Officer of East Coast Railway Hq. that the only candidate left- over i.e., Ashok Ranjan Ray, the applicant, has submitted his application for changing over his designation from Khalasi to Peon and that his application is being forwarded along with the letter for taking further course of action by changing his designation from Khalasi to Peon. It is further mentioned that the forwarding of the application for changing of category has the approval of Deputy CMM(Systems). This letter is in response to a letter from APO dated 17.11.2008. It is absolutely clear from this letter that even in the year 2008, option for change of designation from Khalasi to Peon ^{was} ~~were~~ being considered and acted upon. The authorities are well aware of the exercise of option by the applicant and his case also has been duly recommended. Therefore, the Respondents cannot take a plea now that since the applicant had not exercised his option in the year 2004,

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the same cannot be considered now. With regard to the arguments of the Respondents that there was no Office Order to the effect that the applicant's change of designation has been effected, it can be emphatically said here that issuing an office order in this regard was the responsibility of the Respondents and not the applicant. Applicant also made representations in this regard which were not responded to and therefore, if he presumed that his option has been acted upon, he cannot be blamed in this regard. On 1.10.2009, the Respondents have brought out this notification for selection to the post of Junior Clerk cum Typist in the departmental quota and it is admitted that the applicant submitted his application in response to the same. By that time he had already given his option which should have been acted upon. However, his name was published in the ineligible list for the selection from Group-D to group-C. It is seen from the records that the applicant along with two other affected persons made a representation to the General Manager, East Coast Railways on 9.3.2010 mentioning their grievances that their names should not have been published in the ineligible list. In this representation, they have clearly stated that although they have exercised their options for the change of category since December, 2008, ^{they are} ~~they~~ surprised as to how the change of category has not been done after the passage of 14 months. Accordingly, they have made a prayer that they should be allowed to participate in the selection that was held on 4.4.2010. This representation was made on valid grounds whereas the Respondents have not looked into it in its proper perspective.



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7. This O.A. was admitted on 26.3.2010 and by way of interim relief, this Tribunal directed the Respondents to allow the applicant to take the examination scheduled to be held on 4.4.2010 with a rider that his result shall not be published without the leave of the Tribunal. The Respondents in the counter affidavit have also submitted that in obedience to this order the applicant has been allowed to appear in the written examination and ~~the~~ his result has not been published.

8. The Respondents have taken a plea that the representation of the applicant dated 2.12.2008 was considered in the Joint Meeting of Administration with both the recognized Unions wherein a consensus decision could not be arrived at regarding protection of seniority. It has been further submitted that the applicant did not apply in the year 2004 and if his application is considered with protection of seniority, it will create resentment among other similarly situated Peons in the East Coast Railways Hq. This submission is devoid of any justification. The applicant's case has to be considered fairly and in accordance with rules and any discussion with the Unions and the alleged lack of consensus should not deprive an employee of his rightful claim to be considered for a selection and promotion if he fulfills the required terms and conditions. When the Respondents have admitted that the applicant did exercise his option for the change of category from Khalasi to Peon, then they cannot take a stand now that he was not eligible to participate in the selection process. The authorities should always act fairly and impartially. In the present case, it appears that they have not taken a just and fair view in denying the applicant of opportunity of participating in the process of selection for

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promotion when he was eligible. The Respondents have failed to place any fact or proof before the Tribunal to show that options exercised for change of designation after 2004 were not considered. From the contents of the letter dated 2.12.2008 (Annexure-A/3) it appears that this was a continuing process. It was therefore, absolutely unjustified to reject the case of the applicant on this specious ground. The settled position of law is that no employee has a right either to promotion or selection, but he/she has a right to be considered for selection or promotion, in case of fulfilling the required eligibility criteria.

10. From the verification of the available documents, it is crystal clear that the applicant did exercise a valid option for change of category from Khalasi to Peon which makes him eligible to appear in the selection process for the post of Junior Clerk cum Typist as notified by the Respondents on 1.10.2009 for which the written test has already been conducted on 4.4.2010 and by no stretch of imagination his name should have found place in the ineligible list. The point in issue as raised above is answered accordingly.

11. For the reasons discussed above, we hold that the applicant was eligible for appearing at the said test, in which he has so appeared by virtue of the interim direction of this Tribunal. In the fitness of things, now the result of the said test in respect of the applicant should be published. Accordingly, while quashing impugned Annexure-A/6 dated 4.3.2010 in so far as declaring the applicant ineligible to appear at the selection test for the post of Junior Clerk cum Typist held on 4.4.2010 is concerned, we direct the Respondent-Railways to publish the result of selection test which the


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applicant has taken by virtue of the interim direction of this Tribunal,
within a period of thirty days from the date of receipt of this order and in
case the applicant is found to be successful in the examination, further
follow up action be taken by the Respondents.

Ordered accordingly.

In the result, the O.A. is allowed to the extent indicated above. No

costs.


(R.C.MISRA)
MEMBER(A)
BKS


(A.K.PATNAIK)
MEMBER(J)