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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


OA No.287 of 2010


Cuttack, this the 25~~th~~ day of September, 2012

Sushanta Bhusan Mohanty Applicant
Versus
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? x
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? x


(A.K.PATNAIK)
Member(Judl)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Cuttack, this the 25th day of September, 2012

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

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

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Sushanta Bhusan Mohanty, aged about 33 years, Son of Late Pravakar Mohanty resident of Village-Durgapur, Po.Pakhar, Dist.Balasore at present working as Station Master, S.E.Railway, Haldipada, Dist.Balasore.

.....Applicant

By legal practitioner -M/s.S.B.Mohanty,H.K.Mohapatra,
J.R.Kar,J.Tiwari, Counsel.

-Versus-

1. General Manager, S.E. Railway , Garden Reach, Kolkata.
2. Chief Personnel Officer, S.E. Railway, Garden Reach, Kolkata.
3. Senior Deputy General Manager and Chief Vigilance Officer, S.E.Railway, Garden Reach, Kolkata.
4. Divisional Railway Manager, S.E.Railway, Khargpur.
5. Sri Jaydeep Banerjee,ASM/KGP;
6. Sri Tarun Kumar Sinha, SM/CKP;
7. Sri Purushotam Trivedi, ASM/CKP;
8. Sri Anuresh Deepak, ASM/CKP;
9. Sri Avinash Kumar Nirata, ASM/KGP;
10. Sri Santosh Kumar Dubey,G.Guard/CKP;
11. Sri Manoj Kumar, ASM/RNC;
12. Sri Pranay Kumar Barman, ASM/CKP;
13. Sri Pinku Kumar (SC),ASM/CKP
14. Sri Dibakar Behera (SC), SM/KGP;
15. Sri Arun Kumar, G.Guard/CKP;
16. Sri Subal Nayak, ASM/KGP;
17. Sri Sandip Kumar, ASM/ADA;
18. Suvendu Kumar Jena, Sr.TNC/KGP;
19. Sri Lalatendu Keshari Rout, SM/KGP;
20. Sri Ratan Sahay, SM/ADA;
20. Sri Santosh Kumar Srivastava,SM/KGP;
21. Sri Prasant Kumar Mohanty, SM/KGP;
22. Sri Chandra Mohan Paswan (SC),SM/KGP;
23. Sri Manish Sharma, G.Guard/ADA;
24. Sri Deepak Kumar, G.Guard/CKP;
25. Sri Sanjay Kumar Sahoo, ASM/CKP;
26. Sri Ravi Belas Kuju (ST), ASM/CKP;

16 27. Sri Biplab Biswas (SC), ASM/KGP

(Sl.Nos.5 to 27 now under the C/O. Principal Zonal Railway Training Institute, At/Po.Sini, East Singhbhum, State-Jharkhand.

.....Respondents

By legal practitioner -Mr.S.K.Ojha, Counsel.

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ORDER

C.R.MOHAPATRA, MEMBER (A):

Applicant, an employee of the South Eastern Railway, presently posted as Station Manager, at Haldipada in the District of Balasore, Odisha has filed this Original Application seeking the following reliefs:

- “(i) To admit the Original Application;
 - (ii) To quash the provisional panel list dated 4.1.2010 prepared by Sr. Personnel Officer (P&T), Kharagpur, S.E. Railway (Annexure-5) and order dated 15.4.2010 passed by CPO, S.E. Railway, vide Annexure-10;
 - (iii) To direct the Respondents to include the name of the applicant in the panel list before sending the other candidate to undergo training meant for the post of traffic apprentice;
- And pass such other order(s) as deemed and proper.”

2. Respondents filed their counter opposing the prayer of the Applicant stating that this OA being devoid of any merit is liable to be dismissed. Applicant has filed rejoinder more or less reiterating his stand taken in the OA.

3. Mr.Mohanty, Learned Counsel for the Applicant contended that since the selection and empanelment of the candidates to undergo Traffic Apprentice training has not been prepared by taking into consideration the actual merit of candidates and in strict adherence of the Rules, the panel at Annexure -5 dated 04-01-2010 and the letter of rejection of the representation of the Applicant at

17 Annexure-10 dated 15-04-2010 need to be quashed. In this connection Mr. Mohanty, Learned Counsel for the Applicant during the course of arguments contended that the applicant has an outstanding and unblemished record of service. The Respondents have intentionally and deliberately with a view to excluding the applicant reduced the vacancy and had the vacancy position been mentioned in the notification the respondents could not have resorted to the foul play to exclude his name from the panel. There was no personality test held by the Respondents as required under the Rules and mentioned in the advertisement to judge and assess the leadership quality taking into account the academic qualification of the candidates. Though his name did appear at Sl.No.7 in the list at Annexure-4 but for the reason of awarding marks arbitrarily, in other components, his name was excluded from the final list. In substance it was the contention of the Learned Counsel for the Applicant that the selection was not done in free and fair manner and in strict adherence of Rules and as such he is entitled to the relief claimed in this OA.

4. The aforesaid contention of the Learned Counsel for the Applicant was strongly refuted by Mr. Ojha, Learned Counsel appearing for the Respondent-Railway. His stand is that the applicant sought to quash the panel but without making any one from the panel as Respondents in this OA and that if the applicant had any grievance with regard to the deficiency in the notification such as non

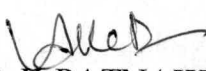
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mentioning of the vacancy etc he should have agitated the same at the first instance. He having applied pursuant to the notification and appeared at the selection and after becoming unsuccessful is estopped to challenge pointing out any deficiency in issuing the notification etc. According to Mr.Ojha, Learned Counsel appearing for the Respondents the empanelment was done on the basis of positive act of selection/merit. The merit list is prepared taking into consideration the aggregate marks obtained on different components by the candidates such as written test, personality, address leadership academic technical qualification and record of service. As the aggregate mark of the applicant was below the marks obtained by the last candidate his name could not find place in the panel. Hence, Mr. Ojha, Learned Counsel appearing for the Applicant reiterated that this OA is liable to be dismissed.

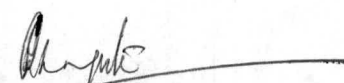
5. After considering the rival submissions, we have gone through the documents relied on in support of the pleadings by the respective parties. Except bald assertion nothing has been pinpointedly shown or produced by the Applicant's Counsel as to which of the Rules required to be adhered to has not been adhered by the Respondents. Similarly, the Applicant after having taken part in the process of selection, knowing fully well the procedure of selection, he is not entitled to challenge the criteria or process of selection. If the Applicant's name had appeared in the merit list, he would not have

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challenged the selection process. He approached the court only after he found that his name did not figure in the merit list prepared by the Respondents. This conduct of the Applicant clearly disentitles him from questioning the selection. We need to record that the onus of proving mala fide lies heavily on the person who alleges it. A mere allegation is not enough. The party making such allegations is under the legal obligation to place specific materials before the court to substantiate the said allegation but no such material has been placed by the applicant in support of his plea that the selection is tainted with mala fide.

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


(A.K.PATNAIK)
Member (Judicial)


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