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O.A.No.345 of 2010
Abhay Kumar Singh Applicant
-Versus-
Union of India & Ors. Respondents

1. Order dated: the 7st July, 2010.

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

It is the positive case of the Applicant that he was one of the selected candidates, pursuant to an open selection conducted by the Railway for the post of Gangman. After his selection the Respondents verified his documents and found correct in all respect. Thereafter he submitted the attestation form as directed by the Railway. As a pre-condition of the appointment, before his appointment to the post he was medically examined on 15.10.2009 and was found fit in Bee-two. Again he was re-examined and found fit in Bee-One. By placing reliance on Annexure-A/4, it has been pointed out by the Applicant that similarly placed candidates having ~~found~~ shortcomings on medical examination have been provided with alternative appointments whereas no such appointment has been provided to him. According to him representation submitted by him seeking appointment under Annexure-A/5 did not yield any result. Hence by filing this OA, the Applicant sought direction to the Respondents to provide him alternative appointment as has been given to others in Annexure-A/4.

2. Heard Mr.D.K.Mohanty, Learned Counsel for the Applicant and Mr.S.K.Ojha, Learned Standing Counsel for the Railway appearing on notice for the Respondents and perused the materials placed on record.

3. It has been contended by Learned Counsel for the Applicant that ~~by~~ not providing alternative appointment to the applicant is not only against the Rules of the Railway but also amounts to utilizing the discretion discriminatorily which is per se illegal, arbitrary and is in violation of Article

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14 and 16 of the Constitution of India. This was opposed by Learned Standing Counsel for the Respondents on the ground that the representation made by the applicant under Annexure-A/5 is not only cryptic but also has been made by the applicant jointly only on 16.3.2010 and before completion of the mandatory period of six months the applicant has approached this Tribunal. Hence he has prayed for dismissal of this OA. I found some force in the submission of the Learned Counsel for the Applicant. But Learned Counsel for the Applicant seeks leave to make an exhaustive representation raising all the points taken in this Original Application to the Respondent No.2 within a period of seven days and has accordingly prayed to direct the Respondents to consider such representation taking into consideration Annexure-A/4 within a specified period. This submission of the Learned Counsel for the Applicant has some merit; because the selection has been over long since and if there are rules for providing alternative appointment in case of shortcomings found on medical examination, as has been given to others in Annexure-A/4 there is no reason to delay the same thereby depriving the applicant of his right to earn his livelihood as provided under Article 21 of the Constitution of India.

4. For the discussions made above, without expressing any opinion on the merit of the matter, this Original Application is disposed of at this admission stage by granting liberty to the Applicant to make a fresh representation incorporating the points raised in this OA to the Respondent No.2 within a period of seven days and the Respondent No.2 is hereby directed to consider the grievance of the Applicant in the light of the consideration given to the case of the others in Annexure-A/4 and communicate the out come of such consideration in a reasoned order to the Applicant within a period of 60 days from the date of receipt of such representation.



5. Send copies of this order along with OA to the Respondent
No.2 for compliance.


(C.R. Mohapatra)
Member (Admn.)