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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O. A. No. 260/00190 OF 2016
Cuttack, this the 5th day of April, 2016

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

.....
Sri B.H.Y Raju, aged about 59 years, S/O-Late B.H.R.K. Rao, at present working as Loco Pilot (G) under Senior DME/E.Co.Rly./Sambalpur Division and posted at Titilagarh.)

.....Applicant
(Advocate: M/s. N.R. Routray, S. Sarkar, U. Bhatt, J. Pradhan, S.K. Mohanty, T.K. Choudhury)

VERSUS

Union of India Represented through

1. General Manager, East Coast Railway, Rail Bhawan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Senior Divisional Personnel Officer, East Coast Railway, Sambalpur Division, At-Khetrajpur, P.O-Modipada, Town/dist-Sambalpur.
3. J.K. Kumar, Loco Pilot (Passenger), C/O-Sr. DME, East Coast Railway, Sambalpur Division, Khetrajpur, Modipada, Sambalpur.
4. R.K. Meher, Loco Pilot (Passenger), C/O-Sr. DME, East Coast Railway, Sambalpur Division, Khetrajpur, Modipada, Sambalpur.

... Respondents

(Advocate: Mr. T. Rath)

ORDER (Oral)

R.C. MISRA, MEMBER (A)

Heard Mr. N.R. Routray, Ld. Counsel appearing for the Applicant and Mr. T. Rath, Ld. Standing Counsel appearing for the Respondents-Railways, on whom a copy of this O.A. has already been served, and perused the materials placed on record.

2. In this O.A. applicants, 21 in number have approached the Tribunal. For joint prosecution M.A. No.216 of 2016 has been filed by the applicants. However, at the outset Mr. Routray submitted that he would like to confine this O.A. only in respect of applicant No.2 viz. Sri B.H.Y Raju who has preferred a representation dated 23.02.2016 to Respondent No.2. In view of this, M.A. No.216 of 2016 is rejected.



3. By drawing my attention Mr. Routray submitted that in case of promotion while providing reservation to reserve candidates the authorities has to assign the reason as laid down by the Hon'bl Apex court in case of M. Nagaraj & Others -Vrs.- union of India & Others, whereas in this case without assigning any compelling reasons the reserve candidates have been straight way given the benefit of reservation. Mr. Routray further brought to my notice that similarly placed applicants had filed O.A. Nos.755, 2058, 3603 of 2012 and 2483 of 2013 before the C.A.T. Principal Bench of this Tribunal. The C.A.T. Principal Bench disposed of the aforesaid O.As. vide its order dated 22.04.2014 with the following observations:-

"In view of the above facts and law laid down by the Apex Court and followed by different High Courts and Benches of this Tribunal all these Original Applications are allowed. Consequently,

(i) the impugned order dated 30.12.2011 in O.A. No.755/2012 is quashed and set aside. We also direct the Respondents to fill up the vacancies of Passenger Goods strictly in accordance with the seniority subject to the rejection of unfits without alloweing reservation.

(ii) the impugned order dated 28.12.2011 in O.A. No.2058/2012 is quashed and set aside to the extent that the Applicants names have not been included therein. We also quash and set aside the order dated 25.04.12 rejecting the claim of the applicants for interpolation in the aforesaid panel dated 28.12.2010. We further direct the Respondents to fill up the vacancies of Loco Pilots Goods strictly in accordance with the seniority subject to the rejection of unfits without allowing the reservation.

(iii) the impugned order dated 16.10.12 in O.A. No.3603/2012 is quashed and set aside to the extent that the vacancies of Mail Train Loco Pilot have been filled by promoting junior staff belong to SC/ST category in violation of the law laid down by the Supreme Court. We also direct the Respondents to fill up the vacancies of Mail Train Loco Pilot strictly in accordance with the seniority subject to the rejection of unfits without alloweing reservation.

(iv) the impugned order dated 09.07.2013 in O.A. No.2483/13 is quashed and set aside to the extent that the vacancies of Loco Pilot Passengers have been filled up by reservations as in (O.A. No.3603/2012).



Mr. Routray further submits that though the present applicant is continuing as Loco Pilot (Goods) as ~~that~~ of the applicants in O.A. Nos.755, 2058, 3603 of 2012 and 2483 of 2013 and is eligible to be promoted to the next higher post but without considering his case, the Respondents have acted in a malafide way by considering the case of pretty juniors for promotion simply because they belong to the Schedule Caste and Schedule Tribe category. Hence, before approaching this Tribunal in this present O.A. the applicant had also made a comprehensive representation dated 23.02.2016 (Annexure-A/4) to Respondent No.2 but till date no reply has been received from the Respondents-Department.

4. On the other hand, Mr. Rath submitted that the present O.A. is now in the shape of Public Interest Litigation and this should not be entertained by the Tribunal as the applicants have not come with clean hands.

5. However, after perusal of the documents annexed to this O.A. as well as the pleadings, I find that the earlier O.A. Nos.755, 2058, 3603 of 2012 and 2483 of 2013 have been disposed of vide its order dated 22.04.2014 with a direction to concerned authorities to comply the above directions within a period of two months from the date of receipt of a copy of this order. As I also find that in this O.A. applicant has approached this Tribunal after making representation, in the first instance I would like to give liberty to Respondent No.2 to consider and dispose of the representation dated 23.02.2016 (Annexure-A/4) submitted by the applicant if it is pending. Accordingly, without entering into the merit of this case, I dispose of this O.A at the stage of admission by directing Respondent No.2 to consider the representation dated 23.02.2016 (Annexure-A/4) as per the extant Rules and regulation and communicate the result thereof to the applicant by way of a reasoned/ speaking order within a period of sixty days from



the date of receipt of copy of this order. I hope and trust, if, after such consideration it is found that the applicant is entitled to the relief claimed by him then the same may be extended to him within a further period of 03 (three) months from such consideration. Though I have not expressed any opinion on the merit of the case, I make it clear that all the points raised in the representation will be kept open for the Respondent No.2 to consider the same as per rules, regulations and law in force. However, it is made clear that if the said representation dated 23.02.2016 (Annexure-A/4) has already been disposed of then the result of the same may be communicated to the applicants within a period of 15 days.

6. In the result, the O.A. is disposed of at the stage of admission itself.

No costs.

7. On the prayer made by Mr. Routray, Learned Counsel appearing for the applicant, copy of this order, along with paper book, be sent to Respondent No.2 by Speed Post for which Mr. Routray undertakes to file the postal requisites by 07.04.2016. Free copy of this order be made over to Mr. T. Rath, Ld. Standing Counsel appearing for the Respondents-Railways.


(R.C.MISRA)
MEMBER(A)

K.B.