

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00605 OF 2016
Cuttack, this the 22nd day of February, 2018

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....

Pravat Kumar Bisoi,
aged about 36 years,
S/o- Gopal Chandra Bisoi,
Vill/PO- Kharada, P.S- Kasinagar,
Dist- Gajapati, Odisha,

...Applicant

(By the Advocate-M/s. P.N.Pattnaik, G.N.Das, U.C.Behera)

-VERSUS-

1. Union of India, Ministry of Railway, represented through Secretary, Railway Board, New Delhi.
2. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist- Khurda.
3. General Manager(P), (Chief Personnel Officer), 2nd Floor, South Block, Rail Sadan, Samanta Vihar, Bhubaneswar -751017, Dist- Khurda.
4. Divisional Railway Manager, (Personnel), East Coast Railway, Khurda Road, Dist- Khurda.
5. Hony. Gen. Secretary, Cuttack Railway Institute, East Coast Railway, Cuttack.

...Respondents

(By the Advocate- Mr. T.Rath)

.....

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ORDER

S. K. PATTNAIK, MEMBER (J):

In a second round litigation, the applicant seeks quashing of the speaking order dated 08.04.2015 passed in obedience to the order of CAT, Cuttack Bench dated 30.01.2015 passed in O.A.No. 1055/15. The applicant has also prayed for a direction to the Respondents to absorb him in any Group-D regular post under the Railway Board and to pay the salary from January, 2013 till date.

2. The case of the applicant in nutshell is that he had joined as Caretaker-II on 11.05.1997 duly selected by the Managing Committee of Railway Institute, Cuttack as per appointment letter dated 09.05.1997 (Annexure-A/1). The grievance of the applicant is that although his name was sponsored, he has not been absorbed in Group-D post. The submission of the applicant is that even after facing screening as per the instruction of the Secretary, Railway Institute, on 27.01.2012, his services were not regularized. On his representation, he has been informed vide letter dated 14.02.2013 that his case was examined by the General Manager, E.Co.Railway (Respondent No.2), but was not found fit to be referred to the Railway Board for consideration. He preferred representation to Respondent No.2 and in pursuance of the direction of this Tribunal in O.A. No. 1055/2014, Respondent No.2 disposed of the representation vide order dated 08.04.2015 (Annexure-A/16), which is impugned herein. The applicant alleges that this order has been passed mechanically without considering the same on merit.

3. In order to understand why the Respondents have rejected

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the representation of the applicant, the relevant portion of the observation of the speaking order need to be extracted below:

"5. However, in order to dispose of his representation in obedience to Hon'ble Tribunal's order dated 30.01.2015, an inquiry was conducted to establish the genuineness of certificate issued by the Secretary, Railway Institute dated 20.04.2000 in respect of his engagement on 11.05.1997.

6. (a) The findings of inquiry reveal that there was no such engagement made by the then Secretary Sri Ashok Kumar Mohanty in the year 1997 as claimed by the applicant, which was affirmed by Sri Mohanty during the inquiry held on 28.03.2015 stating that no such certificate dated 20.04.2000 has been issued by him in favour of the applicant.

(b) Rather, as per the resolution adopted on 27.11.2004 by the Managing Committee of Railway Institute, Cuttack, it is seen that the applicant (Sri P.K.Bisoi) was recruited as a part time Care Taker on purely temporary basis (copy of resolution is enclosed).

Thus, it has been conclusively proved on the basis of available records that he had only been engaged w.e.f. 27.11.2004, but not on 11.05.1997 and thus, all the points mentioned in representation/reminder of the applicant dated 28.5.2013 and 18.2.2014 placed under Annexure-A-13 & Annexure-A-14 to O.A. respectively are irrelevant and deserve no consideration.

As such, his claim for regularization as per RBE No. 103/2000 and 56/2006 is not tenable and hence rejected because of non-fulfilment of the eligibility condition."

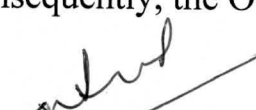
4. The above order clearly indicates that the claim of the applicant is false and frivolous without any basis and rather has been designed to hoodwink the department. Whether the applicant was working as a casual worker or not it is the department, who can say so and can certify for such engagement. Once such engagement, as claimed by the applicant, as revealed from the inquiry discloses that no such

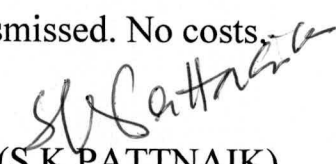
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certificate dated 20.04.2000 was issued in his favour, the whole claim of the applicant falls to the ground. As per the resolution adopted on 27.11.2004 by the Managing Committee of Railway Institute, Cuttack, it is clearly averred that the applicant was recruited as a part time Caretaker on temporary basis and there is no right of regularization or absorption. The Hon'ble Supreme Court in the case of **Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. reported in (2007) 1 SCC(L&S) 270** have emphatically held that *"the court cannot create a post where none exists, nor issue directions to absorb or regularize temporary employees, nor continue them in service, nor pay them salaries of regular employees, as these are purely executive or legislative functions-Supreme Court cannot arrogate to itself powers of the executive or legislature- Judicial activism in this connection, deprecated"*.

5. In view of the discussions made above, we see no justification to interfere in the decision taken by the Respondents.

Consequently, the O.A. being devoid of merit is dismissed. No costs.


(M. SARANGI)
Member (Admn.)


(S.K. PATTNAIK)
Member (Judl.)