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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO.287 OF 2012

Cuttack the 18th day of April, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R. C. MISRA, MEMBER (A)

Vikash Kumar,
Aged about 27 years,
S/o. Jaiprakash,
Village-Sanwalpur,
Near I.T.C. Ltd,
P.O/Dist-Saharnpur,
Uttar Pradesh-247001

...Applicant

(Advocates: M/s-K.C. Kanungo, Chitra Padhi, R.C. Behera)

VERSUS

Union of India Represented through

1. The General Manager,
East Coast Railway,
Samant Vihar,
At/Po/Ps-Chandrasekharpur,
Bhubaneswar-751023,
Dist-Khurda, Odisha.
2. Chairman,
Railway Recruitment Board/ Bhubaneswar,
D-79/80, Rail Vihar,
Chandrasekharpur,
Bhubaneswar-751023, Odisha.

... Respondents

(Advocate: Mr. S.K. Ojha)

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ORDER

A.K. PATNAIK, MEMBER (I)

In this Original Application under Section 19 of the A.T.Act, 1985, applicant, Vikash Kumar has sought the following relief:-

“ ...To direct the Respondent No.2 to hold that the applicant is to be included in the list of eligible candidates for the post of Junior Engineer-II (Electrical) under reserve category(SC) along with others at Annexure-A/3 and A/4 for the ends of justice.”

AND

Be further pleased to direct Respondent No.2 to declare the applicant successful and publish his name in the eligible list along with others under reserve category (SC) at Annexure-A/3 and A/4 for the post of Junior Engineer-II (Electrical) in terms of the marks secured by him in the examination appeared on Dt.21.06.2009 for the ends of justice.

AND

Be further pleased to direct Respondent No.1 to consider the name of the applicant for appointment of Junior Engineer-II (Electrical) along with others under reserve category (SC) at Annexure-A/3 and A/4 for the ends of justice.

2. Shorn of unnecessary details, it would suffice to note that the applicant was one of the contending candidates for selection to the post of Junior Engineer-II (Electrical) pursuant to an Employment Notice dated 21.6.2008. According to him, he appeared at the written test held on 21.06.2009. While he was hopeful to receive a good response in respect of

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the written test, all on a sudden, he received a communication dated 31.12.2000(Annexure-A/2) requiring him to attend the retest. However, when he presented himself before the Respondents, he was apprised to appear at the retest or else his candidature would be cancelled. Without finding any way out, the applicant appeared at the retest on 16.2.2011. However, in the result published, his name having not been found place, he has approached this Tribunal assailing the legality and validity of retest conducted by the Respondents.

3. In the counter the Respondents-Railways have opposed the prayer of the applicant. They have submitted that in the written test conducted on 21.6.2009, applicant had secured 73.11% marks. According to Respondents from the answer papers of five candidates including that of the applicant it could be revealed that not only they had secured same mark but also they had the response to the corresponding questions of respective series of question paper were exactly same for right, wrong and blank and as such, it has been submitted that the applicant having adopted dubious means to qualify himself, retest notice was issued to him. Applicant having secured 43.33% marks in the retest he was not included in the select list. In the circumstances, it has been submitted by the Respondents that the O.A. being devoid of merit is liable to be dismissed.

4. We have heard Mr. K.C. Kanungo, Ld. Counsel for the applicant and Mr. S.K. Ojha, Ld. Counsel for the Railways and perused the

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materials on record. We have also gone through the rejoinder filed by the applicant as well as written note of submission filed by the Respondent-Railways.

5. It is needless to mention that another OA No.288/2012 was also filed by one Pradip Sadhukhan seeking exactly the same relief based on identical facts and circumstances as in the instant O.A. The sole point in that O.A. was whether the Respondents Railways were justified in conducting retest for the post of Junior Engineer-II (Electrical) . After hearing the rival parties, in an elaborate /exhaustive order, this Tribunal held that entertainment of doubt could not create a ground for retest unless there are some materials support to such a doubt. It was further held that in normal circumstances identical answers of a few candidates are no doubt improbable but not impossible. Therefore, a process of inquiry was required in that case. In the circumstance, it was held that merely entertaining a doubt and having sufficient evidence for a malpractice having taken place are two different situations and accordingly, the Tribunal came to a conclusion that the Respondents had failed to give cogent reasons as to why retest was required, just because the same answers were given when the concerned candidates were appearing in various different centers of the examination on the basis of different question papers. Therefore, the action of the Respondents should be based upon not merely on a doubt but also

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based on some inquiry regarding such malpractice being resorted to and a clear finding recorded in this regard.

6. Since the facts and circumstances in O.A. No.288/2012 are quite same and similar to the facts and circumstances in the instant O.A., we are not inclined to make a departure from the view that we have already taken in ~~the~~ formerly O.A. Accordingly, we direct the Respondents to consider the result of the applicant in the first test conducted by them and consider his selection on the basis of the result of the first test. Accordingly the O.A. is allowed. No costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER (J)