

Original Application No.339 of 2012  
Cuttack, this the 4<sup>th</sup> day of July, 2014

-Versus-

FOR INSTRUCTIONS

- (R.C. MISRA)  
ADMN. MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O. A. NO. 339 OF 2012

Cuttack the 4<sup>th</sup> day of July, 2014

CORAM

**HON'BLE MR. R.C. MISRA, MEMBER (ADMN.)**

Gautam Charan Swain,  
aged about 43 years,  
S/o. Late Raghu Swain,  
At-Tangi, P.O.-Lptasajo.  
P.S.-Tangi, Dist-Cuttack.  
Pin-754022.

...Applicant

(Advocate: M/s. N.R. Routray, S. Mishra, T.K. Choudhury )

**VERSUS**

Union of India Represented through

1. The General Manager,  
East Coast Railway,  
Rail Vihar,  
Chandrasekharapur,  
Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager,  
East Coast Railway,  
Khurda Road Division,  
At/P.O.-Jatni, Dist. Khurda.
3. Sr. Divisional Personnel Officer,  
East Coast Railway,  
Khurda Road Division,  
At/P.O.-Jatni, Dist. Khurda.

... Respondents

(Advocate: Mr. T. Rath)



ORDER(Oral)

**R.C. MISRA, MEMBER (A)**

The applicant in the present O.A. has approached this Tribunal for direction to be issued to the Respondents to appoint him in the Railways by extending the benefit of the order of this Tribunal dated 04.01.2012 passed in O.A. No.611/2009.

2. The facts of the case are that the applicant's father was appointed in the Railways in the year 1966 and retired from service in the year 1990 on attaining the age of superannuation. On 13.08.1990, the South Eastern Railway, Khurda Road invited applications from the children of the Railway employees who had retired on superannuation after 01.01.1987 or would be retiring from service by 31.12.1995, for enrollment of fresh faces substitutes for utilization against day to day casual work. The applicant had also submitted application along with documents for enrollment as substitute and was called to appear in an interview which he attended on 28.11.1991. During the process of selection certain irregularities were committed by the Departmental Authorities and therefore, the final result was not published and the matter was subjected to a vigilance investigation. Finally, the General Manager cancelled the entire process of selection in the year 1999. Some of the aggrieved people approached this Tribunal in O.A. No.520 of 2001 and this Tribunal vide order dated 16.04.2004 directed that the wards of the Railway Employees for enrolment as substitutes may be considered along with outsider candidates. Further, this Tribunal directed that the cases of the applicants who had applied in response to the notification dated 13.08.1990 may be considered as and when they would take action for enrolment of substitutes under their organization. Against this order of the Tribunal, the Respondents moved the Hon'ble High Court of Orissa by filing W.P.(C) No.8814/2004. The Hon'ble High Court of Orissa vide order and judgment dated



17.03.2006 upheld the order passed by this Tribunal. However, the Hon'ble High Court of Orissa modified the order of the Tribunal to the extent that on the availability of vacancies the petitioners (Railways) shall invite applications according to their requirement by making publication in some newspapers having wide circulation. The opposite parties 1 to 20 shall also be allowed to apply therein along with the outsiders, in case, they move applications pursuant to the same mentioning that they were the applicants in respect of the earlier notification dated 13.08.1990. It was further directed by the Hon'ble High Court of Orissa that the case of those who are over aged shall be considered for relaxation. The Railway Authorities in compliance of the order of the Hon'ble High Court of Orissa dated 17.03.2006 have already appointed 16 of the applicants in respect of O.A. No.520/2001. The present applicant on 20.01.2012 submitted a detailed representation to the Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division who is Respondent No.3 in this case with a prayer for empanelment/appointment in Railway at par with beneficiaries of order dated 17.03.2006 passed by the Hon'ble High Court of Orissa. In the meantime this Tribunal vide order dated 04.01.2012 was pleased to dispose of similar matter in O.A. No.611/2009 and directed the Railway Authorities to consider the grievance of the applicant in the light of the decision of the Hon'ble High Court of Orissa passed in W.P.(C) No.8814/2004. However, the applicant's representation is still pending with the Respondents and therefore he has approached the Tribunal praying for a relief that he should be considered under the orders passed by the Hon'ble High Court of Orissa in W.P.(C) No.8814/2004 by extending the same benefit as given by this Tribunal in their order dated 04.01.2012 passed in O.A. No.611/09.



2. In the counter affidavit, which has been filed by the Railway Authorities a very detailed history of this case has been submitted. However, I do not consider it is necessary to deal with the entire history of this case. The Respondents have admitted that there was an order of this Tribunal in O.A. No.520/2001 as mentioned by the applicant. This order was challenged by the Railway Authorities before the Hon'ble High Court of Orissa in W.P.(C) No.8814/2004. The Hon'ble High Court in their judgment dated 17.03.2006 made certain modification of the order of this Tribunal dated 16.04.2004. In the counter affidavit the Respondents have admitted these facts as averred by the applicant in his application. It is also admitted by the Respondents that in O.A. No.611/09 this Tribunal gave a direction that the applicants may make applications to the Respondents enclosing thereto proof in support of submission of application pursuant to the notification dated 13.08.1990 and on receipt of the same the Respondents will do well in the light of the decision of the Hon'ble High Court of Orissa within a period of 60 days from the date of receipt of application from the applicants. It may be mentioned here that the applicants in the O.A. No.611/2009 were similarly placed persons. As against this order the Railway Administration has preferred a Writ Petition bearing No.W.P. (C) No.15015 of 2012 before the Hon'ble High Court of Orissa which was disposed of on 09.07.2013 by confirming the orders of this Tribunal. After the decision of the Hon'ble High Court of Orissa the Chief Personnel Officer, East Coast Railway, Bhubaneswar considered the case in pursuance of the various Court orders that the applicants and other similarly placed persons may apply in the next Notification for the erstwhile Group 'D' posts to be published by the Railway Recruitment Cell, Bhubaneswar. Their over-age aspect will be considered as one time exemption if they apply duly enclosing

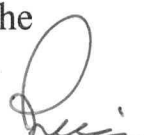


attested copy of call letters in support of attending the Screening/Physical Test conducted against the Notification dated 13.08.1990 as well as copy of this speaking order fulfilling other terms & conditions of Employment notification. The Envelope should be super scribed mentioning that they were the candidates against Notification dated 13.08.1990.

3. I have heard Mr. N.R. Routray, Ld. Counsel appearing for the applicant and Mr.T. Rath, Ld. Standing Counsel appearing for the Respondents/Railways and perused the materials placed on record.

4. Mr. Rath, Ld. Standing Counsel for the Railways has submitted that after the orders by this Tribunal were passed and after the decision of the Hon'ble High Court of Orissa was communicated, the Chief Personnel Officer, East Coast Railway, Bhubaneswar has taken the above decision in compliance to the various orders and he also prayed that the matter may be disposed of in accordance with the decision which has been taken by the Railways in compliance with the orders of the various Courts. The Ld. Counsel for the applicant has confirmed the submissions made by the Ld. Counsel for Railways and has submitted that the applicant's case should be fairly considered in the light of the decision of the Hon'ble High Court of Orissa and also the orders of this Tribunal in similar matter in respect of O.A. No.611/09. It is seen that in the order dated 04.01.2012 passed by this Tribunal in O.A. No.611/09 it was directed as follows:-

"In view of the above, by following the decision of the Hon'ble Apex Court in the case of Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644, this Original Application is disposed of with liberty to the Applicants to make application before the Respondents enclosing thereto proof in support of submission of application pursuant to the notification dated 13.08.1990 and on receipt of the same the Respondents will do well in the light of the decision of the Hon'ble High Court of Orissa, referred to above, within a period of 60 days from the



date of receipt of application from the Applicants. There shall be no order as to costs."

5. It is further noted that the Hon'ble High Court of Orissa in W.P.

(C ) No.8814/2004 directed as follows:-

" In the result, the writ petition is allowed in part. The impugned judgment and order passed by the Tribunal is modified to the extent that on the availability of vacancies the petitioners shall invite applications according to their requirement by making publication in some newspapers having wide circulation. Opposite parties 1 to 20 shall also be allowed to apply therein along with the outsiders, in case, they move applications pursuant to the same mentioning that they were applicants had applied for in respect of the earlier notification dated 13.08.1990 inviting applications for the same purpose. The case of those who have become over-age shall be considered for relaxation."

6. After considering the submission in this regard made by Ld. Counsels for both sides I have no hesitation in disposing of the present O.A. in the light of the decision of this Tribunal In O.A. No.611/09 as quoted above. Therefore, this O.A. is disposed of with a liberty to the applicant to make application before the Respondents enclosing thereto the proof in-support of the submission of his application pursuant to the notification dated 13.08.1990 and on receipt of the same the Respondents will dispose of the matter in the light of the decision of the Hon'ble High Court of Orissa passed in W.P.(C) No.8814/2004. Accordingly, the O.A. is disposed of. No costs.



(R.C. MISRA)  
ADMN. MEMBER