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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O. A. No. 412/2012

Cuttack this the 18<sup>th</sup> day of June, 2015.

.....

Vouduri Bhasker Rao ..... Applicant

-Versus-

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓
2. Whether it be referred to PB for circulation? ✓



(R.C. Misra)  
Member (Admn.)



(A.K. Patnaik)  
Member (Judl.)

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CUTTACK BENCH, CUTTACK

O. A. No.412/2012

Cuttack this the 18<sup>th</sup> day of June, 2015

CORAM

THE HON'BLE MR. A.K.PATNAIK, MEMBER (JUDL.)  
THE HON'BLE MR. R.C. MISRA, MEMBER (ADMN.)

.....

Vouduri Bhasker Rao, aged about 40 years, S/o Late Shri Vouduri China Subba Rao, A-241, Simhadri Nagar Vlasapakala, Kakinada – 533005, District East Godavari, Andhra Pradesh.

...Applicant

(Advocate: Mr. K.C. Kanungo)

**VERSUS**

1. Union of India through Chairman, Railway Board, Railway Bhawan, New Delhi – 110 001.
2. General Manager, East Coast Railway, Samant Vihar, AT/PO/PS Chandrasekharapur, Bhubaneswar – 751023, District Khurda, Orissa.
3. Chief Personnel Officer, East Coast Railway, Samant Vihar, At/PO/PS Chandrasekharapur, Bhubaneswar – 751023, District Khurda, Orissa.

... Respondents

(Advocates: Mr. S. Barik )

**ORDER**

**PER A. K. PATNAIK, MEMBER [J] :**

The case of the applicant is that he is a physically challenged (totally blind) unemployed youth and in pursuance of an advertisement issued by the Railway dated 13.04.2005; he applied for consideration to the post of Khalasi meant for physically challenged persons. The



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Respondents, after verifying the application, called upon him to appear at the written test held on 08.03.2009 (vide Roll No. 23025) and was declared successful in the said written test. Thereafter, he was called upon for verification of documents and medical examination on 26.05.2009 and 27.05.2009 respectively and on 26.05.2009 documents were verified and, he was directed to attend the medical test/examination and on 27.05.2009 he attended the medical test and even though found fit he could not be provided with an appointment. After waiting for a petty long time to know the outcome of his selection, he sought information as to why the process of selection is held up even after <sup>his</sup> coming out successful in the written as well as medical test and completion of certificate verification vide application dated 20.09.2010 under RTI Act, 2005 and in turn, vide letter dated 22.09.2010 he was informed that the recruitment proceedings are under vigilance investigation. Thereafter, by making applications under RTI Act, 2005, one after the other, he had sought to know further development, if any, <sup>that</sup> took place in the meantime with regard to the selection in question and in turn vide reply dated 07.01.2011, 03.03.2011 and 28.10.2011, the applicant was informed that the selection files are in the

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custody of Vigilance Department for investigation. Thereafter, in Memorandum dated 27.01.2012, the Respondents published the names of the physically challenged candidates <sup>who</sup> got selected provisionally in pursuance of the advertisement dated 13.04.2005 for appointment to their respective posts in which the name of the applicant did not figure. Again being aggrieved, the applicant submitted application under RTI Act, 2005 and in reply thereto he was informed vide letter dated 28.02.2012 that due to discrepancies in the application form, the applicant has not been considered eligible for the post of Khalasi. Thereafter, by making another application under RTI Act, 2005, the applicant sought to know what are the discrepancies in his application and in reply thereto he was informed vide letter dated 17.04.2012 that *"Item No.17 of the application form was incomplete, Full Signature was not given and attested copy of certificate in support of educational qualification was not submitted."* He was also given a copy of his application submitted by him for the post in question. Being aggrieved by the aforesaid action, the applicant has filed the instant OA praying for the following reliefs:

*Relief*

***“.....to admit the application, call for the records and upon hearing the parties be pleased to quash Annexure-A/9 and A/10 for ends of justice;***

***.....to hold the applicant is entitled to be considered for appointment as Khalasi and direct the Respondents to appoint the applicant in the post of Khalasi for ends of justice;***

***.....to hold the applicant is entitled for his all service benefits including seniority and fixation of pay in the post of Khalasi from the date any of the successful candidate in pursuance to Annexure-A/8 for ends of justice.***

***.....to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.”***

2. The respondents have filed their counter in which it has been stated that the notification dated 13.04.2005 was for filling up of the vacancies earmarked for PH quota. In pursuance of the said notification, 8317 applications were received which were scrutinized and 2116 short listed candidates were called to appear at the Written examination/skill test on 08.03.2009. The result of the written test was declared on 20.03.2009 and thereafter candidates were called for performance test (wherever applicable), after which medical examination in the ratio 1:1 In each category. Preliminary document verification of the candidates who reported for performance test/medical examination was also undertaken. In the cases where candidates refused to report or were declared medically unfit, they were pushed down in the merit list of that particular category. It has been stated that the applicant

*W. K. Mehta*

had qualified in the written test and therefore, he was called for medical examination and document verification. In the meantime, the vigilance department of the railway called for the files and papers relating to the physically challenged quota recruitment along with accepted and rejected applications, who on investigation found certain discrepancies in the application of the Applicant viz; **applicant had not given his full signature in the application and he had not furnished attested copy of certificate in support of his educational qualification.**

Rather, in the application, the applicant had specifically declared that his appearance in the SSC examination directly which clearly indicates that he had not acquired the requisite qualification as on the date of notification and, therefore, he was not eligible even to apply for the post in question. As he had not fulfilled the conditions as notified, his candidature was rejected. Accordingly, the Respondents have prayed for dismissal of this OA.

3. Applicant has filed rejoinder in which it has been stated that the Applicant has fulfilled the eligibility criteria which is manifestly cleared in the application form which he had submitted for consideration of his candidature. In



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Col. 12, he has mentioned 2004-05 which means the academic year. The percentage of mark and division was also mentioned under the heading 'Division/Grade'. Therefore, it is absolutely improbable that the percentage of mark was quoted without a mark sheet. The secondary school certificate of the applicant contains the mark sheet which he had enclosed along with application and the same was also verified at the initial scrutiny level. Accordingly, the applicant has denied the allegation by way of apprehension that the applicant had not acquired the requisite qualification as on the date of notification. In so far as the allegation of not putting 'full signature' in the application form is concerned, it has been stated that he had put his signature as usually he puts everywhere and below his signature he has written his own name which is his full signature also. It has been stated that when after scrutiny of the application, he was called to appear at the test and after being successful/found fit, denying him the appointment, while appointing others, amounts to infringing his fundamental right enshrined in Article 21 of the Constitution. Accordingly, the applicant has reiterated the relief claimed in the OA.

Allee

4. Heard Mr. K.C.Kanungo, Learned Counsel for the Applicant and Mr. S. Barik, Learned panel Counsel for the Respondent-Railway and perused the material on record. Mr. K.C. Kanungo, Learned Counsel for the Applicant drew our attention to the impugned letters wherein information sought by the applicant under RTI Act, 2005 with regard to reason of rejection of his candidature was supplied to the applicant and submitted that had there been any discrepancy, the applicant could not have been called to appear at the examination/test. In so far as the discrepancies for which the candidature of the applicant was rejected is concerned, it has been stated that the applicant had put his signature as usually he puts everywhere and below his signature he has written his own name which is his full signature also and, therefore, rejection of his candidature on this ground is not sustainable in the eyes of law. In so far as the stand of non submission of attested copies of the documents is concerned it has been stated that the certificate in support of educational qualification was a basic document based on which the applicant was called to appear at the written test. Therefore having allowed the applicant to participate in the selection which was obviously after finding the





application of the applicant was in order, denying appointment on the plea that the application of the applicant was not in order is not sustainable as the same is against the doctrine of estoppel and waiver, more so it has been stated that if the applicant submitted the certificate without attestation the same cannot be a ground to deny appointment especially after verification of those documents on 26.05.2009 with its originals. Hence it has been submitted that as no physically challenged candidate under visually handicapped ground has been selected this is another ground for his appointment. Last but not the least it has been argued that ~~as~~ the applicant is cent percent blind. He was selected after due process of selection. A social obligation casts on the Government to rehabilitate the physically challenged citizens so as to earn their livelihood. Therefore, denying the appointment, after he is found suitable, is nothing but <sup>Tantamount</sup> ~~amounts~~ to infringing the provision enshrined in Article 21 of the Constitution of India. Accordingly, Mr. Kanungo has prayed for grant of the relief claimed in this OA.

5. On the other hand, Mr.S.Barik, Learned panel Counsel for the Respondent-Railway has strongly opposed



to the arguments advanced by learned counsel for the applicant. It has been stated that sympathy and sentiment cannot be a ground to appoint to a Government post as the same has to be done strictly in accordance with Rules and Law as enshrined in Article 14 and 16 of the Constitution of India. Mr. Barik drew our attention to the provision made in Section 20 of the Administrative Tribunals Act, 1985 in which it has been provided that **“application not to be admitted unless other remedies exhausted”** and has submitted that as the applicant has approached this Tribunal without making any representation/appeal even after getting the reason of rejection of his candidate under RTI Act, 2005 this OA is not maintainable. Further it has been stated that applicant sought information under RTI Act, 2005 with regard to the selection which was provided to him in letters (impugned in this OA) with specific stipulation that if he has still any grievance he may prefer appeal to the Appellate Authority declared under the RTI Act but instead of availing of that opportunity or approaching the appropriate forum he has filed the instant OA which not maintainable as this Tribunal lacks jurisdiction to quash the information supplied under the RTI Act, 2005. In so far as merit of the matter is

*Barik*

concerned, it has been stated that the result of Board of Secondary Education, Hyderabad was declared on 30.04.2005. The certificate and mark sheet were received by the applicant much after filing of the present OA. Though no cut off date of acquiring the qualification was mentioned in the advertisement it will be presumed that the qualification must be acquired by the candidate by the date of notification which was dated 13.04.2005. Therefore, the stand of the applicant that he had acquired the qualification prior to the last date of submission of application i.e. on 30.05.2005 cannot be accepted. In the advertisement it was clearly mentioned that attested copies of final/provisional certificate should be attached. Since the applicant did not fulfil the conditions as notified his candidature was rejected. This was also the stand taken by Mr.Barik in so far as not putting the full signature as required, by the applicant on his application. Lastly it was contended by him that mere appearance and empanelment will not confer any right on the applicant when on investigation it was found by the Vigilance that the application of the applicant was not in order. Accordingly, Mr.Barik has prayed for dismissal of this OA.



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6. We have considered the contentions advanced by learned counsel appearing for the respective parties.

7. The prayer of the applicant in this OA is to quash the letters dated 28.02.2012 & 17.04.2012 wherein the applicant was supplied with the information indicating the reason of rejection of his candidature which he had sought under RTI Act, 2005. His second prayer is to hold that the applicant is entitled to be considered for appointment as Khalasi and for a direction to the Respondents to appoint him in the post of Khalasi and his third prayer is to hold that the applicant is entitled to all service benefits including seniority and fixation of pay in the post of Khalasi w.e.f. the date others out of the same selection process were appointed. We find that second and third prayer are consequential to the first prayer, in other words, unless the rejection of candidature of the applicant is quashed, the applicant is not entitled to the second and third prayer made in the OA. As it is, the letters dated 28.02.2012 and 17.04.2012 cannot be construed to be the order of rejection of the candidature of the applicant as these letters are only a medium of communication of the decision taken by the authorities and by quashing these two letters

*Alley*

by no stretch of imagination it can be construed that the original decision as communicated by the aforesaid two letters is quashed. Otherwise also, matters pertaining to RTI application this Tribunal lacks jurisdiction to adjudicate. In the said letters, the applicant was only intimated the reason of rejection which he had sought under the RTI Application. If, according to him, the reason of rejection was not correct, justified or after thought, he should have taken up the matter, at the first instance, before the authority competent, instead of straightaway rushing to this Tribunal. The provision made in section 20 of the A.T. Act, 1985 clearly embargos this Tribunal to entertain an application filed without availing of departmental remedy and in the instant case the departmental remedy was to file representation/appeal before the competent authority after getting the information under the RTI Act. In view of the discussions made above, this OA stands dismissed. No costs.



(R.C. Misra)  
Member (Admn.)



(A.K. Patnaik)  
Member (Judl.)