

CENTRAL ADMINISTRATIVE TRIBUNAL
CUITTACK BENCH, CUTTACK

O.A.No.510 of 2012

Cuttack this the 13th day of December, 2017

Adhikari Jena...Applicant

-VERSUS-

Union of India &Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓

(DR. MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K. PATTNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
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Cuttack this the 13th day of December, 2017

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(A)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

AdhikariJena, aged about 34 years, S/o. late Babaji Jena,
resident of Village-Rahangiria, PO-Biraharekrushnapur, PS-
PuriSadar, Dist-Puri, PIN-752 992

...Applicant

By the Advocate(s)-Mr.A.Mishra

-VERSUS-

Union of India represented through:

1. The Chairman, Railway Board, Railway Bhawan, New Delhi-110 001.
2. The General Manager, East Coast Railway, SamantVihar, PO-Mancheswar, Bhubaneswar, Dist-Khurda
3. The Chief Personnel Officer, East Coast Railway, SamantVihar, PO-Mancheswar, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.A.Mohanty

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant had applied for a job in response to the Advertisement dated 13.4.2005 issued by the East Coast Railways on 15.4.2005. Certain posts were earmarked for hearing impaired candidates and the applicant had applied under that category. He was called to appear in the written test on 8.2.2009 and was placed amongst the successful candidates in the select list dated 24.3.2009. He was asked to

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attend the medical examination on 22.5.2009. He was also called for a typing skill test to be held on 2.9.2009 at the Office of the Chief Personnel Officer for the post of Junior Clerk cum Typist and he claims to have succeeded in that test. Since he did not get the appointment letter, he along with a few others submitted a representation on 10.3.2010. On 4.8.2010, he was informed that the recruitment process was under vigilance investigation. Applicant had filed the O.A. No.787 of 2010 before this Tribunal which disposed of the said O.A. on 29.8.2011 directing the respondents to finalize the selection process and communicate the result to the applicant in a reasoned order within a period of two months. In compliance of this order of the Tribunal, Chief Personnel Officer (Respondent No.3) issued a speaking order dated 30.1.2012(A/13) with the following observations:

"Subsequent to the Hon'ble Tribunals' orders, the Vigilance Department of this Railway had submitted the investigation report based on the preventive check on recruitment against Physically Handicapped Quota. In the report, it has been pointed out that as per the notification only candidates who are 'Deaf' are eligible for consideration against Category No.8, Jr.Clerk-cum-typist as per Employment Notice No.PH/03&04/2005, whereas the applicant is only 'Partially Deaf' as per certificate No.64 dt: 16.6.2009 issued by Chief District Medical Officer, Puri. Being a partially deaf candidate, the applicant is not fulfilling the eligibility criteria for consideration against Category No.8 of Employment Notice No.PH/03&04/2005. As such, he is not eligible for appointment. The results of the eligible candidates have been announced vide Memo No.ECoR/Pers/PWD Rectt./2004-05 dt: 27.01.2012.

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The above decision is communicated to you in compliance of the Hon'ble Tribunal's order dt: 29.8.2011 in O.A.No.787 of 2010".

2. Aggrieved by this, the applicant has filed the present O.A. on 18.5.2012 praying for the following reliefs:

"...to quash Annexure-A/13 dated 13.7.2013 and direct the respondents to appoint the applicant in the post of Junior Clerk-cum-Typist (SBP Unit code)".

3. The applicant has based his prayer mainly on the ground that he has been found eligible in the written test by the respondents, and therefore, rejection of his candidature and his non-selection is illegal, arbitrary and perverse.

4. The respondents in their reply filed on 22.11.2012 have contested the claim of the applicant. They have enclosed a certificate issued by the Medical Board, Puri dated 9.5.2002 wherein the applicant has been found to be partially deaf with permanent disability of hearing and the percentage of disability is 90%. They have also enclosed the report of the Vigilance Cell, wherein at Para-3, it is mentioned as follows:

"3. In the related file mentioned above, a complaint against one candidate had been investigated. On that file it has been decided that Shri Adhikari Jena, Roll No.24039, may be excluded from empanelment, since he is partially deaf but the post had been notified for deaf. Therefore, (ix) Shri Adhikari Jena, Roll No.24039 should also be excluded taking the total number to nine".

5. The Respondents have annexed the result of the Stenography test and typing test conducted on 20.5.2009 and 2.9.2009, respectively in which against the applicant's name it

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is mentioned that he did not qualify in the speed test. It is the contention of the respondents that since the applicant is only partially deaf he is not eligible to be selected for the post of Junior Clerk-cum-Typist in response to the Advertisement dated 13.4.2005.

6. The applicant has filed a rejoinder on 16.11.2015 in which he has reiterated that he suffers 100% deafness and therefore, to categorize him as partially deaf is unfair. It is not for the vigilance cell to say who is deaf and who is partially deaf. Therefore, the report of the vigilance showing him partially deaf cannot be entertained by the respondents. The applicant has annexed the report of the Medical Board in his O.A. wherein his disability is being shown as 100%.

7. We have heard the arguments of the learned counsels from both the sides and perused the documents submitted by them. The learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in Magraj Patodia vs. R.K. Birla & Ors. (AIR 1971 SC 1295) to argue that a document which was procured by improper or even illegal means will be a bar to its admissibility if it is relevant and its genuineness proved. But while examining the proof given as to its genuineness the circumstances under which it came to be produced into court have to be taken into consideration. It is the contention of the respondents that there was some discrepancy in the documents submitted by the applicant and

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therefore, after the vigilance inquiry report, his candidature was rejected.

8. The critical issue in the present O.A. is whether the applicant is eligible to be considered against a physically handicapped quota for the hearing impaired in view of three different sets of certificates used in the O.A. The applicant has annexed A/15 wherein the applicant has been certified as 100% handicapped. This certificate has been signed by three Doctors from the District Headquarters, Hospital, Puri, viz. Specialist in Orthopedic, Specialist in ENT and Specialist in Ophthalmology. In continuation of the same annexure, there is a certificate in the Standard Format of Disability Certificate wherein the same specialists have assessed his percentage of disability as 100% and he is being categorized as deaf. It is also mentioned that the condition is progressive and the re-assessment of the case is not recommended. It is also mentioned that he can hear with hearing-aid of the strong variety. The respondents on the other hand have annexed a certificate issued by the District Medical Board, Puri dated 9.5.2002 in which it is mentioned that the applicant's disability is permanent and he is hearing impaired and the percentage of his disability is 90%. The Respondents have used this document to disqualify the applicant and to reject his application for the post of Clerk-cum-Typist. Although the results of Stenography and Typing show that the applicant did not qualify in the

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speed test, it is mentioned at the bottom of the Memorandum dated 02.09.2009 that as per RBE No.5/2001 such of those candidates who fail to qualify in the typing test/stenography test, may be called for viva-voce and if they qualify in the same they may be allowed to be appointed provisionally, subject to the condition that they will qualify in the typing test/stenography test within a period of two years from the date of appointment.

9. From the records it is seen that the applicant was referred for medical examination that was held on 22.5.2009. The certificate issued by the Medical Board and attached by the applicant have been issued on 16.6.2009, whereas the certificate annexed by the respondents was issued on 9.5.2002. All the certificates have been issued by the District Medical Board, Puri and obviously there is discrepancy in these three certificates. In the certificate issued in the Standard Format, the tick mark is close to Partially Deaf and D-Deaf has not been deleted as instructed in the format. It is difficult to come to a conclusion whether the applicant was partially deaf or deaf on the basis of the Disability Certificate issued on 16.6.2009 and the standard format of disability annexed at A/15. In the written notes of submission, the respondents have questioned the authenticity of certificates attached by the applicant. But this plea has not been taken in the counter filed by them. The respondents have admitted that the applicant had

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earlier submitted an old Disability Certificate dated 9.5.2002 and at the time of certificate verification, he was asked to furnish a fresh Disability Certificate in response to which he submitted a fresh certificate issued by the Chief District Medical Officer, Puri on 16.6.2009 in three pages. The respondents claim that this certificate shows his hearing impairment as partially deaf and the condition is progressive. The vigilance Department of the Railways after its investigation had advised to exclude the name of Shri Adhikari Jena from the selection list since he is partially deaf whereas the post has been notified for the deaf.

10. An analysis of the above position clearly points out to a discrepancy in the decision taken by the respondents inasmuch as they themselves have not accepted the old certificate of the year 2002 determining the extent of disability of the applicant and asked him to produce a fresh Disability Certificate. The applicant has undergone an examination by the District Medical Board, Puri, which at two different places have certified that the percentage of his disability was 100%. Regarding the question whether the applicant is deaf or partially deaf there is a slight confusion since the Medical Board has put the tick mark below the category D-Deaf and above PD-Partially Deaf. The Medical Board should have struck off the category which is not applicable in case of the applicant and they have failed to do


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so. When this categorization is read with the certificate that the applicant is 100% disabled the inescapable conclusion is that the applicant is deaf with 100% disability and is eligible to be considered against the hearing impaired quota. The respondents have also pointed out the fact that the applicant did not qualify in speed test of typewriting. However, the Railways themselves have made a provision that such candidates can be selected provisionally and can be given a chance to qualify in the typing test within a period of two years from the date of appointment. Respondents have questioned the authenticity of some of the documents and have cited the judgment of the Hon'ble Supreme Court in Magraj Patodia vs. R.K. Birla & Ors. (AIR 1971 SC 1295). We are not dealing with the issue of authenticity of the documents and therefore refraining from applicability of the case law. A prima facie perusal of the documents does not show any major inconsistency to affect the authenticity of the document. The only doubt raised is as to whether the applicant is deaf or partially deaf.

11. After examining the legal position and perusing the documents in the O.A., we are of the view that the interest of justice would be better met if the applicant is given another chance to subject himself to medical test by a duly constituted Medical Board which should be asked to give a correct certificate as to whether the applicant is deaf or partially deaf. The respondents will consider the suitability of the applicant in

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terms of the fresh certificate to be issued by the Medical Board and his eligibility in terms of the rules relating to Stenography & typing test and take an appropriate decision on his recruitment. They are directed to complete this process within eight weeks from the date of receipt of this order. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)


(S.K.PATTNAIK)
MEMBER(J)

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