

4

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 641 of 2013
Cuttack the 16th day of September, 2013

CORAM

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

.....
Tankadhar Badhai, aged about 38 years, Son of Sri Chakradhar Badhai resident of Village-Badhaikata, PO. Gondghora, Dist. Jharsuguda and at present working as Trackman at Hirakud in Sambalpur Division, East Coast Railway, Dist. Sambalpur.

...Applicant

(Advocates: M/s.Suryakanta Dash, N.R.Routray, H.Moharana)

VERSUS

Union of India Represented through -

1. General Manager, East Coast Railway, Rail Vihar, Chandrasekhpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager (P), Sambalpur Division, East Coast Railway, At-Modipada, Po.Khetarajpur, Town/Dist. Sambalpur.
3. Chief Personnel Officer, East Coast Railway, E.C.R.Sadan, Chandrasekhpur, Bhubaneswar, Dist. Khurda.
4. Assistant Personnel Officer, Sambalpur Division, East Coast Railway, At-Modipada, Po.Khetarajpur, Town/Dist. Sambalpur

.... Respondents

(Advocate: Mr.T.Rath)

ORDER

(01)

A.K. PATNAIK, MEMBER (JUDL.)

The Applicant has filed this OA stating therein that he was disqualified to appear at the 25% LDC in SBP Division against the Selection for promotion to the post of Sr. P.Way Supervisor in PB-2 Rs.9,300-34,800/- with GP

Ables

Rs.4200/- on the ground of not having basic qualification i.e. 10+2 with Science and Mathematics qualification though the applicant has completed the Diploma ^{from} ~~in~~ ⁱⁿ Institution of Permanent Way Engineers (India) floated by Indian Railway whose course includes the Syllabus for the selection test for the post, in question. It is further case of the Applicant that he has submitted appeal dated 29.7.2013. The said appeal was rejected but clarification has been sought from the CPO/ECoR/BBS. Due to non-receipt of clarification from the CPO/ECoR/BBS the applicant is likely to be deprived of participating in the process of selection. In this connection Mr.Routray also drew our attention to the letter dated 12.8.2013. In the above circumstances, by filing the instant OA the applicant while seeking a declaration that the applicant is eligible to appear in the said LDCE examination as per Notification No.SBP/DPO/Engg/Notification/SPS/25%-LDCE/13 dated 31.5.2013 by way of ad interim measure he has sought to direct the Respondents to allow him to appear in the LDCE or to direct the Respondents to conduct supplementary LDCE Selection/written test against the above notification before a final selection is made in respect of the post in question. Copy of this OA has been served on Mr.T.Rath, Learned Standing Counsel for the Railway.

2. We have heard Mr. N.R.Routray, Learned Counsel appearing for the Applicant and Mr.T.Rath, Learned Standing Counsel appearing for the Respondents and perused the records. Mr.Routray by putting emphasis on the qualification acquired by the Applicant has submitted that denial of opportunity to appear at the examination merely because the applicant does not have the

Alleged

qualification of 10+2 with Science and Mathematics qualification is not sustainable in the eyes of law. On the other hand, Mr.Rath, submitted that the applicant has not challenged the Rules prescribing such qualification in this OA and that when his appeal was rejected and the rejection having not been challenged by him, the applicant is not entitled to the relief claimed in this OA. He has also submitted that seeking clarification after rejection of the appeal cannot give a right to the applicant to claim to allow him to appear ignoring the qualifications prescribed in the rules and in this connection by drawing our attention to the rejection letter dated 12.8.2013 Mr.Rath prayed for dismissal of this OA.

3. Mr.Routray orally submitted that he would be satisfied if this OA is disposed of with a direction to the Respondent No.3 to take a view and communicate the clarification as sought by the Respondent No.4 in letter dated 12.8.2013 within a specified period under intimation to the Applicant. Mr.Rath has no serious objection to this. In view of the above without expressing any opinion on the merit of the matter and without prejudice to either of the parties, this OA is disposed of at this admission stage with direction to the Respondent No.3 to take a decision on the clarification sought and communicate the decision thereof to the Respondent No.4 within a period of 30 (thirty) days from the date of receipt of copy of this order, if not already communicated and on receipt of such clarification the Respondent No.4 is directed to communicate the Applicant within a period of fifteen days therefrom. There shall be no order as to costs.



4. As prayed for by Mr. Routray, Learned Counsel for the Applicant copy of this order along with OA be sent to Respondent Nos.3 and 4 by post for which he undertakes to furnish the required postal requisites within three days hence.


(R.C.MISRA)
Member(Admn.)


(A.K.PATNAIK)
Member (Judi.)