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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 909 of 2013
Cuttack, this the 29th day of September, 2015

Prakash Chandra Biswal

..... Applicant

Versus


Union of India & Ors.


..... 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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HON'BLE SHRI A.K. PATNAIK, MEMBER (JUDL.)

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

.....

Prakash Chandra Biswal,
aged about 34 years,
S/o Anadi Biswal,
At- Beda, PO- Panchapara, Via- Balmi,
P.S.- Rasol, Dist- Dhenkanal (Odisha).

...Applicant

(Advocates: M/s. M.R.Dhal, L. Kanungo, S.Das, P.R.Singh, S.K.Mishra)

VERSUS

Union of India Represented through its

1. General Manager,
East Coast Railway, E.Co.R.Sadan,
Chandrasekharpur,
Bhubaneswar, Dist-Khurda.
2. Chairman, Railway Recruitment Cell,
East Coast Railway, 2nd Floor, South Block,
Rail Sadan, Chandrasekharpur,
Bhubaneswar, Dist-Khurda.
3. Asst. Personnel Officer,
East Coast Railway (Recruitment),
Railway Recruitment Cell,
Rail Sadan, Chandrasekharpur,
Bhubaneswar, Dist-Khurda, Odisha.

... Respondents

(Advocate: Mr. S.K.Nayak)

.....

Me

O R D E R

Mr. A.K.PATNAIK, Member (Judl.):

Unassailably and unquestionably, the Railway Recruitment Cell, East Cost Railway, Bhubaneswar, Odisha issued notification in the Employment News on 17.12.2010 for holding open selection for 2817 posts in various categories viz; Trackman, Token Porter, Gatekeeper, Helper II etc in the scale of pay of PB-1 Rs. 5200-20200 with GP Rs.1800/-. As per the conditions stipulated in the said notification, after the written test the qualified candidates were also subjected to Physical Efficiency Test. The documents of the successful candidates were also verified. The applicant was one of such successful candidates whose documents were also verified by the Railways. After such verification of documents, the candidates were subjected to medical examination and accordingly, the Applicant was sent to Railway Hospital, Khurda Road for Medical Examination as a pre condition for appointment. On due examination, the applicant was declared fit in A-2 category. However, on receipt of complaint on the medical report of the Railway Hospital, Khurda Road, the applicant along with some others were again subjected to re medical examination at Railway Hospital, Mancheswar who after medical examination declared the applicant fit in B-1 category. In view of the contradictory report, the applicant was subjected to re medical examination at Railway Hospital Waltair who upon medical examination, reported the applicant fit in B-1 category. Due to the aforesaid reason, the Railway Vigilance Authority called upon the applicant for enquiry. The applicant attended the enquiry before the Railway Vigilance Authority who

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after conducting the necessary enquiry vide letter dated 24.06.2013 intimated as under:

“X X X X

Sri Biswal tried to mislead the examining doctors during his medical examinations by his act, arising out of his mala fide intention. Such an act, before entering into Railway Service need to be viewed seriously so as to deter other candidates from trying to enter service or take undue advantage by act of fraud. Therefore, it is recommended not to empanel him for Railway service. This has the approval of the GM/ECOR.”

2. Following to the aforesaid letter of the Railway Vigilance Authority, the competent authority of the railways cancelled the candidature of the applicant vide letter dated 29.07.2013. As against such rejection, the applicant preferred representation dated 03.08.2013 and, thereafter, approached this Tribunal in OA No. 610 of 2013 which was disposed of on 6th September, 2013 by granting liberty to the applicant to make a representation to the competent authority which shall be considered by the said authority and intimate the result thereof within a time scheduled. On consideration of the representation so submitted by the applicant the authority concerned intimated the applicant in letter dated 30.10.2013 as under:

“1) Based on your performance in the Written Exam and PET with Roll No. 9008318, you were called for documents verification on 12.12.2012. After document verification you along with 13 candidates were directed to Railway Hospital, Khurda Road for medical examination.

Signature

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The concerned Medical authority declared you fit in A-1 category. However, as per direction of the Vigilance Department you were required to undergo re-medical examination along with other 13 candidates at Railway Hospital, Mancheswar. The Medical authority of central Hospital, Mancheswar declared you fit in B-1 category in the re-medical examination. Since the findings of both the medical tests were differed, you were further sent for re-medical examination at Railway Hospital, Waltair. The Medical authority, Railway Hospital, Waltair also found you fit in B-1 category. From the above findings it was established beyond doubt that you are fit in B-1 medical category but not in A-2 category. In view of the different reports obtained in the medical examination conducted on you, you were called to attend inquiry by Vigilance Department.

2) Vigilance Dept. in its findings concluded that you had tried to mislead the examining Doctor during your medical examination at Railway Hospital, Khurda Road with a mala fide intention. Such an act before entering into Railway Service was viewed seriously so as to deter other candidates who are joining railway service from taking undue advantage by acts of fraud. As such your candidature was cancelled as per Para 14(ii)(g) of the Employment Notification NO. ECor/RRC/D/2010 dt. 17-12-2010 being found guilty of "Using unfair means during medical examination" and the same was already communicated to you vide this office letter No. ECoR/RRC/D/2010/DV dated 29.07.2013.

3) In para-8 of your representation, you have mentioned that, while you were discharging duty of fire fighter on 24.12.2012 sustained an eye injury and the same was also placed before the vigilance enquiry. It is also stated by you that, you had shown the medical certificate to the investigating officer but the investing officer refused to record your statements and the medical certificate was not accepted. It is pertinent to state

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here that, you had presented yourself before the enquiry along with the supporting documents but failed to prove yourself free from the mala fide intention.

In view of the above reasons, the undersigned uphold the decision communicated vide this office letter No. ECoR/RRC/D/2010/DV dated 29.07.2013 that your candidature against Gr. D recruitment notified vide Employment Notice No. ECoR/RRC/D/2010 dated 17-12-2010 as cancelled.”

3. Being aggrieved, the applicant filed this second round of litigation on various grounds which would be dealt into, infra, at the appropriate place. However, the prayer of the applicant in this OA is as under:

“(i) To quash the order dt. 29.07.2013 and 30.10.2013 passed by Respondent No.3.

(ii) To direct the Respondents to give appointment to the applicant against the post of Helper-II as per the result found in the selection process.

(iii) Any other appropriate order.....”

4. By reiterating the stand taken in the letter dated 30.10.2013 the Respondents have strongly opposed the prayer of the applicant and have prayed for the dismissal of this OA. The Applicant has also filed rejoinder.

5. Mr.M.R.Dhal, the Learned Counsel appearing for the applicant placing reliance on the averments in the OA as well as in the rejoinder echoed the heart burns of the applicant to the extent that it is not the case of the Respondents that the medical certificate finding the applicant fit in A-2

category at the first instance was in any manner false/forged/fabricated. However, it has been alleged by the railway vigilance authority that the applicant tried to mislead the examining if from any source, the Railway Vigilance Authority find fault with the doctors during his medical examinations by his act, arising out of his mala fide intention. But the doctor who examined and granted the certificate to the applicant was not examined. It has been stated that the Railway Vigilance Authority has no authority to recommend not to empanel the applicant for railway service. If at all it was found that the Doctor who examined and granted such certificate without due application or mind or otherwise the railway vigilance authority could have suggested taking action against such Doctor(s) but no action was taken against the doctor whereas the railway vigilance authority exceeded their jurisdiction in recommending not to empanel the applicant as he had misled the doctors during his medical examination by his act arising out of his mala fide intention but without clarifying which of the 'act' made them to believe that the same was out of mala fide intention. It has been stated that ultimately the applicant was found fit in B-1 and, therefore, he is entitled to be appointed in the post for which he was qualified retrospectively. Accordingly, the Learned Counsel for the Applicant has prayed to allow this OA.

On the other hand, in a bid to pulverize the arguments, Mr. S.K.Nayak, the Learned Counsel appearing for the Respondents submitted that in terms of para 14 (ii) read with Para 14 (ii)(g) of the Employment Notification dated 17.12.2010 the applicant was being found guilty of using

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unfair means during medical examination by the railway vigilance authority his candidature was rightly cancelled. The Applicant submitted representation/appeal against such decision which was duly considered but the authority did not find any merit in the said decision so as to interfere in the matter. According to him the action of the respondents had salutary and sobering effect on the other candidates. Accordingly, he has prayed for the dismissal of this OA.


6. We have considered the rival contentions of the parties and perused the records. If according to the Railway Vigilance Authority the applicant tried to mislead the examining doctors during his medical examination by his act arising out of his mala fide intention, it is not known as to why no action was taken against such Doctors who granted such certificate. More so nothing has been stated about which of the 'act' and how does it arise out of mala fide intention. It is not the case of the railway vigilance authority the applicant misled rather it is the say of the railway vigilance authority that the applicant tried to mislead but it is not known as to how the doctors were biased when they are there to grant the certificate after examining the applicant in real sense. Be that as it may nothing is transpired that any action has been taken against the said doctors thereby allowing the applicant an opportunity of cross examination when the allegation against the applicant is serious in nature. We also find that the allegation of the railway vigilance authority is based on conjecture and surmises as no material has been filed in support of the allegation that the applicant had misled with mala fide intention so as to obtain such certificate.

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It is trite proposition of law that however the suspicion grave may be that cannot be proved in a domestic enquiry. Therefore, we are of the view that the decision of the railway vigilance authority is based on ipse dixit and, therefore is liable to fall flat. In view of the above, we quash the impugned order dated 30.10.2013 in so far as finding fault with the applicant and thereby discarding him from railway service and in so far as appointment of the applicant is concerned, we leave it to the respondents to examine the eligibility of the applicant for getting the appointment with the fitness in B-1 category and communicate the decision to him in a well reasoned order within a period of sixty days from the date of receipt of a copy of this order.

7. With the aforesaid observation and direction this OA stands disposed of. No costs.


(R.C.Misra)
Admn. Member


(A.K.Patnaik)
Judicial Member

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